

Optus General Terms

Business

You are a Business Customer if you:

1. are a business and use your service(s) mainly for business purposes; and
2. employ the equivalent of 20 or more full time employees; and
3. employ less than the equivalent of 500 full time employees.

These General Terms apply to you if:

- you are a Business Customer; or
- your Agreement (such as the Application) specifies that the General Terms for Business Customers applies to you.

[General Terms for Business Customers](#)

Enterprise

You are an Enterprise Customer if you:

1. are a business and use your service(s) mainly for business purposes; and
2. employ the equivalent of 500 or more full time employees.

These General Terms apply to you if:

- you are an Enterprise Customer; or
- your Agreement (such as the Application) specifies that the General Terms for Enterprise Customers applies to you.

[General Terms for Enterprise Customers](#)

OPTUS GENERAL TERMS FOR BUSINESS CUSTOMERS

1. Introduction

- 1.1 This Agreement applies from when Optus first agrees to supply any Services to Customer or a Customer Group Entity: for example, the date when the first Application or Statement of Work (whichever is applicable) is approved by Optus. This Agreement will continue to operate until it is terminated on the terms and conditions of this Agreement.
- 1.2 These General Terms, together with any Application and/or Statement of Work (as the case may be), Service Description and Standard Pricing Table relevant to the supply of a Service, forms this Agreement. Changes to this Agreement or a Service are subject to the specific requirements set out in clause 7. A copy of the latest version of these General Terms, Service Descriptions and Standard Pricing Table are available from Optus or on the Optus website: <https://www.optus.com.au/about/legal/stand-ard-forms-agreement/business>.

2. Carriage Services

- 2.1 The Parties may agree to an Application for the supply and acquisition of a Carriage Service and related Products under this Agreement. An Application becomes effective and incorporated into this Agreement when accepted by Optus.

3. Information Communication and Technology (ICT) Services

- 3.1 The Parties may agree to a Statement of Work for the supply and acquisition of specific ICT Services and related Products under this Agreement. A Statement of Work becomes effective and incorporated into this Agreement once signed by a duly authorised representative of each Party.

4. About the Services

- 4.1 Optus will supply a Service to Customer from its Service Start Date on the terms and conditions of this Agreement.
- 4.2 Customer agrees to assist Optus and any Subcontractors to set up and supply a Service to Customer safely and efficiently. This may include providing Optus with usage forecasts, and ensuring safe and legal access to Personnel, Premises, equipment and information.
- 4.3 Customer confirms it is not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).
- 4.4 Optus and Customer both agree to comply with all applicable laws, and any directions from Regulators, relating to a Service.
- 4.5 Customer must not, and must not allow anyone else (including any End User) to use or attempt to use a Service:
- (a) other than for the purpose Optus has specified (if any) and in accordance with this Agreement;
 - (b) to break laws, infringe upon anyone else's rights, or harm Property or people;
 - (c) in a way that damages, interferes with or interrupts that Service, the Optus Network or a Supplier Network;
 - (d) to re-supply or re-distribute that Service (or any part of it) without the prior express written agreement of Optus; or
 - (e) in a way that does not comply with the Optus [Fair Go Policy](#).
- 4.6 A Carriage Service may use one or more identifiers such as a telephone number, IP address or domain name ("**Public Addressing Identifiers**"). Customer acknowledges that:
- (a) Optus does not control the allocation of Public Addressing Identifiers;

- (b) Optus is not liable to Customer if Optus is required to change Customer's Public Addressing Identifier as a result of a direction given by a Regulator or any other body administering Public Addressing Identifiers; and
- (c) if Optus is no longer supplying that Service to Customer, Customer's right to use any related Public Addressing Identifier may cease.

5. Equipment and maintenance

- 5.1 Any time Customer receives Optus Equipment, the Optus Equipment remains the property of Optus at all times unless Optus agrees to sell all or part of the Optus Equipment to Customer. While any Optus Equipment is in Customer's care or control, or is situated on Customer's Property, Customer is responsible for any loss or damage to the Optus Equipment.
- 5.2 Customer must use and maintain Optus Equipment correctly, in a fair and reasonable manner and otherwise as required by any reasonable written directions provided by Optus that apply to the Optus Equipment. For example, Customer must make sure that the Optus Equipment has suitable space and power. Customer must keep the Optus Equipment free from any charge, mortgage, lien, encumbrance or other security interest and make it clear to third parties that the Optus Equipment belongs to Optus.
- 5.3 Customer agrees to make sure all other Products that Customer uses in connection with a Service are fully compatible with the Optus Equipment. This includes ensuring Customer's Products have suitable space and power, and comply with all applicable laws, regulations, and any requirements specified by Optus. Optus does not take any responsibility for Customer's Products unless Optus agrees in writing to do so.
- 5.4 In addition to any maintenance window specified in a Service Description, Optus might need to modify or conduct

maintenance on the Optus Network in a way which may impact a Service. Optus always aims to do this outside of Business Hours.

6. Service Terms and Restrictions

- 6.1 Unless the relevant Service Description provides otherwise, when Optus:
 - (a) supplies Products to Customer, Customer accepts the risk in the Product when they are delivered to Customer, and if Optus sells the Products to Customer, ownership will pass to Customer when Optus has received full payment; and
 - (b) on-supplies or sells third party products or services to Customer, the relevant third- party conditions (including licence, warranty, and support conditions) apply to those products or services. Customer acknowledges that the nature of certain Services may require Optus to engage with and obtain products and/or services from third parties, in order to supply such Services to Customer. Where the third party requires specific conditions to apply to its products or services, these will ordinarily be set out or referred to in the relevant Service Description or made available by Optus to Customer through other means. Customer acknowledges that Optus may have a limited ability to negotiate with the third party, including with respect to any conditions that the third party imposes on Optus' Customers.

It may also be the case that in spite of Optus' reasonable efforts, particular third-party conditions may only be available on a 'click through' basis or similar.

7. Changing a Service or the Agreement

7.1 Customer must give Optus written notice if Customer would like any changes to a Service.

7.2 If Optus agrees to make the changes requested by Customer under clause 7.1, any revised or additional charges (for example, a Downgrade Charge) and any additional or modified terms will be agreed between the parties (and may be documented in a MAC Notice).

7.3 Once any Customer-requested modifications to any terms are complete (as contemplated in clause 7.2), Customer must comply with any modified terms, including payment of any additional charges. Optus must also comply with the modified terms.

7.4 Optus may make the following types of changes by advising Customer:

- (a) increases to prices in accordance with clause 10.1(b) (provided Optus advises Customer of the change at least thirty (30) days in advance) or decreases to prices;
- (b) changes to the technology used to provide a Service that Optus reasonably expects will have no Adverse Impact on the quality of that Service;
- (c) changes to all or any part of a Service or changes to the terms of this Agreement required by any current or future law, regulation or similar of the Commonwealth of Australia or a state or territory of Australia or as a result in any change in any such law or regulation (provided Optus advises Customer of the change as soon as reasonably practicable);
- (d) changes to all or any part of a Service or changes to the terms of this Agreement that Optus reasonably expects will not have an Adverse Impact on Customer; or

- (e) changes to the Optus [Fair Go Policy](#) which are reasonably necessary to protect the legitimate commercial interests of Optus.

7.5 Subject to clause 7.4, Optus may make the following types of changes by following the Fair Terms process set out in clause 8:

- (a) changes to prices other than those dealt with in clause 7.4(a);
- (b) changes to all or part of a Service that Optus reasonably expects are likely to have an Adverse Impact on Customer; or
- (c) any other changes to the terms of this Agreement that Optus reasonably expects are likely to have an Adverse Impact on Customer.

7.6 If Optus is required to advise Customer of a change under clause 7.4, Optus may do so in accordance with clause 29.1 and/or, if it is reasonable to do so, by making the change information available on the Optus website:
<https://www.optus.com.au/about/legal/standard-forms-agreement/adverse-change-register>.

8. Fair Terms

8.1 To make a change under the Fair Terms process, Optus must:

- (a) advise Customer of the change at least thirty (30) days in advance of the change occurring (unless that is not reasonably practicable in the circumstances, in which case Optus will advise Customer of the change as soon as reasonably practicable); and
- (b) offer Customer a right to cancel the affected Individual Service or Service (to the extent that all of the Individual Services under that Service are affected) within a specified time period which will be at least thirty (30) days.

8.2 If Customer chooses to cancel the affected Individual Service or Service (as the case may be) under clause 8.1(b) above:

- (a) Customer must notify Optus in writing that it wishes to cancel that Individual Service or Service (as the case may be) and Optus will either cancel that Individual Service or Service (as the case may be) for Customer as soon as reasonably practicable or consult with Customer on a specific date of cancellation;
- (b) if the affected Individual Service or Service (as the case may be) is within its Committed Term and has a Cancellation Fee, Customer may cancel that Individual Service or Service (as the case may be) under clause 8.1(b) and Customer will only have to pay:
 - (i) any charges for that Individual Service or Service (as the case may be) up to the agreed cancellation date; and
 - (ii) that part of any applicable Cancellation Fee that Optus considers is reasonably appropriate to charge having regard to factors including applicable laws and whether the cancellation of the Individual Service or the Service (as the case may be) would result in Optus being unable to recover sunk costs or amortised costs relevant to that Individual Service or Service (as the case may be); and
- (c) clause 15 applies.

