



Master Service Agreement

Background

- A. OneQode provides communications-related services to businesses. This is delivered through services provided directly from us, our related bodies corporate and third parties.
- B. You wish to engage us to provide certain services on the terms and conditions contained in this MSA, any Schedules and Additional Documents.

Note: Any capitalised terms you see which aren't defined in the text itself are defined in the Definitions at the end. Any ' tooltips' (the tips marked in blue - like this one) are for guidance only and don't form part of the terms of this Agreement.

Operative Provisions

1. Term and Operation of this MSA

Summary: You're agreeing to receive services from us and will comply with the terms of this Agreement. Any Services you order will be governed by this MSA.

1.1 Application

These Terms are binding on you from the earlier of:

- (a) the date on which you sign this MSA (if applicable);
- (b) the date on which you enter into any Additional Document;
- (c) the date you place an Order on any Customer Management Platforms; or
- (d) the date you, having received a copy of this MSA, instruct us to commence any Services or purchase any Product,

and applies to all Services we undertake for you unless expressly excluded by us. Agreement to this MSA includes indicating your consent to it through our Customer Management Platform and you agree to be bound by doing so.

1.2 Term

- (a) This MSA will continue to apply to the relationship between the parties and any Services unless terminated under the terms of this MSA, or expressly superseded by another document.
- (b) Other than where terminated by us or you in accordance with this MSA (and any Additional Documents), a Service shall remain in force for its specified Initial Term.
- (c) Following the expiration of an Initial Term for a Service, the Service shall continue under its relevant Additional Document on a month-to-month basis. Unless stated otherwise in the Additional Document, either party may then terminate that Service at any time by giving no less than 30 days Written Notice to the other party.

1.3 Continuing Agreement

- (a) We regularly update, upgrade and change our Services. The terms of this MSA are also regularly updated to keep up with our changing Services and any relevant legislation.
- (b) By using our Service, you are agreeing not only to the terms and conditions of this MSA as they stand, but will, by your continued use of the Service, also be considered by us as consenting to any updates or changes to the terms of our MSA as we publish them,

both within the Portal and online at the Website from time to time.

- (c) You warrant to us that you will regularly check the terms of this MSA and ensure that you are satisfied and comply with the terms. Where you're not satisfied and or refuse to comply with said terms, you must notify us immediately and you agree that you may be in default of this MSA if we determine this to be the case in our sole discretion. If we determine you are in default, we may terminate this MSA in accordance with clause 14.3.

2. Additional Documents

Summary: These are the 'master' terms for all services we provide to you. We may have other supplemental agreements with you and they'll inherit these terms. Usually, most Services will have at least one additional document to go with an Order.

2.1 Operation of Additional Documents

- (a) These terms are general terms governing our relationship with you, in relation to any Services we provide to you at your request.
- (b) We may enter into Additional Documents from time to time with you when you place an Order. These will set out the additional terms for a Service including payment details and Initial Term. Each Additional Document is subject to the terms of this MSA.
- (c) You don't have to make any minimum level of purchases under this MSA and we're not obligated to accept any particular Service request you make.
- (d) Each Additional Document constitutes a separate agreement and the expiry or termination of any Additional Document does not automatically affect the validity of this MSA or any other Additional Documents on foot.
- (e) Unless the terms of the Additional Document state otherwise, each Additional Document (and corresponding Service) will continue in force on the same terms beyond the end of the applicable Initial Term, unless either party elects in writing to end the Service at the end of the Initial Term under the provisions of this MSA (or relevant Additional Document).

2.2 Relationship between MSA and Additional Documents

To the extent that any conflict exists, the various documents comprising this MSA will take precedence in the following order (from highest to lowest priority):

- (a) any variation to this MSA or any Additional Document agreed in writing between the parties (in order of recency); then
- (b) in order of commencement date from the most recent:
 - (i) the appendix or schedule to any Additional Document; and
 - (ii) the terms of any Additional Document; then
- (c) this MSA; then
- (d) any policy or procedure of ours we disclose to you (not forming part of an Additional Document).

2.3 Relationship between the parties

- (a) Nothing in this MSA constitutes a partnership or contract of employment. It is the express intention of both parties to deny any such relationship.
- (b) You must not represent to anyone that:
 - (i) we provide preferential pricing or service to you over any other customer or client of ours;
 - (ii) you are approved or endorsed by us, act as our agent, or are affiliated with in any way other than as recipient of the Services; or
 - (iii) any fault, downtime or suspension of the Services is our responsibility, unless we have verified in writing that we caused the issue.

3. Services

Summary: We'll perform the services to the standards agreed and in accordance with industry best practice. There are some limitations to what we do, and we'll charge for services performed outside scope. Services are ordered either directly with us or through a Customer Management Platform. The terms accompanying these will usually set out all the nitty gritty details specific to that Service.

3.1 Services

We will provide the Services as agreed in each Additional Document, subject to this MSA.

3.2 Orders

- (a) An Order is an Additional Document for the purposes of this MSA.
- (b) Orders may be requested through the Customer Management Platform or provided directly by us to you on request.
- (c) Any Order requested through a Customer Management Platform is subject to our final approval and we may refuse to approve an Order (and provide a Service) even after it has been requested through the Customer Management Platform.

3.3 Hours of operation

Our personnel are typically available during Business Hours on Business Days. Services requiring personnel involvement will be carried out during these hours unless otherwise contracted or agreed.

3.4 First line support

Unless we specifically agree to doing so in an Additional Document, we don't provide 'first line' support to your organisation or your customers. All support enquiries should be made by your nominated support representative(s). Where support enquiries do not come through your nominated representative(s), we reserve the right to charge you for our time as an Out-of-Scope Service (although we will usually warn you of this prior to doing so).

3.5 Performance

- (a) We will use our reasonable commercial endeavours to provide the Services:
 - (i) to the standards and key performance indicators (KPIs) specified in any Order or Additional Document;
 - (ii) within the timeframe(s) set out in the relevant Order or Additional Document;
 - (iii) to all relevant Australian standards;

- (iv) in accordance with industry best practice;
 - (v) using reasonable endeavours to rectify any faults in the Services for which we are responsible; and
 - (vi) taking reasonable steps to investigate and restore Services where affected by causes beyond our control.
- (b) In performing the Services, we will endeavour to:
 - (i) comply with any relevant occupational health and safety policies we set for our performance of the Services;
 - (ii) comply with all relevant laws in-force and currently applicable; and
 - (iii) maintain prudent insurance policies.

3.6 Service limitations

We will use our reasonable efforts to provide the Services, however other than as set out in this MSA, to the fullest extent permitted at law:

- (a) we don't warrant or guarantee that:
 - (i) the Services will be uninterrupted or error free;
 - (ii) the Services will be fit for any purpose or compatibility; or
 - (iii) the Services will make you compliant with any particular legislation or standard; and
- (b) we don't take any responsibility for faults, delays, or interruptions to the Services caused by:
 - (i) your misuse or user error;
 - (ii) your software or equipment;
 - (iii) the delays, fault, negligence action, or inaction of any third party or Supplier (or their services, software or equipment);
 - (iv) the delay in anything provided or required to be provided by you; or
 - (v) any Unforeseen Event.

3.7 Provisioning and Installations

- (a) Where you order a Service with us, we'll advise you of a delivery date by which we plan to provision or install the Service.
- (b) We'll use our reasonable efforts to provision that Service by the delivery date, however you acknowledge that:
 - (i) any delivery date we provide is an estimate only; and
 - (ii) we're not liable or responsible to you for any failure to provision or install a Service by a scheduled delivery date.

3.8 Practical Completion

- (a) Upon completion of the provisioning/installation, we'll provide you with confirmation that work is completed on our end (**Practical Completion Notice** or **PCN**). Following the issuance of a PCN:
 - (i) we'll request that you test the service and ensure it is functional;
 - (ii) we'll usually provide functionality within the Customer Management Platform to give us feedback; and

- (iii) we'll give you a timeframe by which, if we don't hear anything, we may commence billing.
- (b) Typically, we will not begin invoicing you for a service unless you've indicated that the Service is functional after issuance of a PCN. However, you acknowledge and agree that we may begin invoicing if:
- (i) you do not indicate that the Service is functional within 10 Business Days but:
 - (A) your Service is demonstrably functional;
 - (B) you commence using the Services within your business; or
 - (C) you make no effort to test the Service or provide feedback;
 - (ii) your issues with the Service do not relate to any lack of functionality or deficiency under this MSA and/or the relevant Additional Document and at least 10 Business Days have passed; or
 - (iii) we otherwise consider that your Service is wholly compliant with the scope of the Order and at least 10 Business Days have passed.

3.9 Out-of-Scope Services

- (a) We may at our discretion, upon request by you, provide Out-of-Scope Services.
- (b) The same standards, warranties, inspection rights and indemnities apply to Out-of-Scope Services as apply to the Services.
- (c) We will charge the Out-of-Scope Fee for any Out-of-Scope Services we provide, and may vary them at any time. Where we vary them, we'll notify you.
- (d) Out-of-Scope Services usually only occur where they are specifically requested outside of the usual Order process. We will confirm with you prior to providing any Out-of-Scope Services.
- (e) We may, at our discretion, provide Out-of-Scope Services to you without an Additional Document. Where we do this (and have confirmed your consent beforehand) we shall be entitled to charge Out-of-Scope Fees for any time and material expended on providing those Out-of-Scope Services.
- (f) We may elect to provide Out-of-Scope Services to you free of charge, but this will be confined to that particular instance and won't apply to any other Out-of-Scope Services. For clarity, our failure to charge you (or charge a reduced rate) for any part of Out-of-Scope Services will not create an expectation or entitlement to receiving any future Services (including Out-of-Scope Services) free of charge or at a reduced rate.