8.3 If Customer does not exercise its rights under clause 8.1(b) above, Customer is deemed to have accepted the change effective from the day after the last day of the applicable notice period.

9. Charges, Invoicing and payments relating to a Service

- 9.1 By signing the Application or Statement of Work, Customer agrees to pay all the charges that are set out in the Agreement. Customer must pay Optus the charges for each Service, regardless of who uses it and whether Customer approved that usage (except to the extent Optus has caused or contributed to any unauthorised use).
- 9.2 When it comes to paying for a Service, Customer agrees:
 - (a) that Customer will pay the amount Customer owes Optus; and
 - (b) except for any charge that Customer disputes in accordance with clause 9.8, Customer will not withhold, deduct, set-off or counterclaim any amount from or against any payment due to Optus.
- 9.3 Customer may incur extra charges as set out in the Agreement if:
 - (a) Customer Suspends all or part of any Service;
 - (b) Optus needs to modify, repair, or replace any Optus Equipment as a result of an Excluded Event;
 - (c) Optus investigates and (if requested by Customer) corrects a fault, where Optus determines that the fault is caused by an Excluded Event; or
 - (d) Customer requires Optus to perform maintenance or other services outside Business Hours as a result of an Excluded Event.
- 9.4 If Customer continues to use a Carriage Service after expiry of the Committed Term, Optus may end the pricing in the Application and the charges in the Standard Pricing Table for that Service will apply. If Customer renews that Service for a new Committed Term, the agreed charges will

be effective within thirty (30) days after the new Application is approved by Optus.

9.5 If Customer continues to use an ICT Service after expiry of the Committed Term, the charges applicable to that ICT Service will be the charges set out in the Statement of Work applying as at the date of expiration, or as otherwise notified by Optus.

9.6 Optus or an Optus Group Company acting as Optus' Agent will send Customer tax invoices for each Service. Customer agrees to pay the amount due within thirty (30) days of the date of the invoice, by one of the methods specified in it, unless an alternate method of payment has been agreed by the Parties. If Customer pays too much in error, Optus will credit Customer's account, or, Optus may decide to refund Customer the amount that was overpaid.

9.7 If Optus does not receive payment on time in respect of any invoice issued to Customer, Optus may in its sole discretion:

- (a) after providing written notice, charge Customer interest at the Late Payment Rate, and Optus' reasonable costs of recovering payment from Customer; or
- (b) after providing written notice, stop using the agreed rates in the Application or Statement of Work (as the case may be), and instead use the rates in the relevant Standard Pricing Table (if any), until the full payment is made.

In addition to the rights set out in clause 9.7(a) or clause 9.7(b), if Customer's payment is more than sixty (60) days overdue, then subject to regulatory requirements, Optus may provide information about Customer's payment default to a credit reporting body.

9.8 If Customer disagrees with any charges, Customer must provide Optus with a Dispute Notice in writing within twelve (12) months of the date of the relevant invoice containing those charges in accordance with clause 26 (Dispute Resolution). Any such Dispute Notice must set out

Customer's claim clearly and include sufficient information to substantiate the claim. Failure to raise a Dispute Notice within 12 months of the date of the disputed invoice constitutes a waiver of the Customer's right to recover any disputed amounts relating to that invoice.

9.9 Optus may deduct from payments or credits any amount that Customer owes Optus.

9.10 When Customer pays the charges for a Service, Customer must also pay Optus an additional amount that is equal to the GST on the charges for that Service, unless the Agreement states that GST is included.

9.11 If the charges include GST and the rate of the GST changes, Optus may increase or decrease the charges that Customer must pay accordingly.

10. Annual Review

10.1 Without limiting any of Optus' rights under the Agreement, Optus may:

- (a) conduct an annual review of the pricing for any Service or any Individual Service as listed in the Agreement; and
- (b) increase such prices up to an amount that fairly reflects actual increases in cost components incurred by Optus in the provision of a Service or Individual Service (as applicable) and does not exceed the increase in the CPI.

10.2 Clause 10.1 does not apply to a Service during its Committed Term, where the Committed Term commenced prior to 1 April 2023.

11. Taxes

11.1 If Customer is required by law to deduct or withhold Tax from a payment to Optus, Customer must:

- (a) promptly pay an amount equal to the amount deducted or withheld as required by law and by the date that Tax is due to be paid to the

appropriate governmental or regulatory agency; and

- (b) increase Customer payment to Optus by the amount that is necessary to ensure Optus receives the full amount which Optus would have received if no deduction or withholding had been made.

- 11.2 If clause 11.1 applies, Optus will on request, and subject to Customer providing Optus with a receipt for the amount of Tax deducted or withheld by Customer, apply for a credit or rebate to which Optus may be entitled in connection with the deducted or withheld Tax. Optus will refund to Customer any credit or rebate received up to the amount of the increased payment made by Customer under clause 11.1.

12. Financial Security

- 12.1 Optus may ask Customer to supply Optus with Financial Security at any time if Optus reasonably considers Customer to be a Credit Risk. If Customer does not supply Financial Security in the amount requested, Optus may Suspend or cancel all or any part of a Service or terminate this Agreement. The Optus Group may apply all or part of any Financial Security provided by Customer to satisfy any amount overdue by Customer to an Optus Group Company. Optus will return any remaining Financial Security to Customer following termination of the Agreement.
- 12.2 Customer agrees to co-operate with Optus and Optus' insurers in respect of the provision of accurate and updated financial information and any other relevant information required for the purpose of disclosure under Optus' insurance policies. Customer agrees that financial and other information provided by Customer to Optus may be disclosed to Optus' insurers for the purpose of assessing Customer's creditworthiness.
- 12.3 Providing financial security does not affect your obligations to Optus, including your

obligation to pay amounts to Optus as they become due and payable.

- 12.4 Optus may apply the whole or any part of any financial security to satisfy any amount you are required to pay to Optus from time to time and that is overdue. Doing so does not limit Optus' other rights under the Agreement.
- 12.5 Optus will return any remaining financial security to you after you have stopped taking all Services from Optus, you have paid Optus all outstanding charges and discharged all your other obligations under the Agreement and Optus is satisfied that it will not be obliged to repay any amount received by it for any reason.

13. Customer's rights to cancel an Individual Service or Service

- 13.1 Without limiting Customer's other rights in this Agreement, Customer may cancel an Individual Service with Optus:
- (a) by giving Optus at least thirty (30) days' written notice after expiry of the Committed Term;
 - (b) during the Committed Term where that Individual Service has a Cancellation Fee as set out in the Application or Service Description and as long as Customer gives Optus at least thirty (30) days' written notice and pays the applicable Cancellation Fee (unless the applicable Cancellation Fee would, in the circumstances, be contrary to any applicable law (as reasonably determined by Optus), in which case Optus will waive that fee to the extent required by that applicable law); or
 - (c) immediately by giving Optus written notice if Optus breaches a material term of this Agreement which affects that Individual Service and Optus fails to remedy that breach within sixty (60) days

after being notified to do so by Customer.

13.2 Without limiting Customer's other rights in this Agreement, Customer may immediately cancel a Service (without needing to cancel each of its Individual Services) by giving Optus written notice if:

- (a) that Service has ceased to be provided because Optus has suffered an Insolvency Event; or
- (b) Customer is required to do so by law or to comply with an order, instruction or request from a Regulator, emergency services organisation or any other competent authority.

13.3 Without limiting Customer's other rights in this Agreement, Customer may immediately terminate this Agreement (without needing to cancel each Service or each of its Individual Services) by giving Optus written notice if an event in clause 13.2(a) occurs.

14. Optus' rights to Suspend or cancel an Individual Service or Service

14.1 Without limiting Optus' other rights in this Agreement, Optus may cancel an Individual Service with Customer:

- (a) by giving Customer at least thirty (30) days' written notice after expiry of the Committed Term;
- (b) by giving Customer at least thirty (30) days' written notice if, before the Service Start Date, Optus reasonably determines that it is not technically or operationally feasible or commercially viable to supply Customer with that Individual Service. For example, Optus may exercise this right if it determines that the supply of such Individual Service would require Optus to install certain equipment or provide other Individual Service(s) that would cause Optus

to incur costs that were not previously contemplated at the time of agreement and are disproportionate to the value of that Individual Service that would otherwise be provided to Customer; or

- (c) immediately by giving Customer written notice if Customer breaches a material term of this Agreement and Customer fails to remedy that breach within sixty (60) days after being notified to do so by Optus.

14.2 Without limiting Optus' other rights in this Agreement, Optus may immediately cancel a Service (without needing to cancel each of its Individual Services) by giving Customer written notice if:

- (a) Customer suffers an Insolvency Event (subject to any applicable ipso facto rules under applicable law);
- (b) Customer fails to pay Optus in accordance with clause 9;
- (c) Customer does not supply Financial Security in the amount requested by Optus in accordance with clause 12;
- (d) Optus is required to by law, to comply with an order, instruction or the request of a Regulator, emergency services Organisation or any other competent authority; or
- (e) that Service is Suspended or Downgraded by Optus under clause 14.3 and that Suspension or Downgrade continues for more than fourteen (14) days (provided that this right relates only to the cancellation of that Service and not this Agreement).

14.3 Without limiting Optus' other rights in this Agreement, Optus can immediately Suspend or Downgrade a Carriage Service

in whole or in part by giving Customer written notice if:

- (a) that Carriage Service is affected by:
 - (i) a Force Majeure Event;
 - (ii) repairs or maintenance required on the Optus Network or a Supplier's Network; or
- (b) a Supplier Network service is unavailable; or
- (c) any of the events referred to in clause 14.2 occur, as an alternative to cancelling a Service or terminating this Agreement at the discretion of Optus.

14.4 If a Carriage Service has been Suspended or Downgraded under clause 14.3 and Optus has not cancelled that Carriage Service or terminated this Agreement, Optus will promptly recommence that Carriage Service when the reason for the Suspension or Downgrade has been resolved.

15. Consequences of cancellation, Suspension and termination

15.1 If an Individual Service is cancelled or Suspended under clause 13.1 or clause 14.1:

- (a) Optus will notify Customer of the revised charges (if any) that will apply to the remaining active Individual Services within the impacted Service;
- (b) Customer (and Customer's Personnel and any End User) must stop using that Individual Service;
- (c) Optus will immediately cease providing that cancelled or Suspended Individual Service. However, until the provision of that Individual Service has actually

ceased, Customer will continue to incur the usage charges for that Individual Service;

- (d) at Optus' direction, Customer must immediately return or allow Optus to remove any Optus Equipment or other Optus material that is on Customer's Premises or that is in Customer's possession or control to the extent such equipment or material relates to that cancelled or Suspended Individual Service; and
- (e) none of the other remaining active Services and their respective Individual Services will be affected and Customer must continue to pay the applicable charges for those remaining active Services and their respective Individual Services.

15.2 Without limiting any other consequences set out in this Agreement, if a Service is cancelled or Suspended for any reason:

- (a) all of the Individual Services under that Service will also be cancelled or Suspended; and
- (b) the consequences set out in clause 15.1 will apply to each Individual Service of that cancelled or Suspended Service.

15.3 Without limiting clause 15.1 and clause 15.2, the following consequences may apply based on the relevant event described below:

- (a) if Optus cancels or Suspends a Service specifically under clause 14.2(a), 14.2(b) or 14.2(c), Customer must comply with clause 15.2(b) at their own cost;
- (b) If Customer cancels an Individual Service under clause 13.1 prior to its Service Start Date, Customer must pay the reasonable infrastructure and installation costs incurred by Optus; or

- (c) if Customer has overpaid for an Individual Service because:
 - (i) that Individual Service (or its relevant Service) was cancelled during a billing period; or
 - (ii) the price of that Individual Service (or its relevant Service) was increased prior to the date that Individual Service was cancelled,

then Customer will be credited with the amount it overpaid, or if Customer has stopped obtaining that Individual Service, Optus will use reasonable endeavours to notify Customer about the overpayment and refund the overpayment (though this refund is subject to clause 15.1(c)).

- 15.4 If there are no active Individual Services under a Service, that Service will automatically cancel.
- 15.5 If there are no active Services under this Agreement, either Party may terminate the Agreement at any time by giving the other Party at least thirty (30) days' written notice.
- 15.6 Upon termination of this Agreement, each Party's accrued rights and obligations will be unaffected, unless this Agreement expressly states otherwise.

16. Risk Allocation

Liability and Indemnity

- 16.1 To the maximum extent permitted by law, a Party (the 'first party') is not liable to the other Party (the 'second party') for Loss suffered by the second party:
 - (a) in connection with or arising from the second party's non-compliance with this Agreement; or
 - (b) in connection with or arising from a breach of third-party Intellectual Property Rights by the second party. However, this exclusion will

not apply where the second party is exercising any license granted under clause 18.2 in respect of the first party's Intellectual Property Rights and is otherwise complying with the requirements of clause 18.2; or

- (c) to the extent such Loss is Consequential Loss.

- 16.2 To the maximum extent permitted by law, Optus' aggregate liability for Customer's Loss in connection with this Agreement, whether in contract (including breach, anticipatory breach and repudiation), tort (including negligence), statute, under an indemnity or otherwise, is limited, for any one event or series of connected events, to the lesser of the following:

- (a) an amount equal to the charges paid by Customer to Optus under this Agreement in the twelve (12) months before the event or the first event in the series of connected events leading to a claim (except that where Services have been provided for less than twelve (12) months, the amount will be equal to the sum of all charges paid by Customer to Optus under this Agreement divided by the total number of months for which Services have been provided before the relevant event, multiplied by twelve (12)); or

- (b) five million dollars (\$5 million),

to the extent that the exclusions or limitations in clause 16.1, clause 16.4, clause 16.5 and clause 16.6 do not apply.

- 16.3 Without limiting clause 16.1, the liability cap which operates for Optus under clause 16.2 does not apply to Customer's Loss that arises from:

- (a) any damage to Customer's Property which has been caused by the fault, negligence or fraud by Optus or Optus' Personnel during installation, repair or maintenance;

- (b) personal injury or death to Customer or Customer's Personnel caused by Optus or Optus' Personnel;
- (c) breach of Optus' obligations under clause 22;
- (d) breach of third-party Intellectual Property Rights by Optus. However this exclusion (d) will not apply where Optus is exercising any licence granted under clause 18.2(a) in respect of Customer's Intellectual Property Rights and is otherwise complying with the requirements of clause 18.2(a); and
- (e) any fraudulent or illegal act or omission by Optus,

in connection with this Agreement.

16.4 Each Party has a duty to mitigate its Loss. The liability of a Party (the 'first party') for the other Party's (the 'second party') Loss is reduced to the extent that:

- (a) the second party fails to notify the first party promptly of any claim made against the second party by another person which relates to the conduct of the first party, and as a result the first party's ability to take relevant action with respect to such a claim is prejudiced or adversely affected;
- (b) the second party causes or contributes to the Loss;
- (c) the second party has failed to take reasonable steps to mitigate the Loss; or
- (d) the Loss is caused by a Force Majeure Event and the relevant Party has complied with clause 23.2.

16.5 In addition to, and without limiting, clause 16.4, Optus' liability for Customer's Loss is reduced to the extent that the Loss is caused by an Excluded Event.

16.6 Optus is not liable to End Users in connection with a Service or for any Content that was obtained using that Service or used in connection with that Service (for example, software applications). Customer is liable for a claim by an End User arising out of or in connection with the use of attempted use of that Service.

Roles and responsibilities

16.7 Customer acknowledges that while Optus can make recommendations about the suitability of any Service, it is Customer's responsibility to conduct relevant risk assessments in order to decide which Service to purchase from Optus.

16.8 To enable Optus to provide a Service, Customer must at its expense:

- (a) have support agreements and software in place including:
 - (i) maintaining, or authorising Optus to enact and maintain, valid licence and support agreements on behalf of Customer;
 - (ii) downloading any requisite virtual software onto its public cloud infrastructure and loading the Optus-generated token within one (1) hour to enable Optus to complete the configuration;
- (b) take care of its infrastructure including:
 - (i) ensuring that a site is ready and available for Optus or its representatives to provide any necessary services (either on-site or remote), including ensuring that all necessary access is available;
 - (ii) in the event of any fault or alarm being raised as part

- of that Service, comply with all reasonable requests made by Optus including, if requested, resetting or rebooting customer premises equipment;
 - (iii) providing Optus with reasonable notification in writing if it intends to replace or change any equipment located on Customer's Premises, or under the direction or control of Customer, which is managed by Optus;
 - (iv) maintaining the necessary security to ensure that the infrastructure managed by Optus is not subject to unauthorised interference or change and to prevent loss of or damage to any infrastructure managed by Optus. This includes Wi-Fi access points, switches and security appliances and may also include hardware, software and configuration items;
 - (v) allowing configuration of the management components such as agents and probes to enable Optus to actively monitor infrastructure managed by Optus;
 - (vi) allowing storage of all relevant configurations in Optus' secure configuration management database; and
 - (vii) providing any consumables needed in association with that Service. The consumables may incur additional costs which will be charged to Customer;
 - (c) provide reasonable written notice to Optus of events that may impact Optus including:
 - (i) notification of any changes, projects or strategic direction that may impact the performance or scope of that Service;
 - (ii) notification of any changes (for example, new equipment or sites are added) to that Service; and
 - (d) train its Personnel, including ensuring that any employees or other Personnel with administrative access are trained to use relevant dashboards to minimise the likelihood of them causing an incident or other event that impacts the security, functionality, performance or availability of any system or network required for that Service. Any applicable service levels breached by Customer will not apply and Optus may charge Customer to restore or reconfigure the system or network in the event of any such incident.
- 16.9 If Optus did not design and install the infrastructure that will be used to provide a Service, then prior to the transition of that Service to Customer, Customer must provide Optus with the following:
- (a) operational and technical documentation and diagrams of the components of the infrastructure to be managed by Optus;
 - (b) an inventory of equipment located on Customer's Premises, and any equipment under the direction or control of Customer, including specifications of all relevant hardware and software;

- (c) written confirmation of the appropriate vendor maintenance (and its expiry date) for the relevant hardware and software; and
- (d) management configuration of the infrastructure that will be covered by that Service.