3.10 Changes to Services or Equipment

Technology and business environments are constantly evolving and we may make adjustments to the Services to ensure we deliver Services which stay relevant and commercially current. We'll give you reasonable notice of any changes we consider are substantial and ensure that any altered services are at least the same standards as the original.

3.11 Right to sub-contract

We may appoint third parties, contractors or agents to provide all or part of the Services; and such entities are bound by the same obligations as us. It's our responsibility to make sure those entities comply with this MSA.

3.12 Identifying data

We reserve the right to:

- (a) attach labels or index your data within our databases; and
- (b) remotely measure your usage of the Services to ensure billing accuracy and technical efficiency.

3.13 Charges from Suppliers

- (a) Where Services you order from us require or include services from a Supplier, additional charges may apply which were not contemplated or agreed to in an Additional Document (**Additional Supplier Charges**).
- (b) Additional Supplier Charges will, where possible, be provided to you for approval prior to them being incurred and where a Service is dependent on that approval, we'll delay provisioning of the Service pending your approval. You acknowledge however that some Additional Supplier Charges may be incurred unknowingly or without the opportunity to approve them.
- (c) Where Additional Supplier Charges are incurred, these will be billed to you upon delivery of the relevant service by the Supplier. You warrant that you will pay any Additional Supplier Charges required in relation to the Services we provide from time to time.
- (d) Where you don't approve the Additional Supplier Charges, we may terminate the Services in question under clause 14.3.

3.14 Third Party Terms

- (a) Third party software and services provided or utilised in conjunction with the Services may be subject to Third Party Terms.
- (b) Where possible, we'll provide you directly with relevant Third Party Terms. In other cases, we may pass them on in our agreements. Some terms may be located directly in software. It's a condition of our provision of Services that you agree (and continue to agree) with any relevant Third Party Terms which are provided or alluded to.
- (c) Where you believe you have a basis for a claim in relation to third-party services or software, your sole and exclusive remedy is to pursue that third-party for resolution in line with the relevant Third Party Terms.
- (d) You agree that you won't pursue, bring a Claim or otherwise involve us in a Claim which relates to third-party Services or Software, except where our acts or omissions have indisputably contributed to that Claim under this MSA.

4. Your Rights and Obligations

Summary: You also have a responsibility to do the right thing by us. This includes giving us clear instructions, protecting your systems, taking responsibility for things which are under your control and making sure that you're interacting safely with Our Network.

4.1 Instructions, Equipment and materials

In order for us to deliver the Services to you in an efficient and timely manner, you must:

- (a) supply any requested Client Materials in a timely manner;

- (b) supply clear instructions regarding the scope and specifications of the Services, and respond to any questions about the scope and specifications of the Services promptly and clearly;
- (c) give us all information and assistance that we reasonably require to meet our obligations under this MSA and supply the Services, including for feasibility studies and service qualifications, as well as that which is required for our compliance with relevant laws;
- (d) respond in a timely manner if we bring an issue to your attention in relation to your software, equipment, data or network that affects the Services;
- (e) notify us if you make any changes to your software, network or data which are likely to affect the Services; and
- (f) take reasonable measures to prevent any unauthorised person from accessing the Services.

4.2 Warranties

- (a) You warrant and undertake that:
 - (i) you and your representatives have all necessary licences and legal right(s) to permit and authorise us to provide the Services;
 - (ii) providing the Services in accordance with your directions will not contravene applicable laws and regulations; and
 - (iii) you and all of your employees and contractors maintain prudent and comprehensive insurance policies.
- (b) We may ask for assurances of these warranties (including copies of any licences or insurance policies under clause 4.1). If you can't provide them, we may stop providing the Services and serve you with a Notice of Default.

4.3 Access Authority

Where you provide access to your premises or any other location under your control (for example, a server rack in a third party data centre) as part of the services, you must provide a safe working environment in compliance with all occupational health and safety laws.

4.4 Nominated representative

You agree (if we request) to nominate a key representative who has the authority to make decisions and give us instructions on your behalf.

4.5 Customer responsibilities

- (a) You must:
 - (i) provide us with anything we reasonably request for the installation and provision of any Services;
 - (ii) ensure that, where you install or connect any cabling which interacts with Our Network:
 - (A) that all cabling has been installed by a qualified and licenced cabling service provider and/or installer; and
 - (B) that the cabling meets the minimum requirements required by ACMA;
 - (iii) obtain all required permissions, consents, licences and approvals for us to conduct any installation in relation to the Services and assist us wherever necessary for us to do the same.

- (b) Unless expressly stated in this MSA or an Additional Document, you are responsible for, and expressly agree that we are not responsible for:
 - (i) issues or damage to any goods or products that you purchase from a third party and request that we install, maintain or service;
 - (ii) providing any backup, disaster recovery and business continuity practices which are outside the scope of the agreed Services;
 - (iii) any performance outcomes from your use of the Services;
 - (iv) your failure to ensure suitability of any Product or Service purchased from us;
 - (v) any issues or defects arising in relation to your data, business processes, software, equipment or network;
 - (vi) your reliance on the Services without any backups, redundancy or alternative solutions in the event of an emergency; and
 - (vii) any third party software or services, including any that integrate with the Services, unless that functionality forms part of the Service itself.

4.6 Use of the Network

You must ensure that:

- (a) your employees, End Users, contractors and agents use Our Network and any Products or Software in accordance with this MSA and any other applicable terms (such as Additional Documents and Third Party Terms);
- (b) everything connected to Our Network by or on your behalf:
 - (i) is technically compatible with Our Network;
 - (ii) complies with generally accepted industry standards, requirements and codes; and
 - (iii) complies with all reasonable procedures, standards and other requirements notified by us from time to time;
- (c) you do not use Our Network, Services and Products, connect anything to Our Network or do anything at our sites or facilities in a way that:
 - (i) endangers the health or safety of any person or negatively impacts the normal operation of any network or system over which we supply Services;
 - (ii) damages or interferes with any site, facility or telecommunications equipment which we own, operate or use under licence (including sites of third parties);
 - (iii) interrupts or degrades the normal operation of Our Network, Services or any Services or Products supplied by us to another customer or to us by another third party;
- (d) in using Our Network, Services and Products, you comply with:
 - (i) our policies and procedures; and
 - (ii) anything within this agreement which is a restriction on your use of same;
- (e) you allow for us, our suppliers and contractors to have safe and timely access to your sites and the

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sites of your resellers or end users, where it is necessary for us to:

- (i) ensure that the supply of the Services continues without any issues;
- (ii) maintain the integrity or optimal performance of Our Network;
- (iii) install, maintain, repair, enhance, remove or otherwise perform work with any equipment relating to Our Network or the Services;
- (f) you provide any and all assistance and information we reasonably require (including following our reasonable directions) to allow us to confirm whether you've complied (and will continue to comply) with this clause 4.6;
- (g) you're taking all reasonable measures to ensure that your End Users comply with the obligations in this clause 4.6 as if any reference to 'you' is a reference to those End Users; and
- (h) you implement policies, procedures, monitoring software and training to maximise the chance of compliance with this clause 4.6.

4.7 Resellers

- (a) You must do everything reasonable to ensure that your Resellers comply with all of your obligations in this MSA which relate to:
 - (i) the marketing, branding and use of our name and Intellectual Property (including any of our Related Bodies Corporate);
 - (ii) use of Customer Management Platform;
 - (iii) the use and supply of the Services; and
 - (iv) any activities which relate to that use or supply (including those in clause 4.6);

as if the references to 'you' in this MSA and any Additional Documents were references to your Resellers.

- (b) You are liable and indemnify us fully for any non-compliance by your Resellers with their obligations under this MSA.

4.8 Restrictions

You agree that you won't:

- (a) interfere or attempt to interfere with the proper working of the Services, Our Network, the Customer Management Platform or any Software we use or any activities conducted using the Services;
- (b) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to Services or Software (or other accounts, computer systems or networks connected to our software or services);
- (c) access all or any part of the Services and use knowledge gained by that access to build a Service which competes with us or the maker of that Product;
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services, Customer Management Platform or Software other than as provided under this agreement; or
- (e) otherwise take any action in violation of any guidelines, policies or supplemental documentation

which are applicable to the Services, Customer Management Platform or Software from time to time;

without our separate, express written permission.

4.9 Connected Networks

If Your Network is connected to Our Network and one of us:

- (a) intends to implement an outage in, or a change to, that network; or
 - (b) becomes aware of a fault or other event relating to that network;
- that could have a detrimental impact on the other network, that party must:
- (c) give prior notice (where possible) to the other party;
 - (d) inform the other party as soon as possible in the circumstances (where prior notice was not possible);
 - (e) take all reasonable steps to minimise all impacts to the other party; and
 - (f) keep the other party informed of the status of the event and the steps being taken in relation to same.

This clause 4.9 won't affect our rights to make any changes to Our Network which are permitted by this MSA or an Additional Document.

4.10 Data

Unless we're providing Services which expressly give us responsibility, you'll be responsible for the preservation of your data (and the data of your customers) on digital mediums.

4.11 Customer Management Platform

- (a) We may provide you with access to our Customer Management Platform(s) to facilitate the ordering of Services, access to Our Network, management of your relationship with us and to perform other functions (like payment).
- (b) Where we provide you with credentials and/or other ways of authenticating yourself (and your employees/End Users) on a Customer Management Platform, anyone who obtains those credentials and uses the Customer Management Platform will be considered your authorised representative until you notify us otherwise.
- (c) You acknowledge that we have no method to ascertain whether a user with access to your credentials is authorised by you or not, and that the responsibility for account security is ultimately yours. You release us from all Liability in this regard.
- (d) When using a Customer Management Platform, you must comply with any and all terms which are published by us in relation to that platform or are otherwise provided to you. We may suspend or withdraw access if you don't comply.
- (e) We make no guarantees that any Customer Management Platform or any other systems we use will be fault free, secure, always available or provide accurate information. You acknowledge and agree that you don't have any expectations in relation to same.