16.10 Without limiting Optus' other rights in this Agreement, if Customer fails to meet its obligations under clause 16.8 or clause 16.9, that failure materially impacts on Optus' ability to provide a Service and Customer fails to rectify that failure within a reasonable period (but in any event no longer than fourteen (14) days) of being advised by Optus to do so, then:

- (a) Optus reserves its right to increase the charges for that Service; and
- (b) Optus will be relieved of its service level obligations in respect of that Service with effect from the start of the failure.

17. Warranties

17.1 Optus warrants that:

- (a) it has the requisite power and authority to enter into this Agreement;
- (b) the Optus Products will perform in accordance with the specifications set out in the Service Module; and
- (c) Optus will use adequate numbers of suitably qualified, experienced and competent Personnel in the provision of a Service.

17.2 Optus reserve the right, using its reasonable discretion to:

- (a) determine which Personnel will perform a Service;
- (b) replace or reassign any Personnel performing a Service; and
- (c) sub-contract suitably qualified Subcontractors to perform a

Service, or any part of that Service.

17.3 A Service may come with guarantees to the extent the Australian Consumer Law provides for this and, where it does, certain guarantees cannot be excluded or limited. Optus excludes all conditions and warranties implied into this Agreement to the extent permitted by law. If the law implies any term into this Agreement and Optus breaches that term or where any guarantee under the Australian Consumer Law applies to Customer, and Optus is liable to Customer, Optus is only liable for repairing or replacing the relevant goods, resupplying the relevant or equivalent services, or paying Customer the cost of doing so to the extent that Optus' liability can be limited in this manner at law.

18. Intellectual Property

18.1 Intellectual Property Rights in:

- (a) Customer Material will be owned by Customer;
- (b) Products manufactured and developed by a third party will be owned by the third party; and
- (c) all Contract Materials or Products that are not covered by clause 18.1(a) or (b) will be owned by Optus, unless a Statement of Work expressly provides otherwise.

18.2 Under this Agreement:

- (a) Customer grants Optus a royalty free, non-exclusive, non-transferable licence for the Committed Term of this Agreement to use the Intellectual Property Rights in Customer Material in the country in which a Service is supplied for the purpose of supplying that Service to Customer.
- (b) Optus grants Customer a royalty free, non-exclusive, non-transferable licence for the

Committed Term of this Agreement to use the Intellectual Property Rights in the Contract Material in the country in which a Service is supplied for the purpose of receiving that Service. If Customer or an End User attempts or purports to licence, sell or commercially exploit the Contract Material, Optus may terminate this licence immediately.

19. Privacy and Personal Information

19.1 Each Party:

- (a) must comply with all applicable Privacy Laws;
- (b) during and after the Term must not do or omit to do anything that would cause the other Party to breach any Privacy Laws; and
- (c) must co-operate with the other Party to resolve any complaint (threatened or actual) or investigation made under any Privacy Laws.

19.2 Customer acknowledges and agrees that it has the consent of its Personnel and its End Users to allow Optus to collect and use their Personal Information as reasonably required in connection with its provision of a Service.

19.3 Optus may collect, use and disclose Personal Information provided by Customer for purposes reasonably required for the supply of a Service as described in this Agreement, for purposes that would be reasonably expected as part of the supply of that Service and for other purposes described in the [Optus Privacy Policy](#).

20. Data Incident Notification

20.1 If Optus is aware that a Data Incident has occurred or there are reasonable grounds to believe that a Data Incident may have occurred in relation to any Customer Data, then Optus must, as far as the law permits,

notify Customer of that Data Incident as soon as practicable following Optus first becoming aware of that Data Incident. The notice will specify the nature and details, and any assumptions of the suspected or actual breach.

20.2 Within thirty (30) days from the time of notification in clause 20.1 or such other period as the law permits, Optus must conduct an expeditious investigation into the Data Incident and notify Customer of Optus' findings in respect of whether there are reasonable grounds to believe that a Data Incident has occurred, the nature of the Data Incident (if any), its consequences and plans to remedy.

20.3 If a Data Incident has occurred, then Optus must remedy the Data Incident as soon as practicable following the conclusion of the investigation referred to in clause 20.2, and notify Customer that the Data Incident has been remedied.

21. Data Security

21.1 Optus will establish, maintain and enforce information security controls against the unauthorised access, destruction, loss, corruption, alteration, disclosure or misuse of Customer Data in the possession or control of Optus and any of its Subcontractors. These information security controls will:

- (a) include policies, procedures and systems (including technical access controls);
- (b) be designed, implemented and tested appropriately having regard to the risk and potential consequences of unauthorised access, destruction, loss, alteration, disclosure or misuse of Customer Data in Optus' and any of its Subcontractors' possession or control; and
- (c) be no less rigorous than those implemented through generally accepted industry practice.

- 21.2 Optus will regularly and actively review and, where appropriate, revise its information security controls to reflect changes in vulnerabilities and threats.
- 21.3 To the extent that it is not inconsistent with Optus' information security controls, Optus will comply with Customer's security procedures that relate to Customer Data (as notified and provided by Customer from time to time), including any policies and procedures related to the preservation, installation or handling of Customer Data. If Optus incurs in connection with its compliance with this paragraph, then Customer must bear the costs of Optus' compliance.

22. Confidentiality

- 22.1 Each Party agrees to keep confidential, and not to disclose the other Party's Confidential Information except where necessary under this Agreement, or when it is required by law or by a Regulator.
- 22.2 Customer agrees that Optus is allowed to refer to Customer as a customer of Optus in Optus' marketing, sales, financial material or reports. If Customer does not want Optus to refer to Customer as an Optus customer publicly, Customer must advise Optus in writing.
- 22.3 Customer agrees that Optus may use and disclose Customer data for credit assessment purposes, including share with credit reporting bodies (CRBs), if reasonably required in connection with the provision of the Services. Data we share with CRBs in exchange for receiving your credit information may be included in future credit reports provided to other creditors to assist them in assessing your credit worthiness. If you fail to meet your payment obligations or we believe you have committed a serious credit infringement, we may also disclose this to the CRBs.
- 22.4 Following the termination of this Agreement, a Party may require the return or destruction of its Confidential Information, provided that it is not required by law to be kept by the other Party.

23. Force Majeure Event

- 23.1 A Party is not liable for any delay or failure to perform its obligations (other than to pay money) under this Agreement to the extent that the delay or failure to perform was caused by a Force Majeure Event.
- 23.2 The affected Party must let the other Party know of the Force Majeure Event as soon as reasonably possible and each Party must use its best effort to resume performance in accordance with this Agreement as soon as is reasonably practicable. A Party's obligations do not otherwise change during this Force Majeure Event.

24. Assignment and Subcontracting

- 24.1 Customer can assign its rights under this Agreement if Customer has the prior written consent of Optus, which will not be unreasonably withheld.
- 24.2 Optus can assign some or all of its rights under this Agreement to another Optus Group Company or other person in connection with any business transaction involving Optus or its assets. Optus can otherwise assign some or all of its rights under this Agreement to any person with the prior written consent of Customer which will not be unreasonably withheld.

25. Faults

- 25.1 To the maximum extent permitted by law and subject to the other terms of this Agreement, Optus does not guarantee a continuous or fault-free Service. Optus is not liable for Interruptions to a Service caused by a Force Majeure Event or an Excluded Event or service specific exclusions set out in the relevant Service Description. If Optus is liable for an Interruption, and Customer makes a valid claim in accordance with this Agreement, Customer will be entitled to the rebate amount (if any) specified in the Service Description.

- 25.2 As soon as Customer becomes aware of any fault in a Service, Customer must report that fault to Optus by telephoning the number notified to Customer by Optus from time to time.
- 25.3 Before reporting a fault to Optus, Customer must take all reasonable steps to ensure that the fault is not attributable to an Excluded Event.
- 25.4 Where Optus determines that the fault is an Interruption, Optus will use reasonable endeavours to restore the affected Service in accordance with the relevant service levels (if any) identified in the Service Description. Optus will notify Customer when the Interruption is rectified.
- 25.5 Any further conditions regarding fault restoration applicable to a Service are set out in the relevant Service Description.
- 25.6 Notwithstanding anything else in this clause 25, Customer is not entitled to claim a rebate to the extent that Customer has undisputed amounts outstanding in favour of Optus under this Agreement for more than thirty (30) days after the due date for payment in accordance with this Agreement.

26. Dispute Resolution

- 26.1 A Party claiming that a dispute has arisen out of or in connection with this Agreement ("**Dispute**"), must notify the other Party in writing ("**Dispute Notice**").
- 26.2 The Parties agree to attempt to initially resolve any Dispute by conducting good faith negotiations led by the Personnel nominated in the Application or Statement of Work or as otherwise advised by a Party to the other Party.
- 26.3 If the Parties are unable to settle the Dispute themselves in accordance with clause 26.2 within ten (10) Business Days after the issue of Dispute Notice, or such longer time as agreed between the parties, either Party may escalate the Dispute to the chief executive officer of the Parties (or their nominees).

- 26.4 If the Parties cannot resolve the dispute in accordance with clause 26.3 within ten (10) Business Days, or such longer time as agreed between the parties either Party may refer the Dispute to mediation by the Australian Disputes Centre ("**ADC**") for attempted resolution in accordance with the then current '*Guidelines for Commercial Mediation*' of the ADC.
- 26.5 Each Party must bear its own costs of resolving a Dispute under this clause 26 and the Parties to the Dispute must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve the Dispute.
- 26.6 A Party must not initiate arbitration or court proceeding (except interlocutory relief) in respect of a Dispute unless it has complied with this clause 26.

27. Risk Governance Forum

- 27.1 The Parties may agree to establish and operate a risk governance forum ("**Risk Governance Forum**").
- 27.2 The Risk Governance Forum will meet monthly, or at such other intervals agreed by the Parties, and each Party must make available the appropriate Personnel to attend the Risk Governance Forum meetings.
- 27.3 At each Risk Governance Forum meeting, Optus will discuss any issue concerning risks, including the content, preparation and operation of a Risk Management Plan.
- 27.4 Each Party must answer any reasonable queries that either Party may have, or provide any information or material reasonably requested by either Party, in respect of any of the matters covered by this clause 27.

28. Optus insurances

- 28.1 Optus will provide the following insurances:

INSURANCE	LIMIT
Public and product liability	Ten million dollars (\$10 million) in the aggregate
Professional Indemnity including Cyber Security Services	One million dollars (\$1 million) in the aggregate
Workers' compensation	As required by applicable law

29. Personal Property Securities Act 2009 (Cth) (PPSA)

- 29.1 You acknowledge that this Agreement does or may create a security interest in the Optus PSSA Equipment for the purposes of the PPSA and therefore does or may constitute a security agreement for the purposes of the PPSA.
- 29.2 Except where Optus has granted its consent (not to be unreasonably withheld), you must not create or cause to be created a security interest over, or in respect of your rights in, the Optus PSSA Equipment other than any security interest arising under this clause, or other than a security interest over all its assets granted to a bank or other financial institution.
- 29.3 You must do all things and provide all information reasonably requested by Optus to enable Optus to perfect any security interest it has in the Optus PSSA Equipment (including assist Optus to complete the registration of any financing statement or financing change statement (each as defined in the PPSA)).
- 29.4 You agree that the lease or bailment of the Optus PSSA Equipment does not secure payment or performance of an obligation for the purposes of the PPSA, other than in the case of a financing lease. However, if Optus has agreed to allow you to pay for Optus PSSA Equipment over a defined term or Optus has otherwise allowed you more than 30 days to pay for the Optus PSSA

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Equipment, then you agree that the security created under this agreement will secure your payment or performance of obligations in relation to those deferred payment arrangements with Optus.

- 29.5 If, despite clause 29.4, Chapter 4 of the PPSA applies to any security interest arising under this clause, to the extent permitted by law, you and Optus contract out of the following sections:

- (a) 125 and 143 of the PPSA; and
- (b) 95, 121(4), 130, 132(3)(d), 132(4), 135 and 142 of the PPSA and you irrevocably waive your rights under these provisions.

These provisions may be contracted out of under the PPSA where Optus PSSA Equipment is not being used predominantly for personal, domestic or household purposes and You may not receive all the notices or protections that apply if you were a consumer using the Optus PSSA Equipment for personal, domestic or household purposes. In addition, where Optus is a controller of Optus PSSA Property, to the extent permitted by s115(7) of the PPSA, you and Optus contract out of the provisions of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA.

- 29.6 You irrevocably waive any rights you may have to receive notice of a verification statement (as defined in the PPSA) in respect of any financing statement or financing change statement registered by Optus.

30. Integrated Public Number Database

- 30.1 This clause 30 applies to Customer if Optus supplies Customer, including its Personnel, with a number (being a mobile, calling card, freephone, geographic, international, local rate, premium rate or satellite number) for the purpose of, or as part of, providing Customer's Service.
- 30.2 Customer acknowledges the following:

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- (a) The Integrated Public Number Database (**IPND**) is a centralised database of all public phone numbers and related customer information. That information is referred to as Public Number Customer Data (or **PNCD**);
- (b) The IPND is a critical source of information for emergency services, law enforcement and national security agencies. The IPND is also used for non-critical purposes such as publishing public number directories and electoral, health and government public research;
- (c) Each PNCD record includes (among other things):
 - (i) the relevant phone number;
 - (ii) Customer's name and associated details;
 - (iii) Customer's contact information;
 - (iv) Customer's address (which for a mobile service will be the physical address provided by Customer (or Customer's relevant Personnel) and for a fixed service will generally be the service address as installed, unless not technically feasible); and
 - (v) details of the carriage service provider who provides the relevant service;
- (d) As for some Services the service address provided may not be the physical address from where a person is calling, it is particularly important that Customer makes sure that Optus always has up to date details of Customer's contact for a Service. The Customer's contact is a named person who can provide information about the relevant Service;
- (e) Incorrect information in the IPND can (among other things) delay emergency responses, stop phone-based emergency warning systems working properly and compromise investigations by law enforcement and national security agencies. This highlights why it is critical

that Customer's PNCD is kept up to date and accurate and that Customer promptly notifies Optus of any changes. As a carriage service provider, Optus is required to supply correct PNCD to the IPND Manager and keep that information up to date.

- 30.3 Customer agrees to provide Optus with accurate and up-to-date information about Customer's and (where applicable) its Personnel's names, phone numbers, contact details, service addresses and other PNCD. Customer should inform Optus promptly if any of this information changes. In addition, if at any time Customer wishes to have its PNCD altered in the IPND in any way, Customer will need to contact Optus to arrange this.

31. General

- 31.1 Unless this Agreement or the Telecommunications Legislation allows otherwise, all Parties will give any necessary notice under this Agreement to each other in writing.
- 31.2 Customer must:
- (a) nominate in writing a customer representative as the single point of contact for administration of a Service; and
 - (b) make available a suitably skilled, qualified, and technically competent person nominated, authorised and directed by Customer to provide technical assistance to Optus Personnel as required, to assist in the delivery of a Service.
- 31.3 Customer must also nominate in writing at least two authorised operational contacts each of whom is authorised by Customer to:
- (a) request and/or accept changes to a Service;
 - (b) report faults and request moves, adds or changes to a Service;
 - (c) be a point of contact for Optus' support and maintenance Personnel; and
 - (d) notify Optus of anyone who is to

be added or removed as an End User.

Optus is not required to respond to, and is not liable for, any consequences arising from non-compliance with any requests made by persons who are not authorised operational contacts.

31.4 Any notice or consent required or permitted to be given by one Party to the other in writing may be served by:

- (a) delivery to that Party's address;
- (b) sending by registered mail to that Party's address; or
- (c) transmitting by email to that Party's email address, as the case may be.

31.5 A notice given to a Party in accordance with clause 31.4 is treated as having been given and received:

- (a) if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by registered mail, on the next Business Day after posting; and
- (c) if delivered by e-mail, on the earlier of the time that the sender receives an automated message that the email was delivered; and six (6) hours after being sent unless the sender receives an automated message that the email was undeliverable or that the recipient is out of office; or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the email was not delivered, in which cases the email is taken not to be delivered and the sender should resend the notice by hand or post.

31.6 For the purpose of providing notices, the address of a Party is the registered office or business address of that Party set out in the Agreement, or the address last

notified by the Party.

31.7 If a Party does not exercise a right under this Agreement that Party does not waive its right to exercise that right at another time.

31.8 Where a provision of this Agreement is void, voidable or unenforceable, it will be severed but the remainder of the Agreement will not be affected.

31.9 Each Party agrees to pay its own costs and expenses relating to the preparation of this Agreement, and any agreement or document that is needed to give effect to it.

31.10 The Parties agree that nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the Parties, and neither Party has the right to bind the other under any circumstances.

31.11 There are parts of this Agreement that have been written with the intention that they will continue after a Service has been cancelled, and the Parties both agree that they will do so.

31.12 This Agreement is governed by the laws of New South Wales ("**NSW**"), and each Party submits to the non-exclusive jurisdiction of the courts of NSW.

31.13 This Agreement may be varied in accordance with its terms or in writing when signed by both Parties.

31.14 To the extent a Customer Group Entity receives the benefit of a Service from Optus, Customer holds the benefit of each promise and obligation of Optus in this Agreement for itself and on trust for that Customer Group Entity. Customer must ensure that each Customer Group Entity that receives the benefit of a Service from Optus complies with each of the obligations of Customer under this Agreement as if each Customer Group Entity were jointly responsible for those obligations. Customer must ensure that each Customer Group Entity does not bring any claim against Optus in connection with this Agreement whether arising at law, in equity, under statute, tort (including negligence) or otherwise. However, if a Customer Group Entity suffers Losses as result of one or

more acts or omissions of Optus relating to the performance or non-performance of this Agreement, Customer will be able to recover those Losses (subject to clause 16) as if those Losses were suffered or incurred by Customer itself and to the extent that Losses would have been capable of being recovered by Customer had Customer suffered those Losses.

32. Dictionary

32.1 In this Agreement capitalised words have the following corresponding meaning:

Adverse Impact means a more than minor detrimental effect.