4.12 Legislation Specific Obligations

- (a) You acknowledge that we may be required by certain government and/or law enforcement agencies:

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- (i) to intercept communications over or using the Services as required by legislation and/or as directed; and
 - (ii) to monitor communications, usage and other aspects of the Services;
- and you release us from any and all consequences, Liability and responsibility for same.
- (b) Our Network integrity is paramount and we take it seriously. While we endeavour to cooperate with all Government Agencies, some new government powers have the potential to disrupt or hinder Our Network if they're exercised without our knowledge. Where you're served with a Technical Assistance Request, Technical Assistance Notice or Technical Capability Notice under the Telecommunications Act, a Computer Access Warrant under the Surveillance Devices Act 2004 (Cth) or any other instrument which would compel you to access, or provide access to, Our Network or our Services on behalf of any third party (including government entities) without our knowledge or input, you agree to take all actions available to you to dispute such a notice or instrument, or at a minimum, the portion of that notice or instrument which relates to Our Network or Services. Any dispute shall include a submission that, where the notice or warrant relates to Our Network, our Services and/or systems, that notice should instead be served on us.
- (c) The Telecommunications Act prohibits us from providing certain services using Our Network to small businesses with less than 15 employees. There are exceptions under the legislation - particularly that we can provide services if you're a business with more than 14 employees, a carrier or a carriage service provider. By ordering Services from us, you warrant and represent that you either:
- (i) have more than 14 employees; or
 - (ii) you're a carrier or carriage services provider as defined in the Telecommunications Act.

You indemnify us and our related bodies corporate for any breach of this clause 4.12(c) and recognise that this is a continuing obligation on you. Where you do, at any time, fail to comply with this clause 4.12(c), you shall notify us immediately and we may either enter into an arrangement to transfer your Services, terminate the Service or make other arrangements with you.

5. Payment

Summary: You need to pay us any agreed fees for all the various work we do for you. You can't have more than our set Debt Limit outstanding with us and if you don't pay us, we can take action to get that money from you.

5.1 Payments

- (a) Payments are to be made as specified under this MSA and each Additional Document.
- (b) Typically, information on Fees for the Services will be provided either within the Customer Management Platform or directly from us. Payment for any initial setup Fees will usually be requested and paid as part of the initial payment process.
- (c) In addition to any Fees specified in this MSA and each Additional Document, we'll issue invoices for the following fees (where applicable):
 - (i) setup fees (if any);

- (ii) the price of any Product ordered, to be paid in the amount and frequency specified on the Order;
- (iii) any fees for Out-of-Scope Services requested and performed under clause 3.9, payable fortnightly in arrears or otherwise as agreed;
- (iv) for Services that attract a surcharge, such as after hours services or onsite visits (other than planned visits included with a Service);
- (v) any pre-approved expenses for travel time at current daily rates if we are required to travel to a site more than 15 km from our offices; and
- (vi) any pre-approved expenses if we are required to travel to a site more than 100 km from our offices, including travel time at current daily rates, and all travel expenses including flights, accommodation and meals (excluding alcohol).

- (d) Unless provided for to the contrary, Fees for the Services will be billed monthly in advance on or about the first day of each calendar month.

5.2 Further payment provisions

- (a) Unless otherwise stated, each tax invoice:
 - (i) is payable within 14 days from the date of the tax invoice;
 - (ii) where you are on a Credit Account, payable on the terms agreed in a Credit Agreement; and
 - (iii) will be sent via email and/or our Customer Management Platform.
- (b) You're responsible for and must reimburse us for any transaction, processing, dishonour or charge-back fees issued by a financial institution or payment gateway in the course of making payment.
- (c) All fees are in Australian dollars, exclusive of GST unless otherwise stated. If any GST is imposed on a supply under this MSA, you must pay the GST amount with and in addition to the Fees. We will itemise any applicable GST on each tax invoice.
- (d) Some Services may be billed in other currencies, including US Dollars. Where this is the case, we'll advise you.
- (e) Where there is a Debt Limit in place in relation to your account, you must not have a total of more than the Debt Limit outstanding with us at any one time. In the event that you exceed this amount and do not pay at least 50% of the Debt Limit within seven (7) days, we reserve the right to cease all Services without further notice to you and take any further action necessary to recover the debt. This clause does not apply for funds validly attributed to a Credit Account.
- (f) We reserve the right to vary any Fees where the cost of supplying a Service (whether direct or indirect) increases due to any additional legislative, regulatory or other costs, penalties, imposts or taxes imposed by any governmental or regulatory body.
- (g) Where you fail to pay any taxes which are required or we do not collect taxes from you which are later assessed as due and owing in relation to the Services, you indemnify us in relation to same (including for payment of those Taxes and any interest or penalties levied or assessed in connection with this clause 5.2(g)). We will provide evidence in relation to an assessment upon request.

5.3 Fee disputes

- (a) If you reasonably believe that an invoice contains an error, you must notify us before the due date of the invoice and pay the undisputed portion of the invoice.
- (b) Provided you have complied with this clause 5.3, we won't suspend or terminate any Services for non-payment of the disputed Fees while the dispute is being investigated.
- (c) Our records are sufficient evidence of Fees owing and/or paid.

5.4 Default in payment

- (a) If you fail to pay any invoice by the due date, then without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest), we reserve the following rights:
 - (i) to charge an overdue fee on all overdue amounts at the RBA cash rate plus 6 percentage points, compounded daily from the due date of the relevant invoice;
 - (ii) provided that we have issued you a reminder notice which allowed at least 5 Business Days to make payment, to then immediately suspend any or all Services then on foot and provide you with a Notice of Default;
 - (iii) where Services include rental of space within a data centre, suspend all access to assets within that data centre;
 - (iv) to commence debt recovery proceedings against you and engage a third party to assist with that process; and
 - (v) to retain a lien over all equipment, materials, data and work in progress, including those owned by you in our possession and control.
- (b) You are liable by way of liquidated damages for all amounts payable under this clause plus all costs of debt collection and enforcement, including legal fees on a solicitor and own client basis.

5.5 Fee increase

Unless otherwise specified in the relevant Additional Document, monthly fees and surcharges remain the same for the duration of an Initial Term (subject to any changes in the scope of the services provided or other increases provided for elsewhere). Following completion of an Initial Term, we reserve the right to increase Fees, but will notify you if we intend to do so.

5.6 Creditworthiness

- (a) From time to time, we may request that you provide us with information in relation to your capacity to pay for our Services and/or the financial position of your business. This is to assist us with assessing our business risk and determine your continued ability to pay us.
- (b) You agree to provide us with any documentation or financial statements that we reasonably request within 10 Business Days. Usually, we will only require a Certificate of Solvency but we may also request other documentation if needed.
- (c) Where you can't provide the requested documentation, you must provide us with written reasoning for same within 10 Business Days from the initial request.

5.7 Fixed Contract Period

Where you have purchased a Fixed Contract Service and:

- (a) you terminate a Service prior to the expiry of its Initial Term (other than in accordance with clause 14.1 or 14.2); or
- (b) we terminate that Service, all Services or this MSA prior to the expiry of Initial Term(s) pursuant to clauses 14.1 or 14.3 (save for sub-sections (ii), (vii) and (viii) of clause 14.3); then

any unpaid Fees for the Fixed Contract Services will become immediately due and payable for the entire length of each Initial Term.

5.8 Security Deposit

- (a) Where:
 - (i) you fail to pay our Fees under this MSA or an Additional Document; or
 - (ii) we consider that it is necessary for our continued confidence in your ability to pay our Fees;we may give you Written Notice that we require you to provide us with a security deposit (**Security Deposit**).
- (b) Any amount we require for a Security Deposit must not exceed a total of three months' Fees for all of your current Services combined.
- (c) Where we require payment of a Security Deposit, you must provide same to a bank account we elect within 10 Business Days. Failure to do this will be considered a default by you under this Agreement and grounds for immediate termination.
- (d) We will hold the Security Deposit as security for all Fees related to your Services. Where you fail to make payment for Fees for any Service by the due date, you authorise us to immediately deduct the corresponding amount from the Security Deposit. Where we make a deduction, you must pay us immediately on request an equal amount to replace the amount that was deducted.
- (e) We reserve the right to increase the required Security Deposit amount to correspond with any increase in your total Fees for Services. We must also return any unused Security Deposit amount on termination of this MSA.

5.9 Group Invoices

Services under this MSA may be performed and invoiced by any of our entities or related bodies corporate. Where another of our entities invoices for Services, you shall be obligated to make payment for that invoice as if it was rendered by us.

5.10 Acknowledgements

You acknowledge and agree that we may pay commission or referral fees in relation to Services you purchase from us.

5.11 Credit Checks

You authorise us to use any information you provide us (including any Personal Information) to perform all enquiries we consider reasonable into your creditworthiness. We may perform checks before, during or after electing to provide any Services to you.

6. Equipment

Summary: We maintain title to all of our equipment unless you purchase it from us.

6.1 Title to Equipment

From time to time, we may install or provide equipment as part of a Service. Where we do:

- (a) we and/or our supplier(s) retain all right, title and interest in that equipment and may register our interest in that equipment on the PPSR;
- (b) you must pay any of our reasonable costs in repairing or replacing equipment which is lost, damaged or otherwise adversely affected while under your effective control (or the control of your Resellers, End Users, agents, employees or contractors), excluding anything attributable to fair wear and tear;
- (c) where the equipment is installed at your premises (or that of our Reseller or End User), you must ensure there's adequate space for installation and are responsible for the supply of electricity to operate the equipment.

7. Confidentiality

Summary: We both need to keep each others' information confidential - and only disclose it to certain people who are bound also by confidentiality.

7.1 Confidential Information

- (a) Each party acknowledges that in the course of performing its obligations under this MSA, it may receive Confidential Information which is proprietary and confidential to the other party and any of that party's clients, directors, employees, contractors or agents.
- (b) Each party agrees not to use or disclose Confidential Information of the other party and any of that party's clients, directors, employees, contractors or agents.

7.2 Disclosure and Return

- (a) Despite clauses 7.1(a) and 7.1(b) above, either party may use or disclose Confidential Information strictly to the extent necessary to:
 - (i) carry out its obligations under this MSA;
 - (ii) comply with any law, binding directive of a regulator or a court order;
 - (iii) comply with the listing rules of any stock exchange on which its securities are listed; or
 - (iv) obtain professional advice where the advisors agree to be bound by the same obligation of confidentiality.
- (b) At the request of a party, the other party must return all Confidential Information received and must not retain any copies of, or other reproductions or extracts of, the Confidential Information, except as it may retain in accordance with prudent business practices. Any retained material will remain subject to the provisions of this MSA without any time limit.
- (c) You acknowledge and agree that we do not make any representation or warranty, express or implied, as to the accuracy, correctness or completeness of Confidential Information. You agree that neither we nor any of our affiliates, directors, officers, employees, professional advisors or agents have liability to you resulting from the use of Confidential Information by you or your directors, employees, contractors or agents.

8. Intellectual Property

Summary: We both own our own pre-existing material. Anything we develop as part of the Services is ours, unless we agree that it will be yours. We'll both take steps to protect each other's Intellectual Property.

8.1 Client Materials

- (a) You (or where applicable, any third party owner) retain ownership of all relevant Intellectual Property rights in the Client Materials and such rights are not assigned or transferred to us.
- (b) You grant us (and our employees, contractors and agents, as applicable) a revocable, royalty-free, non-transferable licence to use, copy, modify and adapt any Intellectual Property in the Client Materials as reasonably necessary to provide the Services.

8.2 Pre-existing IP

Unless otherwise agreed, each party retains ownership of all Intellectual Property rights in material owned or created by that party independently of this MSA (even if incorporated into a Service), and no such Intellectual Property is assigned or transferred by way of this MSA.

8.3 Third party material

We may incorporate third party materials as necessary to provide the Services. Use of third party materials may be subject to third party, creative commons or open source licensing terms, or such third party licensing terms as notified by us to you.

8.4 Ownership of Intellectual Property

The parties agree that all Intellectual Property rights in:

- (a) the Services, Software and any other material developed by us under this MSA; and
- (b) any improvements, modifications or enhancements to the Services, and any other material developed by us in the course of providing the Services,

will vest in and are owned by us upon creation, even if based on your new feature request or user feedback.

8.5 Licence

- (a) Provided that you comply with all of your payment obligations, we grant you a limited, non-exclusive, revocable, royalty-free licence to use our Intellectual Property to the extent that it is incorporated as part of the Services under this Agreement.
- (b) The licence granted under clause 8.5(a):
 - (i) includes the right to use the Services for commercial purposes, subject to any licence limitations set out in this Agreement or the relevant Additional Document;
 - (ii) may not be sub-licensed except as reasonably necessary for you to maintain any Services; and
 - (iii) is not transferable without our written consent.
- (c) Without limiting your rights at law, and subject to any conflicting rights granted by this Agreement or Additional Documents, you agree that you won't, without our written consent:
 - (i) sell, sublicense, rent, lease, lend, modify, alter, translate, reproduce, transmit, distribute, publicly display, publicly perform, publish, adapt, or edit any part of our Intellectual Property;

- (ii) combine or incorporate our Intellectual Property in any program or system without our consent in writing;
- (iii) copy our Intellectual Property, in whole or in part;

and must ensure that you don't enable or permit anyone else who you're associated with to do any of the above.

8.6 IP Addresses and Network Space

- (a) Any internet protocol address (**IP Address**) we allocate to you as part of this MSA or a Service remains our Intellectual Property. Nothing in this MSA assigns any rights to IP Addresses provided to you and you must only use them in connection with the Service. All IP Addresses are used under a limited, revocable licence.
- (b) Where a Service is terminated for whatever reason, your licence to any associated IP Addresses shall cease and we may deal with them as we wish.
- (c) Any space or addresses we provide you on Our Network is for use with the relevant Service only. It must be returned upon termination or suspension of the Service (or this MSA).
- (d) You acknowledge and agree that we may cease your use of any areas of Our Network alluded to in this clause 8.6 without further notice to you upon suspension or termination.

8.7 Publicity Rights

For the term of this MSA, and subject to any ongoing right of revocation by Written Notice, you grant us, and our contractors and agents, a non--exclusive and revocable licence to:

- (a) use your logo, trade marks and other branding rights to advertise or promote the Services;
- (b) publish general case studies describing your use of the Services in general terms for academic and promotional purposes; and
- (c) display, link to, or promote your business as part of our portfolio;

however it is our usual practice to request permission before using your logo, trade marks or other branding in public, particularly on any press releases.

9. Indemnity and Limitation of Liability

9.1 Client indemnity

We're providing you a service, but we can't accept responsibility for things which are either out of our control or don't form part of the responsibilities we agree to. This clause sets out the things you agree we won't be responsible for and gets some assurances from you so we know you understand. Without these we can't provide our Services.

- (a) You agree to release, indemnify, defend, and hold us harmless (including our Indemnified Officers) against any Claim or Liability arising under this MSA or the Services from:
 - (i) your misuse of the Services, Software or Products;
 - (ii) your breach of any law, warranty or infringement of any third party rights (including Intellectual Property rights);

- (iii) your instructions causing us to be in breach of any law, regulation or infringement of any third party rights including Intellectual Property rights;
- (iv) our actions taken in accordance with our legal obligations, regulatory or court order which adversely affect you or your customers;
- (v) issues you or your customers have relating to a Supplier as contemplated by clause 11.7;
- (vi) issues you or your customers have relating to, or stemming from, the physical failure of, or damage to, a fibre-optic cable (particularly a submarine cable);
- (vii) any downtime, interruption, data loss, Product, Software or Service failure, or Consequential Loss of any kind experienced by you or your customers;
- (viii) any loss or damage to persons or property (including data) caused by your acts or omissions, including use of the Services;
- (ix) a claim brought by a third party against us because of your actions (or omissions), including your breach of any Third Party Terms;
- (x) our reasonable actions in denying anyone access to the Services; and
- (xi) any cause independent of human control that occurred after the Services were supplied/deployed;

whether directly or indirectly arising in connection with the Services, even if we knew or should have known about the possibility of such Claim or Liability.

- (b) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this MSA, including expenses for enforcing payment, on a solicitor and own-client basis.
- (c) You similarly agree to release, indemnify and hold harmless our Suppliers against any Claim or Liability arising from any of the matters listed in clause 9.1(a).

9.2 Limitation of Liability

Summary: Our liability for our Services lines up with Australian Consumer Law. We won't be responsible for any added liability and neither of us are responsible to each other for Consequential Loss.

- (a) We only accept liability to you as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.
- (b) To the fullest extent allowable at law:
 - (i) indirect, special, pure economic or Consequential Loss (whether arising under contract or tort) for both parties is expressly excluded under this MSA;
 - (ii) all Services are provided under this MSA on an 'as is' basis and all warranties that may be implied by law or statute (other than those set out in this MSA) are excluded;
 - (iii) we won't be liable for any damages, claims, breaches, liability or losses arising from our compliance with any Technical Assistance Notice, Technical Assistance Request or Technical Capability Notice issued under the Telecommunications Act 1997 (Cth), Computer Access Warrant under the Surveillance Devices

- Act 2004 (Cth) or any other lawful direction by an intelligence or law enforcement agency;
- (iv) our liability, and liability of our Indemnified Officers under this MSA is limited to (at our election), in relation to Services:
- (A) supplying the Services again; or
 - (B) payment of the cost of having the Services supplied again; or
 - (C) a refund of the amount you paid us for those Services;
- (v) our liability, and liability of our Indemnified Officers under this MSA is limited to (at our election), in relation to a Product:
- (A) supplying the Product again;
 - (B) payment of the cost of having the Product supplied again;
 - (C) repairing the Product;
 - (D) payment of the cost of having the Product repaired; or
 - (E) a refund of the amount you paid us for the Product; and
- (vi) despite any other provision to the contrary, our total liability (and the total liability of our Indemnified Officers) in connection with this MSA and the Services whether under contract or tort, will not in any circumstances exceed the maximum value equal to the total fees received by us from you in the 3 months preceding the cause of the claim.

9.3 Costs

Subject to our obligations under the *Competition and Consumer Act 2010* (Cth), we exclude all other liability to you for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by you in connection with this MSA and/or the Services. This limitation applies however the Costs are caused whether they arise in contract, tort (including by our negligence) or under statute.

9.4 Additional Documents

Where you fail to comply with any Additional Document, you acknowledge and agree:

- (a) that such failure may negatively impact our ability to provide the Services; and
- (b) to release us from any obligation or Liability, including obligations to meet service levels or provide rebates or compensation under instruments like the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, to the extent that the obligation or Liability was caused or contributed to by your failure to comply with requirements in an Additional Document.

10. Suspension and Force Majeure

Summary: If you break your word or do something damaging, we can suspend the Services until we sort it out. We both get some leeway if we're affected by something unforeseen.