Agreement means the Standard Pricing Table, Service Description, General Terms and Application/Statement of Work (as the case maybe), relevant to the supply of a Service.

Agent includes an agent who acts not only as a salesperson, or broker, for the principal, but also as a guarantor of credit extended to the purchaser of services.

Application means a form provided to Customer by Optus, to document the Carriage Service(s) to be supplied by Optus to Customer, and which has been duly executed by Customer and Optus.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act.

Business Day means a day other than a Saturday, Sunday or a public holiday in NSW.

Business Hours means the hours between 9am and 5pm on a Business Day.

Carriage Service has the meaning given in the Telecommunications Act and, in addition, refers to any management service in connection with a Carriage Service.

Cancellation Fee means the cancellation fee, termination charge (if any) or other similar charges (if any) applicable to a Service or Individual Service (where applicable), calculated in accordance with the Application/Statement of Work (as the case maybe), Standard Pricing Table (if any) or Service Description, which is a genuine estimate of the Loss that Optus will suffer as a result of the cancellation, termination or similar event.

Committed Term means the period specified in the Application, Statement of Work or MAC Notice commencing on the Service Start Date, or if no period is specified, then twelve (12) months from the Service Start Date and, for professional services, the period from the Service Start Date until such time as the works or services have been provided.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

Confidential Information means all information treated by the disclosing party ("**Discloser**") as confidential of which the receiving party ("**Recipient**") knows or ought to know is confidential but excludes information:

- (a) the Recipient creates (whether alone or jointly with any person) independently of the Discloser's Confidential Information;
- (b) that is or becomes public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Discloser through no breach of confidentiality by that source.

Consequential Loss means any Loss suffered by a party as a result of:

- (a) any breach of this Agreement (including anticipatory breach and repudiation); or
- (b) other act or omission giving rise to liability,

where that Loss cannot reasonably be considered to follow naturally (that is, in the usual course of things) from that breach or other act or omission. For the purposes of this Agreement, **Consequential Loss** also includes loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of goodwill, loss of productivity, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss, and any penalties or fines imposed by a Regulator.

Content means:

- (a) all forms of information including text, pictures, animations, video, sound, recordings, information- based updates,

multimedia and software, whether separate or combined; and

- (b) any content service (as defined in the Telecommunications Act) sent and received across a network.

Contract Material means all materials, information, know how, systems, processes, software (including enhancements or modifications) and technology of any nature that is created or used in connection with this Agreement.

CPI means the Consumer Price Index rate released by the 'Australian Bureau of Statistics' (or any replacement body) based on the All Groups, Weighted Average of Eight Capital Cities and with respect to the twelve (12) month period preceding the date of each relevant review.

Credit Risk means if Customer:

- (a) suffers an Insolvency Event or is likely to;
- (b) has a material judgement entered against it;
- (c) fails to pay an invoice in accordance with the Agreement;
- (d) is, or any of Customer's directors or principals are, identified by a credit reporting agency as presenting a credit risk;
- (e) fails or refuses to provide financial and trading information satisfactory to Optus upon reasonable request by Optus;
- (f) employs less than one hundred and fifty (150) Personnel;
- (g) is trading as a trust;
- (h) relocates its main office to a country other than Australia; or
- (i) fails our credit checking process prior to the Service Start Date.

Customer means the business entity entering into the Agreement.

Customer Data means data, information and other materials provided to, or obtained or generated by, Optus in the provision of a Service relating to any of Customer's End Users, including any Personal Information.

Customer Group means Customer and each of Customer's Related Bodies Corporate.

Customer Group Entity means an entity in the Customer Group other than Customer.

Customer Material means any document, methodology or process, documentation, data or other material in whatever form provided by Customer to Optus.

Data Incident means an incident where:

- (a) there is unauthorised access to, or unauthorised disclosure of Personal Information, or a loss of Personal Information which is supplied by Customer or collected by Optus on Customer's behalf in the provision of Services by Optus to Customer that Optus holds and where that loss of Personal Information is in breach of Privacy Laws; and
- (b) it is reasonable to believe that the unauthorised access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the Personal Information relates.

Downgrade means any modification to a Service which reduces the capacity, use or utility of the Service.

Downgrade Charge means the relevant charge (if any) calculated by Optus, if a Downgrade is requested by Customer and accepted by Optus, in accordance with the Standard Pricing Table (if any), Service Description or otherwise as agreed between the parties. The Downgrade Charge is a genuine estimate of the Loss Optus will suffer as a result of the Downgrade.

End User means any person or entity that uses or desires to use a Service, whether or not Customer allows them to.

Excluded Event means:

- (a) a breach of this Agreement by Customer, an act or omission of Customer, Customer Personnel or an End User, or any failure, unavailability or fault in any of Customer's Products, or infrastructure or services (including where provided by a third party other than Optus); or
- (b) any act or omission that affects a Service caused by a third party, but not including

any event outside Customer's reasonable control.

Fair Go Policy means the documented policy, as amended from time to time, located at:

<http://www.optus.com.au/about/legal/standard-forms-agreement/appendices#Appendices>

Fair Terms has the meaning set out in clause 8.

Financial Security means any form of security for the performance of Customer's obligations, including, for example, a deposit of funds, payment in advance, debtors insurance, a Guarantee, change of payment terms as may be required by Optus under clause 12 and conditions, or a Letter of Credit. If the request for Financial Security is made prior to the Committed Term Optus will typically request three (3) months' worth of monthly charges that Optus will invoice Customer. If the request for Financial Security is made during the Committed Term, Optus will typically request three (3) months' worth of monthly charges invoiced to Customer in the previous three (3) months from the date the request is made.

Force Majeure Event affecting a party means any event outside that party's reasonable control, and includes failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that party and its own Personnel), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or any failure of any equipment owned or operated by any third party (including any Regulator but excluding a Subcontractor).

General Terms means this document which sets out the standard form of agreement for a Service and any addendum attached.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Guarantee means an unconditional guarantee in a form approved by Optus and provided by an Australian bank licensed by the Australian Prudential Regulation Authority ("APRA").

Individual Service means each individual service, circuit, site, connection component or link making up a Carriage Service or each individual service, component, item or technology or other product Optus General Terms

making up an ICT Service. For clarity, there may be more than one Individual Service making up a Service (as the case may be).

Information Communications and Technology Service or **ICT Service** means any Service provided by Optus that is not a Carriage Service.

Insolvency Event means, in respect of a party:

- (a) bankruptcy proceedings are commenced against the party, or the party is declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between the party and its creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the party's assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the party or to the whole or any part of the party's assets or business;
- (e) where the party is a partnership, the partnership is dissolved, or an application is made to dissolve the partnership;
- (f) the party suspends payment of its debts generally; or
- (g) the party is or becomes unable to pay its debts when they are due, or the party is or is presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth) as amended or replaced from time to time.

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

Interruption means a delay in supplying or a failure to supply or an error or defect in the supply to the extent that a Service is rendered unavailable or unusable, whether that occurs before or after the Service Start Date.

Late Payment Rate means an interest rate of two percent (2%) above the Optus corporate overdraft rate at the time payment was due.

Letter of Credit means a letter of credit in a form approved by Optus and provided by an Australian bank licensed by APRA.

Loss means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis.

MAC Notice means the notice of changes, revised charges or changed terms applicable to any move, add or change request.

Optus means Optus Networks Pty Limited (ABN 92 008 570 330).

Optus Equipment means equipment, cabling or any other item owned or controlled by Optus including where installed on the Customer's premises.

Optus Group Company means Singapore Telecommunications Limited (ARBN 096 701 567) and each of its Related Bodies Corporate.

Optus Network means the telecommunications network, Optus Equipment and facilities owned or controlled by Optus.

Optus PSSA Equipment means Optus Equipment and any other equipment, facilities, devices or other items that are supplied to Customer and/or its End Users by Optus and/or its Personnel for which the customer has agreed to provide payment after the date of supply (including on 30-day terms or under an instalment payment program).

Party means Optus or Customer (as the case may be).

Personal Information has the same meaning as it is given in the *Privacy Act 1988* (Cth) as amended or replaced from time to time.

Personnel of a party means that party's employees, agents, contractors or other representatives and, in the case of Optus, includes the employees, agents, contractors or other representatives of any Optus Group Company.

Premises means locations at or to which Optus supplies a Service, and locations to which Optus requires access to supply that Service.

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth) as amended or replaced from time to time;
- (b) Part 13 of the Telecommunications Act; Optus General Terms

and

- (c) any legislation (to the extent that such legislation applies to Optus or Customer or any other recipient of Personal Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data.

Products means goods, equipment, hardware, software and software tools, and includes any related technology and/or documentation.

Property means real or personal property.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or any other relevant government authority or statutory body with authority to enforce regulation.

Related Bodies Corporate has the same meaning as in section 50 of the *Corporations Act 2001* (Cth) as amended or replaced from time to time.

Risk Management Plan means a formal document describing how the parties will deal with specific risks and what risk managing actions can be taken to mitigate or remove threats to the project activities and outcomes.

Service means:

- (a) a Carriage Service requested in the Application and has features as described in the Service Description (including any appendix to the Service Description); and/or
- (b) Products requested in an Application or a Statement of Work; and/or
- (c) an ICT Service agreed under a Statement of Work and has features as described in the Service Description (including any appendix to the Service Description), and
- (d) any related materials (including equipment) and ancillary services that Optus supplies to Customer in connection with that Service.