10.1 Your Default and Suspension

- (a) We may suspend our Services under this MSA any or all Additional Documents at any time and provide you a Notice of Default if:

- (i) you fail to make any payment when due, or any payment is dishonoured or subject to chargeback, subject to clause 5;
 - (ii) you breach your obligations to us, or we have reasonable cause to believe you've done so;
 - (iii) you fail to provide clear and timely instructions after repeated requests by us;
 - (iv) you cause any malicious code or other damaging virus, malware or code to be uploaded to our servers or software;
 - (v) you use the Services or any other Software, Products for Mission Critical or High-Risk Activities without:
 - (A) notifying us;
 - (B) obtaining our written permission; and
 - (C) signing any and all additional documentation required for same.
 - (vi) we have reason to suspect illegal or unethical activity in relation to your data; or
 - (vii) in our reasonable opinion your data, network, software or equipment may be causing damage to any person or property.
- (b) Suspension of Services under this clause does not affect your liability to make payment and will end when the issue giving rise to the suspension is remedied.
- (c) We may reinstate the Services after the cause of suspension has been remedied, however we make no guarantees about the timeliness of this reinstatement. We reserve the right to charge a reconnection fee equal to our reasonable Costs incurred due to the suspension and reactivating any Services.

10.2 Unforeseen Events

- (a) If a party is affected by an Unforeseen Event, they must immediately notify the other party of the circumstances. The parties' obligations are suspended for the duration of and to the extent that they are affected by the Unforeseen Event.
- (b) Where an Unforeseen Event continues for more than 30 consecutive days, the non-affected party may terminate this MSA.
- (c) Clause 10.2(b) shall not apply where the Unforeseen Event relates to a failure or issue with a submarine cable.

11. Our Network

Summary: We'll endeavour to rectify faults as soon as we can - but no network is perfect and they do happen. Where they happen and you notice them, we need you to tell us. We're also reliant on infrastructure of other Suppliers and that may have issues every now and then too. If you're operating mission critical services, you'll need to get redundancy.

11.1 Fault Reporting

- (a) You must report any Faults related to Our Network and the Services to the NOC as soon as possible after you become aware of them.
- (b) Before you report a Fault to our NOC, you should take reasonable steps to ascertain that the origin of the Fault does not stem from Your Network, equipment,

applications, systems or any other hardware or software you use to interface with Our Network.

11.2 Fault Restoration and Responsibilities

- (a) Subject to any SLA provided in relation to a Service, we'll use our reasonable efforts to rectify any Fault which is attributable to Our Network and parts of the Services under our direct control, however:
 - (i) we make no guarantees that any Fault will be rectified in any particular time;
 - (ii) we're not responsible for rectifying Faults which arise from issues attributable to Your Network, equipment or any other aspect under your control;
 - (iii) we're not responsible for rectifying Faults which arise in or are caused by Supplier's or third parties (but we will request that such Faults are rectified);
 - (iv) you acknowledge that Faults are part of the normal operation of a telecommunications network and that you're not entering into this Agreement under the assumption that there won't be Faults; and
 - (v) you warrant to us that you'll take measures to prepare for the occurrence of Faults (including building redundancies into Your Network).
- (b) You acknowledge and agree that you'll be liable for any and all Costs we incur in restoring a Service due to a Fault, where that Fault is caused by:
 - (i) your actions, or the actions of your employees, agents, contractors, representatives or associated third parties; or
 - (ii) a fault or defect in equipment or software under your control (or under the control of your associated third parties) which isn't owned or provided by us.

11.3 Change of Services

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove items from, redesign, improve or otherwise alter the Services (including offering new Services) at our sole and absolute discretion.

11.4 Intentional maintenance

We reserve the right to perform maintenance on some or all of the Services from time to time as is required for the proper operation of Our Network. We will use reasonable endeavours to provide you with advance notice of any maintenance period but you accept that there may be rare occasions where this is not possible and we are not liable for any harm or damage you may suffer during a maintenance.

11.5 Unintentional inaccessibility

- (a) From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Services as soon as practicable. Nothing in this agreement gives us any obligation or liability to you in any way whatsoever for unintentional inaccessibility and you accept that in the case of urgent maintenance, notice may not always be possible.
- (b) We may, by providing reasonable notice and with consideration to the urgency of a situation, suspend a Service for as long as we reasonably consider necessary for the health and safety of Our Network,

any other party or to comply with any law or order. We may also suspend a service to enable someone to attend an emergency.

11.6 Security Responsibilities

We will take reasonable steps to ensure that the Services (and any Software) is secure from unauthorised access consistent with generally accepted industry standards in our industry. For clarity, these obligations only include taking reasonable measures to:

- (a) secure our physical premises from unauthorised access;
- (b) restrict access to critical parts of Service infrastructure to employees, contractors and third parties who are required to have access; and
- (c) implement recommendations from advisors provided to us from time to time in relation to securing any connections, Software and Services.

11.7 Supplier Risk

- (a) Our Network often incorporates the services and networks of Suppliers. Our contracts with these Suppliers are what enables us to provide certain Services and without leveraging Supplier products, we would be unable to offer them.
- (b) You acknowledge that in using Our Network and the Services:
 - (i) you may be adversely affected by the actions of Suppliers;
 - (ii) our relationship with Suppliers may deteriorate such that contracts we have with them are terminated, meaning we can no longer provide certain Services;
 - (iii) Suppliers may experience Insolvency Events, remove products or Services they offer or be subject to a number of other adverse occurrences which we have little or no control over; and
 - (iv) while we may take steps to mitigate any effects on Our Network and Services due to the actions of a Supplier, we can't make any guarantees about our ability to re-establish areas of Our Network which are affected.

- (c) In consideration of the above, you acknowledge that Our Network and the Services as they relate to Suppliers are provided 'as is'. Where this is an unacceptable risk, you must not place any Order for our Services.
- (d) Some of our agreements with Suppliers require us to ensure that you won't take any action against them. For Suppliers with these types of arrangements with us, you agree to release them from any and all Liability to you. For the same reason, you also agree to not take (or be part of) any action against a Supplier for a cause arising under this MSA without first obtaining our written approval.

11.8 DDoS Protection

Our DDoS Protection is provided 'in-line' on Our Network, meaning that all traffic passes through our scrubbing appliances prior to entering Our Network. While we use industry leading [Coreo Smartwall](#) devices and have significant filtering headroom, our DDoS Protection is not limitless. Accordingly, you acknowledge and agree that:

- a) all DDoS Protection is offered "as is" and is provided based only on the current DDoS scrubbing footprint

- within Our Network (typically between 20-80 Gbps per Point of Presence);
- b) we cannot guarantee DDoS Protection against attacks that are either beyond the limits of our capacity (e.g., state level and/or large-scale DDoS attacks) or which aren't actively filtered by our equipment (e.g., new or complex Layer-7 attacks);
 - c) we do not provide discrete or specialised DDoS Protection to any IP Transit customers, and any DDoS Protection on these services will be simply the existing in-network protection;
 - d) notwithstanding clause 11.8(c), we may provide specialised DDoS products, however, these will be subject to their own specific agreements and SLAs, and any further protection afforded will be expressly set out therein;
 - e) we give no guarantees that our DDoS Protection will provide complete protection from attacks, be error-free or otherwise meet any specific outcome, goal or expectation you may have;
 - f) all liability for DDoS Protection, DDoS attacks or related events is expressly excluded from this MSA and we will not be liable to you for any direct, indirect, incidental, punitive or special loss, Consequential Loss or exemplary damages and regardless of the form of action or claim (whether contract, tort, strict liability or otherwise), even if we have been informed of the possibility thereof; and
 - g) you will notify us in advance if enhanced DDoS protection is required, so that we may tailor a custom solution for you. Such solutions will incur additional cost and/or additional latency penalties and will be subject to a separate agreement.

12. Account, Credit and PPSR

Summary: We may offer you a Credit Account, but that's a privilege and not a right. You'll need to sign a Credit Agreement to get it, and we can take steps to protect ourselves if you're not able to pay. This clause will usually only apply where you have a Credit Agreement with us.

12.1 Application

This clause 12 only applies where we have provided you with a Credit Account under a valid Credit Agreement.

12.2 Ability to Pay

- (a) In allowing you access to the Services under this MSA, we may provide you with access to a Credit Account. In order to provide you with access to a Credit Account, you must:
 - (i) complete the Credit Account request form attached to the initial Additional Document;
 - (ii) provide us with any evidence we request which may demonstrate that you are able to satisfy your payment obligations to us at all times; and
 - (iii) comply with the terms listed on that request form and this clause 12.
- (b) Prior to providing you access to a Credit Account, and for the term of this MSA, we reserve the right to:
 - (i) check your credit history with institutions of our choosing;
 - (ii) enquire with you about confidential business matters such as cash flow, expenses and projected revenue; and

(iii) take all other actions we deem reasonably necessary to satisfy ourselves that you will discharge your payment obligations under this MSA.

- (c) We may refuse to execute, suspend or terminate this MSA at our complete discretion where you fail to comply with our requests under clause 12.2(b).

12.3 Credit Agreement

- (a) You may obtain Services, Products and other goods under this MSA up to the amount of your credit limit. The credit limit is stipulated in your Credit Agreement.
- (b) You must comply with all terms, payment periods and requirements of any Credit Agreement you enter into with us for a Credit Account.
- (c) We reserve the right to suspend the provision of Services, Products and other goods on credit and may (in our discretion) suspend/terminate the Credit Agreement and/or Credit Account entirely if:
 - (i) you breach any term of this MSA;
 - (ii) you breach any term of the Credit Agreement;
 - (iii) you do not make payments on your Credit Account within the period stipulated; or
 - (iv) you exceed the credit limit.
- (d) You expressly release and discharge us from any Liability to you for a suspension or termination of a Credit Account and/or Credit Agreement under clause 12.3(c).
- (e) You acknowledge that the provision of a Credit Account is a privilege provided entirely at our discretion, and that you have no inherent or continuing right to the privilege. You agree that we may revoke your Credit Account at any time without the need for prior notice to you.

- (f) We may update, amend or vary any of the terms on which we provide you a Credit Account at our complete discretion. Your continued use of the Credit Account is considered acceptance of all terms and conditions which relate to the provision of that account.

- (g) Where you do not agree with any updated terms and conditions as they relate to a Credit Account, your sole and exclusive remedy is to cease usage of the Credit Account altogether.

- (h) You indemnify us for any failure to comply with the Credit Agreement and/or misuse of your Credit Account, including any legal costs, Consequential Loss or other damages which flow from that breach.

- (i) You acknowledge and agree that we may charge interest and other fees on the Credit Account, fees for which will initially be set out in the relevant Credit Agreement. We may update these fees at any time, and will notify you of changes in relation to same within a commercially reasonable timeframe.

12.4 Security Interest

- (a) In contemplation of the risk involved in providing you a Credit Account, we may require that you offer up Collateral for us to secure an interest over.
- (b) You acknowledge that, where we do require Collateral, this MSA will be considered a Security Agreement for the purposes of the PPS Act and

- irrevocably consent to us registering our Security Interest on the PPSR for that Collateral.
- (c) In order to secure your obligations under this MSA and Credit Agreement, including any obligation to pay any amount to us, you:
- (i) grant to us a Security Interest in respect of Property and any proceeds thereof;
 - (ii) consents to us perfecting such Security Interest by registration on the PPSR, including as a Purchase Money Security Interest;
 - (iii) undertake to us to do all things reasonably necessary or required by us to assist us in perfecting the registration of the Security Interest on the PPSR; and
 - (iv) waive, to the extent permitted by the PPS Act, your right to receive any notice of a verification statement or any other notice we would otherwise be required to give under the PPS Act.

12.5 Dealing with Secured Collateral

In relation to any Collateral for which we have a Security Interest under this agreement, you agree and warrant that you:

- (a) have full right and title in any Collateral;
- (b) will disclose any and all encumbrances over Collateral as soon as possible;
- (c) will not allow any other encumbrances over the Collateral without our express permission; and
- (d) will not sell, dispose of, grant a license or lease, give control to another, part with possession, allow the value to be reduced, commingle, or deal with the Collateral in any way which could be harmful to our interests in the Collateral without our express permission.

12.6 Enforcement

If Chapter 4 of the PPS Act would otherwise apply to the enforcement of this MSA, you agree that the following provisions of the PPS Act will not apply to the enforcement of this MSA:

- (a) section 95 (notice of removal of accession), to the extent that it requires us to give a notice to you;
- (b) subsection 121(4) (enforcement of liquid assets — notice to grantor);
- (c) section 130 (notice of disposal), to the extent that it requires you to give a notice to you;
- (d) paragraph 132(3)(d) (contents of statement of account after disposal);
- (e) subsection 132(4) (statement of account if no disposal);
- (f) section 135 (notice of retention);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).

13. Mission Critical and High-Risk Activities

Summary: We're providing 'standard' services based on the assumption that's all you need. If you're doing something where any failure in the Services would have serious consequences, you need to let us know.

13.1 Reliance Not Permitted for Standard Services

- (a) The Services, including any Products we provide under this MSA or any associated Additional Documents, are not intended for any use which may constitute a Mission Critical or High-Risk Activity in their 'standard' form.
- (b) You must not use the Services for any Mission Critical or High-Risk Activity without our express consent, including (but not limited to) the operation of nuclear facilities, air traffic control, life support systems or any other use where the failure of Services could lead to death, personal injury, serious financial cost or environmental damage.
- (c) If you intend to use any Service or Product we provide to you for Mission Critical or High-Risk Activities, you must notify us prior to using them for any such purpose.
- (d) If you wish to use our Services or Products for Mission Critical or High-Risk Activities, we reserve the right to:
 - (i) require that you sign additional agreements and/or documentation;
 - (ii) require that you upgrade or purchase your hardware and/or software which you use for communications;
 - (iii) require that you purchase additional Services;
 - (iv) require that you put in place redundancies and backup measures in case of a failure within Our Network;
 - (v) provide your staff with additional training;
 - (vi) issue further documentation, policies and procedures in your organisation wherever critical communications solutions will be implanted;
 - (vii) increase our fees and charges; and
 - (viii) do any other act or thing we consider necessary in light of the particular Mission Critical or High-Risk Activity(s).

13.2 No Liability For Breach

- (a) You acknowledge and agree that the requirements of the above clause 13.1 are reasonable considering the difference in standard Services usage and usage for Mission Critical or High-Risk Activities.
- (b) Where you don't adhere to the terms of clause 13.1, including failing to strictly adhere to any directions or recommendations we give in relation to Mission Critical or High-Risk Activities, you agree to indemnify and hold us completely harmless regarding same. We won't accept any liability for use of our Products or Services for Mission Critical or High-Risk Activities where you haven't obtained our express permission.

13.3 Requirement Extends to Third Parties

Where any of your associated bodies corporate or third parties (and their agents, employees or assigns) have access to our Services, Products or Software and could use them for Mission Critical or High-Risk Activities, you agree to:

- (a) notify us regarding same prior to any use for such a purpose;
- (b) obtain any consents, agreements and warranties requested by us (at our complete discretion); and
- (c) do all acts and things necessary to ensure that those associated or third parties comply with the requirements of this agreement, any Additional

Documents and any other subordinate terms, policies or procedures to which you agree with us from time to time.

13.4 Initial Permitted Mission Critical or High-Risk Activities

Any permitted Mission Critical or High-Risk Activities, and any terms associated with those activities, shall be set out in the relevant Additional Document.

14. Termination

Summary: Either party can terminate this Agreement if someone does the wrong thing and doesn't fix it in time. This Agreement can also end with appropriate notice. This clause assumes you'll be on a Fixed Contract Service - for any non-Fixed Contract Service, you'll have some separate termination avenues in the Additional Document.

14.1 Termination for default - both parties

- (a) Either party may end this MSA and any Additional Documents immediately by Written Notice if the other party:
- (i) fails to remedy a Notice of Default; or
 - (ii) experiences an Insolvency Event.

14.2 Termination by you

- (a) You may terminate an Order by Written Notice prior to the Commencement Date for the relevant Service and pay to us any applicable early termination charges.
- (b) Early termination charges are calculated as set out in the Additional Document or Order, but failing any relevant provisions in either, shall be calculated as the total charges payable for the Service for the Initial Term. You acknowledge and agree that this is fair and reasonable considering that we may need to place similar orders for Supplier services in preparation for provisioning your Service and may not be able to cancel without incurring early termination charges of our own.
- (c) Where we can cancel your Order or Service prior to the Commencement Date without incurring any loss, we may elect to reduce or waive entirely an early termination - however you acknowledge and agree that we are under no obligation to do so.
- (d) After the conclusion of an Initial Term for a Fixed Contract Service, the termination rights in clause 1.2 shall apply.

14.3 Termination by us

- (a) We may terminate this MSA, an Additional Document or an Order (as the case may be) by Written Notice to you if:
- (i) you fail to pay any amount due under this MSA or an Additional Document within 14 days of Written Notice from us;
 - (ii) a failure, issue or Unforeseen Event occurs in relation to one of our Suppliers which prevents us from or affects our ability to deliver the Services under any relevant terms;
 - (iii) you commit a breach of this MSA or any Additional Document which is incapable of remedy;
 - (iv) you fail to pay any Additional Supplier Charges when required;

- (v) you breach any warranties you give to us;
- (vi) you fail to comply with the Security Deposit requirements of clause 5.8;
- (vii) we are unable to obtain or maintain any approval, licence, permit, lease or instrument which is required for the provision of the Services;
- (viii) we are required to terminate this MSA and/or the Services due to a change in law or a direction of any Government Agency; or
- (ix) you refuse or fail to comply with any terms of this MSA.

- (b) For the removal of doubt, where we have cause to terminate a single Service under clause 14.3(a) or otherwise:
- (i) you shall be considered as defaulting under this MSA and all Additional Documents; and
 - (ii) we may elect to terminate this MSA and all other Services concurrently.

14.4 Consequences of Termination

- (a) If this MSA or a Service ends for any reason, then in addition to any other rights we may have:
- (i) we may issue an invoice for Services delivered but not yet invoiced;
 - (ii) you must return all access codes, keys and equipment that belong to us (or that we have provided to you and you do not own clear title to);
 - (iii) you must provide us with reasonable access and all required assistance (on notice) to your premises for the purpose of disconnecting, removing or de-commissioning a Service and any related equipment;
 - (iv) you must remove all equipment you have within data centre space we have provided within 5 Business Days;
 - (v) you must pay all of our outstanding invoices whether or not due, including any invoice issued under clause 14.4(a)(i); and
 - (vi) we retain a lien over all equipment and data we possess until all outstanding invoices have been paid in full, including any invoice issued under clause 14.4(a)(i).
- (b) If Service is terminated before the end of any applicable contract period for any reason, and we were not in default in relation to that Service, then in addition to the rights specified in clauses 14.4(a) and any other rights we may have, all fees for the balance of the contract period (if any) of that Service (calculated using the fees applicable as at the date of termination), excluding any costs we can reasonably mitigate, become immediately due and payable. The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from early termination in light of our sunk infrastructure, effort, support, training and implementation costs and ongoing commitments. This does not apply where we terminate the Service under clauses 14.3(a)(ii), 14.3(a)(vii) and 14.3(a)(viii).
- (c) Where you do not remove your equipment under clause 14.4(a)(iv) after we have provided at least 5 Business Days Written Notice to you, you waive any

rights you have in that equipment and assign all right, title and interest in that equipment to us.