Service Description means the part of the Agreement entitled or described in the "Service Description" which is the Optus standard service

description describing a Service.

Service Family Terms means the terms described as such in or contemplated by a Service Description.

Service Module means:

- (a) an Application in the case of provision of a Carriage Service; and
- (b) a Statement of Work in the case of an ICT Service,

in each case together with the Service Description and relevant Standard Pricing Table for a Service.

Service Option Terms means the terms described as such in or as contemplated by a Service Description.

Service Start Date for a Service or an Individual Service means the date on which Optus starts supplying that Service or Individual Service to Customer or is deemed to do so.

Standard Pricing Table means the Optus standard rate plan, pricing and charges list for a Service.

Statement of Work means a statement of work provided to Customer by Optus, to document an ICT Service(s) and related Products supplied by Optus to Customer, and which has been duly executed by Customer and Optus.

Subcontractor means any supplier of goods or services which are used by Optus to supply the Products or Services (but excludes a provider of telecommunications services over a Supplier Network or a provider of Products or Services that are on supplied by Optus as contemplated in clause 6.1(b)).

Supplier Network means the telecommunications network, equipment, facilities and cabling controlled by a third party.

Suspend or **Suspension** means stop, reduce, restrict or limit supply in circumstances where at the relevant time, there is no intention that it is permanent or indefinite.

Tax means any withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority but does not include GST or any taxes on income or capital.

Telecommunications Act means the Optus General Terms

Telecommunications Act 1997 (Cth), as amended or replaced from time to time.

Telecommunications Legislation means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) and Part XIB, Part XIC, related provisions of the Competition and Consumer Act, including the Australian Consumer Law each as amended or replaced from time to time, and any relevant mandatory industry codes of practice.

33. Interpretation

This Agreement is interpreted as follows.

- 33.1 If there is any inconsistency between the terms of the documents that form this Agreement, they will be interpreted in the following order of precedence (unless specifically agreed by the parties otherwise in writing):
- (a) these General Terms;
 - (b) Standard Pricing Table;
 - (c) Service Option Terms of the Service Description;
 - (d) Service Family Terms of the Service Description; and
 - (e) Application/Statement of Work (as the case maybe), except to the extent of any inconsistency in pricing (in which case the Application/Statement of Work overrides the Standard Pricing Table).

For clarity, a term of a document is not considered to be inconsistent with a term of another document if both terms relate to the same subject matter and the former term adds more detail to the latter term.

33.2 For the avoidance of doubt:

- (a) a Service supplied by Optus to Customer (under an Application or Statement of Work) will form part of this Agreement and will not create a new separate agreement between Optus and Customer. However, each Service is independent of each other (for example, the cancellation of a Service will not

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- cancel other remaining active Services nor this Agreement, unless expressly stated otherwise in this Agreement);
- (b) without limiting clause 32.2(a), a Carriage Service or ICT Service may be made up of Individual Services. Each Individual Service will form part of this Agreement and will not create a new separate agreement between Optus and Customer. However, each Individual Service is independent of each other (for example, the cancellation of an Individual Service will not cancel other remaining active Individual Services, nor the relevant Carriage Service or ICT Service, nor this Agreement);
- (c) a reference to a Service is also to be read as a reference to include all of the Individual Services that make up that Service unless these terms are expressly distinguished otherwise in these General Terms; and
- (d) undefined words and expressions have the same meaning as in the Telecommunications Legislation;
- (e) this is the entire agreement between Customer and Optus in relation to the Services;
- (f) a reference to a party includes that party's successors and permitted assigns;
- (g) a reference to a party includes a reference to a person, firm, corporation or other legal entity;
- (h) a term which is defined in any part of this Agreement has the same meaning in every other part of this Agreement;
- (i) the singular includes the plural and vice versa;
- (j) different grammatical forms of the same word have the corresponding meaning;
- (k) a reference to a clause is to a clause in that document, unless otherwise stated; and
- (l) examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.
- (m) different grammatical forms of the same word have the corresponding meaning;
- (n) a reference to a clause is to a clause in that document, unless otherwise stated; and
- (o) examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.

OPTUS ENTERPRISE GENERAL TERMS

1. Introduction

- 1.1 This Agreement applies when Optus supplies any of its Services, including Carriage Services and ICT Services to the Customer or a Customer Group Entity.
- 1.2 A reference to the Customer in these General Terms is also to be read as a reference to each relevant entity in the Customer Group to which Optus provides a Service

2. Carriage Services – the application process

- 2.1 Once Optus and the Customer execute a completed Application, it will be incorporated into this Agreement for the supply and acquisition of each Carriage Service that the Customer has selected in the Application.

3. Information Communication and Technology Services

- 3.1 The parties may agree a Statement of Work to provide for the supply and acquisition of specific ICT Services under this Agreement. A Statement of Work becomes effective and incorporated into this Agreement once signed by a duly authorised representative of each party.

4. About the Services

- 4.1 Optus will supply the Service to the Customer from the Service Start Date on the terms and conditions of this Agreement.
- 4.2 The Customer agrees to assist Optus and any Subcontractors to set up and supply the Service to the Customer safely and efficiently. This may include providing Optus with usage forecasts, and ensuring safe and legal access to Personnel, Premises, equipment and information.

- 4.3 The Customer confirms the Customer is not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).

- 4.4 Optus and the Customer both agree to comply with all applicable laws, and any directions from Regulators, relating to the Service.

- 4.5 The Customer must not, and must not allow anyone else (including but not limited to any End User) to use or attempt to use the Service:

- (a) other than for the purpose Optus has specified (if any);
- (b) to break laws, infringe upon anyone else's rights, or harm property or people;
- (c) in a way that damages, interferes with or interrupts the Service, the Optus Network or, a Supplier Network;
- (d) to re-supply or re-distribute the Service (or any part of it) without the prior express written agreement of Optus; or
- (e) in a way that does not comply with Optus' Fair Go Policies.

- 4.6 A Carriage Service may use one or more identifiers such as a telephone number, IP address or domain name ("**Public Addressing Identifiers**"). The Customer acknowledge that:

- (a) Optus does not control the allocation of Public Addressing Identifiers
- (b) Optus is not liable to the Customer if Optus is required to change the Customer's Public Addressing Identifier as a result of a direction given by a Regulator or any other body administering Public Addressing Identifiers; and
- (c) if Optus is no longer supplying the Service to the Customer, the Customer's right to use any related

Public Addressing Identifier may cease.

5. Equipment and maintenance

- 5.1 Any time the Customer receives Optus Equipment, the Optus Equipment remains the property of Optus at all times unless Optus agrees to sell all or part of the Optus Equipment to the Customer. While any Optus Equipment is in the Customer's care or control, or is situated on the Customer's property, the Customer is responsible for any loss or damage to the Optus Equipment.
- 5.2 The Customer must use and maintain Optus Equipment correctly. This includes making sure that the Optus Equipment has suitable space and power. The Customer must keep the Optus Equipment free from any charge, mortgage, lien, encumbrance or other security interest – and make it clear to third parties that it belongs to Optus.
- 5.3 The Customer agrees to make sure all other Products the Customer uses in connection with the Service are fully compatible with the Optus Equipment. This includes ensuring the Customer Products have suitable space and power, and comply with all applicable laws, regulations, and any requirements specified by Optus. Optus doesn't take any responsibility for the Customer Products unless Optus agrees in writing to do so.
- 5.4 In addition to any maintenance window specified in the Service Description, Optus might need to modify or conduct maintenance on the Optus Network in areas relating to the Service. Optus always aims to do this outside of Business Hours.

6. Service Terms and Restrictions

- 6.1 Unless the Service Description provides otherwise, when Optus:
- (a) supplies Products to the Customer, the Customer accepts the risk in the Product when they are delivered to the Customer, and

if Optus sells the Products to the Customer, ownership will pass to the Customer when Optus has received full payment; and

- (b) on-supplies or sells third-party Products or services to the Customer, the relevant third-party conditions (including licence, warranty, and support conditions) apply to those Products and services.

7. Moves, adds and changes

- 7.1 The Customer must give Optus written notice if the Customer would like any changes made to the Customer's Service.
- 7.2 If Optus agrees to make the changes, any revised or additional charges (for example, a Downgrade Charge) and any additional or modified terms may apply.
- 7.3 Once any modifications are complete, the Customer shall be responsible for adhering to any revised terms, including payment of any additional charges.
- 7.4 Optus may vary the technology used to provide the Service and / or any term of the Service Description at any time for technical, operational or commercial reasons provided that there is no material adverse effect to the quality of the Service.

8. Charges, Invoicing and payments relating to the Customer Service

- 8.1 By signing the Application or a Statement of Work, the Customer agrees to pay all the charges that are set out in the Agreement. The Customer must pay Optus the charges for the Service, regardless of who uses it and whether the Customer approved that usage.
- 8.2 If the Customer continues to use ICT Services following expiry of the Committed Term, the charges applicable to those Services will be the charges applying as at the date of expiration.