- (d) A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 9.

15. Security

Summary: You need to take care of your own internal digital and physical security. We're not a security company and unless our agreement accounts for it, that responsibility isn't ours.

15.1 General Security Obligations

You shall use proper security measures in connection with the Services (including any Products and Software). This shall include (but not be limited to) the following:

- (a) setting strong passwords and access control mechanisms;
- (b) safeguarding access to all hardware, systems, Customer Management Platforms and Products from unauthorised use and/or tampering;
- (c) safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- (d) verifying the trustworthiness of persons with access to the Services, Products and Customer Management Platform;
- (e) performing regular checks on user accounts;
- (f) implementing appropriate policies and procedures to safeguard access to the Services, Products and Software within your organisation;
- (g) undertaking adequate security training with all of your employees, contractors and agents; and
- (h) implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au>) from time to time.

15.2 Notifiable Data Breaches

You must notify us within 48 hours if you learn of any security breaches relating to your systems or the Services. If the breach(es) could constitute a Notifiable Data Breach under Part IIIC of the Privacy Act, you must notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

15.3 Malicious Code and Security

- (a) It is your responsibility to protect your systems and the areas of the Services which are under your control from Malicious Code.
- (b) While we will take reasonable measures to secure the Software and the infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Services, you acknowledge that we can't be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we're actively employing measures to combat cyber-crime and an exploit or data loss occurs, you

agree to hold us harmless for any consequences of same.

15.4 Insurance

You must obtain and maintain electronic and computer crime insurance to the appropriate level assessed by a reputable insurance company. It is acceptable for this to be incorporated into an over-arching general insurance policy.

15.5 Specific Release and Indemnity

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 15. You acknowledge that while we may secure the Software as part of the Services, we're unable to protect you from a failure to properly secure your business, educate your employees/agents or practice good digital hygiene.

16. Privacy

Summary: We'll handle data in line with our Privacy Policy. We'll both comply with reasonable obligations regarding information privacy too.

16.1 Privacy Policy

- (a) You agree and consent to our handling of Personal Information in accordance with our Privacy Policy.
- (b) We may change the Privacy Policy at any time by without giving notice to you.
- (c) You acknowledge and agree to inform any of your employees, contractors and any other relevant individuals, where reasonably necessary:
 - (i) of our Privacy Policy; and
 - (ii) that their Personal Information may be disclosed to us.

16.2 Privacy Obligations – Service Provider

If Personal Information is disclosed to us in the course of this MSA, we agree that we won't:

- (a) sell the Personal Information to any third party in a form which has not been sufficiently de-identified so that it no longer represents information by which the associated end user could be personally identified by the third party; or
- (b) distribute or disclose identifiable Personal Information to any third party other than:
 - (i) to our personnel and/or related bodies corporate; or
 - (ii) service providers who require the information in the provision of providing those services to the party;

who will only use the Personal Information for the purposes contemplated by this MSA.

16.3 Privacy Obligations – Customer

If Personal Information is disclosed to you in the course of this MSA, you agree that you will not:

- (a) sell the Personal Information to any third party in any form; or
- (b) distribute or disclose Personal Information to any third party other than:
 - (i) to your personnel and/or related bodies corporate; or

- (ii) service providers who require the information in the provision of providing those services to the party;
- who will only use the Personal Information for the purposes contemplated by this MSA.

16.4 No Warranty

- (a) We make no warranties or guarantees that the manner in which we manage Personal Information is compliant with any foreign privacy laws. It's your sole responsibility to ensure you are compliant with any foreign privacy laws in your use of the Services.
- (b) In the event that you request changes to the Services in order to achieve compliance, you acknowledge and agree that any work will be considered an Out-of-Scope Service.

16.5 The Privacy Act

For the purposes of this clause, the term 'disclose' is to have the same meaning as defined in the *Privacy Act 1988* (Cth).

17. Open Source Software

Summary: We'll be using Open Source Software as part of providing the Services, just like every telecommunications company.

17.1 Key Reliance

- (a) You acknowledge that modern enterprise software development and cloud services rely heavily on Open Source Software. Many large open source projects and libraries are the pre-eminent solution for their use case and usually offer a superior foundation for Services like those contemplated by this MSA. They also typically represent a more secure and tested alternative to traditional, closed-source proprietary software.
- (b) Given this, you acknowledge and agree that:
- (i) we may use Open Source Software in our core Services;
 - (ii) you approve the use of Open Source Software generally in relation to the Services; and
 - (iii) we may use any Open Source Software we deem appropriate for the fulfilment of the Services.

17.2 Liability

You acknowledge and agree:

- (a) that many of the underlying third-party solutions we use in delivering the Services use significant amounts of Open Source Software;
- (b) where we use Open Source Software which is actively developed and considered fit for purpose, we shall not be liable for any deficiencies, issues or vulnerabilities with the underlying code, provided that where a project is deprecated and a viable alternative exists, we make efforts to migrate the code in question over to the alternative within a sensible timeframe (with regard to our business and the functionality of the code in question).

18. Related Bodies Corporate

Summary: We may use a number of companies within our Group to provide the Services. Your related companies may also order Services from us under this MSA, provided you ask us first.

18.1 Our Related Bodies Corporate

- (a) The Services may be provided to you through the use of any of our Related Bodies Corporate.
- (b) We reserve the right to require that you contract with any of our Related Bodies Corporate separately, however in the absence that, this MSA will form the framework for your relationship with any of our Related Bodies Corporate.
- (c) You acknowledge and agree that any debt you owe under this MSA is a debt owing to us, regardless of how it arose and which Related Bodies Corporate were involved.

18.2 Your Related Bodies Corporate

- (a) Because of the nature of the Services, you may wish for your Related Bodies Corporate to utilise the Services and get the benefit of this MSA.
- (b) Where your use of the Services will include use by your Related Bodies Corporate, you must provide us with details of those entities in writing. Those Related Bodies Corporate must also agree in writing to be bound by the terms of this MSA (and any other Additional Documents).
- (c) Once we've got written agreement from your Related Bodies Corporate, they may order Services directly from us within the framework of this MSA. We may elect to invoice you or your Related Bodies Corporate in respect of those Services.

19. Dispute Resolution

Summary: If we have a serious disagreement, we need to sort it out. Neither of us can run straight off to court. We'll try mediation, and if that doesn't work, we'll arrange arbitration (which is usually cheaper, quicker and better for all involved).

19.1 Mediation

- (a) If a dispute arises between the parties in relation to this MSA, either party may give the other party a written notice that they intend to arrange mediation.
- (b) The parties must refer the dispute to an independent mediator within 21 days of the written notice.
- (c) If the parties can't agree on a suitable mediator, either party may contact the Law Society in the jurisdiction defined in clause 21.6 and request that they provide a mediator.
- (d) The costs of the mediation must be paid by the parties in equal shares.

19.2 Arbitration

- (a) If the dispute isn't settled within 30 Business Days of the submission to mediation (unless such period is extended by agreement of the parties), it will be submitted to final and binding arbitration in accordance with, and subject to, *The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations*.
- (b) When the dispute is submitted to arbitration, each party will pay its own costs and expenses for the proceedings. The parties will share equally the costs and expenses payable to the Institute of Arbitrators & Mediators Australia.
- (c) Subject to this section, a party must not bring court proceedings (if ever) in respect of any dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

- (d) Nothing in this section prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute. However, where such relief is not granted, that party will indemnify the other for all related costs, however occurring, which result from those proceedings (including all solicitor/barrister costs on an indemnity basis).
- (e) Despite the existence of a dispute, the parties must continue to perform their respective obligations under the Terms and any other agreement between the parties.

20. Non solicitation

Summary: You'll have access to some of our best and brightest during the Agreement. That access is provided on the understanding you won't try to make them your best and brightest.

20.1 Restraints

- (a) During the term of this MSA and the Restraint Period following termination of this MSA for any reason, you must not solicit, entice, hire or interfere with:
 - (i) any of our employees or contractors; or
 - (ii) any of our customers, or cause them to decrease their dealings with us,either directly or through an intermediary entity or entities.
- (b) You must implement reasonable internal policies to ensure that you comply with this clause 20.

20.2 Consequence for Breach

If you breach clause 20.1(a)(i), you must pay us an amount equal to 50% of the employee's or contractor's new annual remuneration package (if applicable and including all commissions, bonuses and other benefits). The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the costs to us of recruiting, hiring and training a suitable replacement for the employee or contractor. This clause 20.2 does not prevent us from seeking other relief, such as interlocutory relief or damages.

21. General

Summary: Some other general obligations for both of us which haven't been dealt with elsewhere.

21.1 Assignment

- (a) You may only assign, novate, or transfer any of your rights under this MSA with our written consent, which won't be reasonably withheld.
- (b) We may in our absolute discretion assign, novate, or transfer all or any of our rights under this MSA with 7 days' Written Notice.
- (c) Upon assignment or novation, the parties' obligations and benefits under this MSA are binding on and will benefit their respective representatives, successors and assigns.

21.2 Notices

- (a) Communications (including notices) must be in writing.
- (b) Either party may serve any communication on the other party by sending it to that party's email address. A communication by email will be taken to have been received by the addressee at the earlier of

the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee.

- (c) If delivery is made after 5:00pm on a Business Day, it must be treated as received on the next Business Day.
- (d) For the purposes of the *Electronic Transactions Act 1999* (Cth), the *Electronic Transactions (Queensland) Act 2001* (Qld) and section 127 of the *Corporations Act*, the parties agree to send, receive and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.

21.3 Costs

All stamp duty, government charges and legal fees incidental to this MSA, specifically including all legal fees incurred in enforcing this MSA on a solicitor own client basis, are the responsibility of and payable by you.

21.4 Enduring clause

The parties' rights and obligations under clauses 3.6, 4.2, 4.5, 7, 8, 9, 12, 14.4, 20, 15, 19 and 21.6 will survive the termination of this MSA, as well as any other terms in this MSA or Additional Document which should, when taken at face value, survive termination.

21.5 Relationship between the parties

Nothing in this MSA constitutes an agency, partnership or contract of employment, or as a guarantee of future employment or engagement. It is the express intention of the parties to deny any such relationships.

21.6 Jurisdiction

The laws of Queensland, Australia apply to this MSA and the parties submit to the courts of that jurisdiction.

21.7 Severability

If any provision of this MSA is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this MSA.

21.8 References

Subject to our Privacy Policy as published from time to time, we may include your name and trademarks in a list of subscribers, online content or promotional materials. You also agree that we may verbally communicate your status as a customer of ours from time to time.

21.9 Waiver

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

21.10 Entire Terms

This MSA contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this MSA.

21.11 Variation

Any variation or amendment to this MSA must be in writing signed by all parties.

22. Definitions and Interpretation

Summary: Definitions of all the capitalised terms in this agreement, and some guidelines for interpreting this Agreement in general.

22.1 Definitions

Master Service Agreement

In this MSA:

Additional Document means a document setting out service specific terms and details of agreed Services and/or Products you are purchasing from us, and may include (but not be limited to) the following additional documents:

- (a) executed statements of work or work orders;
- (b) Orders; and
- (c) any other supplementary terms or documents which are relevant to our relationship under this MSA and not expressly excluded from application in the document itself.

Business Day means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.

Business Hours means between the hours we publish from time to time, and failing publication, as we reasonably determine.

Claim means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this MSA or third party.

Client Materials means any data, materials, and Intellectual Property that you provide to us in the course of our provision of the Services, and includes any materials we request from you from time to time.

Collateral takes its meaning from section 10 of the PPS Act.

Commencement Date means the date specified in any Order or Additional Document for the commencement of a Service.

Confidential Information means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:

- (a) any kind of technical, financial or business information;
- (b) details of employees, suppliers, or customers;
- (c) material developed under this MSA; and
- (d) Intellectual Property, concepts, know-how and trade secrets;

but excludes information in the public domain (other than by default under this MSA) or information independently known to the other party.

Consequential Loss includes, without limitation:

- (a) data loss;
- (b) reputational loss;
- (c) loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss;
- (d) disappointment, distress, stress, and inconvenience; and
- (e) any other type of loss which would usually be considered consequential.

Contract Period means the period defined as such in the initial Additional Document.

Costs means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

Credit Account means an account with us in which we allow you to accrue debt to us for Services rendered under this MSA without the need for immediate payment of those debts.

Credit Agreement means a contract or form which details specific terms for a Credit Account and falls under the terms of this MSA, generally by way of a credit application form.

Customer, you, your means the signatory and/or contracting party for this MSA, any Additional Document, Credit Agreement or other document referencing these terms where we are the other contracting party.

Customer Management Platform means any platform, portal or system which we provide to you to access and use, including for the management of your account, placing Orders and accessing the Services.

DDoS Protection means the act of protecting against Distributed Denial of Service (**DDoS**) attacks by way of hardware and software mitigation.

Debt Limit means the amount specified as such this MSA, the Customer Management Platform and/or in any Additional Document.

End Users means people who acquire a Service that is a resupplied version or a derived version of the Service which we supply to you.

Fault means a degradation, failure or other issue which has a material effect on your use of the Services or Our Network as a whole.

Fees means the fees for any Products or Services purchased by you, as set out in any contract.

Fixed Contract Service means any Service we supply for a fixed Initial Term where the period of the Initial Term is specified in the Order for that Service. For example, a Service providing a 10Gbps ethernet link between two points for a 24-month fixed term would be a Fixed Contract Service.

Government Agency means any statutory, public, regulatory, judicial or governmental authority, department, entity or body, and for the purposes of this Agreement, includes any self-regulating organisation for which we hold membership or are given delegated authority by law.

Indemnified Officers means, in relation to a party, its directors, employees, contractors, agents and representatives.

Initial Term means the minimum contract period specified in the Order applicable to a Service, the beginning of which will commence on the relevant Commencement Date.

Insolvency Event in relation to a party means any of the following:

- (a) the party enters into a scheme of arrangement with its creditors;
- (b) the party is wound up or dissolved, or an administrator, liquidator or receiver is appointed;
- (c) the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence; or

Master Service Agreement

(d) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days.

Intellectual Property means all intellectual property rights, patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, source and object code, products, programs, technology, hardware, data, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets), improvements, machines, techniques, methods, and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Liability means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.

Malicious Code means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, back-doors and other similar things or devices.

Mission Critical or High-Risk Activity means any use which, if any of Services or Products were to fail, could result in death, serious injury or significant financial loss to any party, and includes (but is not limited to):

- emergency services;
- military and police services;
- critical communications infrastructure; or
- financial settlements and high-speed trading.

MSA or Agreement the legally binding contract arising between the parties under this document, comprising this agreement and any Additional Documents such as Orders.

NOC means our network operations centre, which can be contacted at the NOC email advised from time to time. Unless we say otherwise, this will be noc@oneqode.com.au.

Notice of Default means a Written Notice that:

- (a) states that it is a notice of default;
- (b) specifies the default with sufficient detail and particulars;
- (c) gives a reasonable deadline by which the default must be remedied, of not less than 10 Business Days.

Open Source Software means any software where the code is available in an open, public repository. This includes software that, as a condition of its use, modification or distribution, requires that software, any modification to that software or any other software with which that software is combined or distributed be:

(a) disclosed or distributed in source code or object code form;

- (b) licensed for the purposes of making modifications; or
- (c) redistributable,

to any third parties. However the key aspect of any Open Source Software is the public availability and auditability of all source code.

Order means an order for the provision of a Service, which includes details of the Initial Term and Fees, which has been approved by us. For clarity, an Order includes a request for Service placed through a Customer Management Platform.

Our Network means the network used by us to provide the Services (including any network of our Suppliers).

Out-of-Scope Fee means the fees charged for Out-of-Scope Services, which shall be calculated according to the rates which either provided in the relevant Additional Document, or as advised by us from time to time.

Out-of-Scope Services means all services outside the Scope of Services of an Additional Document.

Personal Information has the meaning given to that term in the Privacy Act 1988 (Cth).

PPS Act means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register established under the PPS Act.

Privacy Act means the Privacy Act 1988 (Cth) and the National Privacy Principles found in Schedule 2 of the Privacy Act as amended from time to time.

Privacy Policy means our privacy policy as amended from time to time available at the Website.

Product means any physical or digital goods, such as equipment, routers, cables, Software, computer systems, specific configurations or code, that you request, order or purchase under this MSA and/or as part of the Services.

Product Fees means the fees for Product that you request, order, or purchase under this MSA or a relevant Additional Document.

Property means all goods, chattels and other items which can be listed as Collateral in a Credit Agreement.

Purchase Money Security Interest takes the meaning given to it in the PPS Act.

Related Bodies Corporate has the meaning given to it in the Corporations Act 2001 (Cth).

Resellers means any third party who acquires a resold Service (or a service which is based upon a Service) who is not an End User.

Restraint Period means the duration of this MSA, and the longest enforceable period following termination, of:

- (a) 24 months;
- (b) 18 months;
- (c) 12 months;
- (d) 6 months;
- (e) 3 months; or
- (f) 1 month.

Schedule means any schedule attached to this MSA.

Master Service Agreement

Security Agreement has the meaning given to it under the PPS Act.

Security Interest has the meaning defined under the PPS Act.

Service Provider, we, us, our means OneQode Pty Ltd ABN 35 637 271 937.

Services means services that you request, order or purchase under this MSA, the details of which shall be set out in the relevant Additional Document.

Software means the software applications, programs, deployed code, portals and managed storage provided by the us as part of the Services or purchased by you in connection with the Services.

Supplier means a third party supplier, who may be a carrier, a carriage service provider, a wholesale supplier, equipment supplier, lessor or another third party who we engage to enable us to provide the Services from time to time.

Telecommunications Act means the *Telecommunications Act 1997 (Cth)* as amended from time to time.

Third Party Terms means any terms and conditions imposed upon Software, hardware or other products developed, owned and/or licensed by a third party which are used in conjunction with the provision of the Services or provided under an Additional Document.

Unforeseen Event means an unforeseen event beyond the control of the affected party, including an act of god, war, terrorism, riot, vandalism, hacking, industrial action, or law or actions of any government or governmental agency.

Written Notice means providing information by:

- (a) delivering it to the other party in person;
- (b) transmitting it to the other party's email address as advised by that party (or as last notified by that party). A notice that is emailed will be deemed received at the time it was sent, unless the sender receives a failed delivery notification;
- (c) including it on or in an invoice, including an invoice made available to the other party in electronic format via a website.

Website means <https://oneqode.com>.

Your Network means your network and any network of your customer that's connected to your network.

22.2 Rules for Interpreting this MSA

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this MSA, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) **(legislation)** legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) **(parties)** a party to this MSA or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iii) **(person)** a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

- (iv) **(parts of things)** anything (including a right, obligation or concept) includes each part of it.
- (b) **(number)** A singular word includes the plural, and vice versa.
- (c) **(gender)** A word which suggests one gender includes the other genders.
- (d) **(parts of speech)** If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) **(examples)** If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) **(this MSA)** A reference to this MSA includes the agreement recorded by this MSA and by any document incorporated in this document by attachment or by reference.
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (i) A reference to a **representative** of the Service Provider is to an employee, officer, agent or subcontractor of ours.

22.3 Multiple Parties

If a party to this MSA is made up of more than one person, or a term is used in this MSA to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.