- 8.3 When it comes to paying for the **Service**, the **Customer** agrees:
- (a) that the **Customer** will pay the amount the **Customer** owes **Optus**; and
 - (b) except for any charge that the **Customer** disputes in accordance with clause 8.8 the **Customer** won't withhold, deduct, set-off or counterclaim any amount from or against any payment due to **Optus**.
- 8.4 The **Customer** may incur extra charges as set out in the **Agreement** if:
- (a) the **Customer** suspends all or part of any **Service**;
 - (b) **Optus** needs to modify, repair, or replace any **Optus Equipment** as a result of an **Excluded Event**;
 - (c) **Optus** investigates and (if requested by the **Customer**) corrects a fault, where **Optus** determines that the fault is caused by an **Excluded Event**; or
 - (d) the **Customer** requires **Optus** to perform maintenance or other services outside **Business Hours**.
- 8.5 On expiry of the **Committed Term**, **Optus** may end the pricing set out in the **Application** or the **Statement of Work**, in which case the charges set out in the **Standard Pricing Table** (if any) will apply. If the **Customer** renews the **Service** for a new **Committed Term**, the agreed charges will be implemented within 30 days of **Optus** executing the **Customer** renewal **Application**.
- 8.6 **Optus** or an **Optus Group Company** acting as **Optus' Agent** will send the **Customer** tax invoices for the **Service**. The **Customer** agrees to pay the amount due within 30 days of the date of the invoice, by one of the methods specified in it, unless an alternate method of payment has been agreed upon by the parties. If the **Customer** pays too much in error, **Optus** will credit the **Customer's** account, or, at the discretion of **Optus**, refund the **Customer** the amount that was overpaid.
- 8.7 If **Optus** does not receive payment on time in respect of any invoice issued to the **Customer**, **Optus** may:
- (a) after providing written notice, charge the **Customer** interest at the **Late Payment Rate**, and **Optus'** reasonable costs of recovering payment from the **Customer**; and/or
 - (b) after providing written notice, stop using the agreed rates in the **Customer Application** or **Statement of Work**, and revert to the rates in the relevant **Standard Pricing Table** (if any), until the full payment is made; and
 - (c) if the **Customer's** payment is more than 60 days overdue, then subject to regulatory requirements, provide information about the **Customer's** payment default to a credit reporting body.
- 8.8 If the **Customer** disagrees with any charges, the **Customer** must provide **Optus** with a **Dispute Notice** within 12 months of the date of the relevant invoice containing those charges in accordance with clause 24 (**Dispute Resolution**). Any such **Dispute Notice** must set out the **Customer's** claim clearly and include sufficient evidence to substantiate the claim. Failure to raise a **Dispute Notice** within 12 months of the date of the disputed invoice constitutes a waiver of the **Customer's** right to recover any disputed amounts relating to that invoice.
- 8.9 **Optus** may deduct or credit any amounts that the **Customer** owes **Optus**.
- 8.10 When the **Customer** pays the charges for the **Service**, the **Customer** must also pay **Optus** an additional amount that's equal to the **GST** on the charges or **Services**, unless the **Agreement** states that **GST** is included.
- 8.11 If the charges include **GST** and the rate of the **GST** changes, **Optus** may increase or

decrease the charges that the Customer must pay accordingly.

Annual Review

8.12 Without limiting any of Optus' rights under the Agreement, on and from 1 April 2023 Optus may:

- (a) conduct an annual review of the pricing for Services as listed in the Agreement; and
- (b) increase such prices up to an amount equal to the 'Consumer Price Index' rate released by the 'Australian Bureau of Statistics' based on the / All Groups, Weighted Average of Eight Capital Cities.

9. Taxes

9.1 If the Customer is required to deduct or withhold Tax from a payment to Optus by law, the Customer needs to:

- (a) promptly pay an amount equal to the amount deducted or withheld as required by law and by the date that Tax is due to be paid to the appropriate governmental or regulatory agency; and
- (b) increase the Customer payment to Optus by the amount that's necessary to ensure Optus receives the full amount which Optus would have received if no deduction or withholding had been made.

9.2 If clause 9.1 applies, Optus will on request, and subject to the Customer providing Optus with a receipt for the amount of Tax, deducted or withheld by the Customer, apply for a credit or rebate to which Optus may be entitled in connection with the deducted or withheld Tax. Optus will refund to the Customer any credit or rebate received, up to the amount of the increased payment made by the Customer under clause 9.1.

10. Financial Security

10.1 Optus may ask the Customer to supply Optus with Financial Security at any time if Optus reasonably considers the Customer to be a Credit Risk. If the Customer doesn't supply Financial Security in the amount requested, Optus may Suspend or cancel all or any part of the Customer's Service or terminate this Agreement. The Optus Group may apply all or part of any Financial Security provided by the Customer to satisfy any amount overdue by the Customer to an Optus Group Company. Optus will return any remaining Financial Security to the Customer following termination or expiry of the Agreement.

10.2 Customer agrees to co-operate with Optus and Optus' insurers in respect of the provision of accurate and updated financial information and any other relevant information required for the purpose of disclosure under Optus' insurance policies. Customer agrees that financial and other information provided by Customer to Optus may be disclosed to Optus' insurers for the purpose of assessing Customer's creditworthiness.

10.3 Providing financial security does not affect your obligations to Optus, including your obligation to pay amounts to Optus as they become due and payable.

10.4 Optus may apply the whole or any part of any financial security to satisfy any amount you are required to pay to Optus from time to time and that is overdue. Doing so does not limit Optus' other rights under the Agreement.

10.5 Optus will return any remaining financial security to you after you have stopped taking all Services from Optus, you have paid Optus all outstanding charges and discharged all your other obligations under the Agreement and Optus is satisfied that it will not be obliged to repay any amount received by it for any reason.

11. The Customer rights to cancel the Customer Service, or terminate the Agreement

11.1 The Customer may cancel an Individual Service or terminate this Agreement with Optus:

- (a) by giving Optus at least 30 days' written notice after expiry of the Committed Term; or
- (b) during the Committed Term if the Application or Service Description includes a Cancellation Fee, as long as the Customer gives Optus 30 days' written notice and pays the Cancellation Fee.

11.2 The Customer may immediately cancel an Individual Service or terminate this Agreement by giving Optus written notice if:

- (a) the Customer's Service has ceased to be provided because Optus has suffered an Insolvency Event;
- (b) the Customer is required to do so by law or to comply with an order, instruction or request from a Regulator, emergency services organisation or any other competent authority; or
- (c) Optus breaches a material term of this Agreement and (i) if the breach is capable of being remedied, Optus fails to remedy that breach within thirty days after being notified to do so by the Customer, or (ii) the breach is not capable of being remedied.

11.3 The Customer must pay:

- (a) the reasonable infrastructure and installation costs incurred by Optus if:
 - (i) the Service is Suspended, for the period of the Suspension; or
 - (ii) the Customer cancels an Individual Service or terminates this Agreement prior to the Service Start Date;

(b) the Cancellation Fee, when the Service is cancelled in part or this Agreement is terminated during the Committed Term;

- (i) by the Customer under clause 11.1(b) in exercising the Customer's option to terminate for convenience;
- (ii) by Optus under clauses 12.2(a)-(d).

12. Optus' rights to Suspend or cancel a Service or terminate the Agreement

12.1 Optus can cancel an Individual Service immediately or terminate this Agreement by giving the Customer 30 days written notice:

- (a) after expiry of the Committed Term; or
- (b) if before the Service Start Date, Optus reasonably determines that it's not technically or operationally feasible or commercially viable to supply the Customer with the Service.

12.2 Optus may also cancel an Individual Service or terminate this Agreement immediately by giving the Customer written notice if:

- (a) the Customer suffers an Insolvency Event;
- (b) Optus is required to by law, or to comply with an order, instruction or the request of a Regulator, emergency services organisation or any other competent authority;
- (c) the Customer fails to pay Optus in accordance with clause 9;
- (d) Customer breaches a material term of this Agreement and (i) if the breach is capable of being remedied, Customer fails to remedy that breach within thirty days after being notified to do so

- by Optus, or (ii) the breach is not capable of being remedied; or
- (e) the Service is Suspended by Optus under clause 12.3 and that suspension continues for more than fourteen (14) days.
- 12.3 Optus can immediately Suspend or Downgrade the Customer's Carriage Service in whole or in part if:
- (a) the Carriage Service is affected by:
- (i) a Force Majeure Event;
- (ii) repair or maintenance required on the Optus Network or a Supplier's Network; or
- (b) a Supplier Network service is or becomes unavailable; or
- (c) any of the events referred to in clause 12.2 occur, as an alternative to cancelling an Individual Service or terminating this Agreement at the discretion of Optus.
- 12.4 If the Customer's Service has been Suspended or Downgraded under clause 12.3 and Optus has not cancelled the Service or terminated this Agreement, Optus will promptly recommence the Customer's Service when the reason for the Suspension has been resolved.

13. The Customer's rights and obligations after cancellation or Suspension of a Service, or termination of this Agreement

- 13.1 If one of more of the Customer Individual Services is cancelled under clause 11 or clause 12 Optus will notify the Customer of the revised charges (if any) for the Customer's remaining Services.
- 13.2 If a Service is cancelled or Suspended or this Agreement is terminated for any reason:

- (a) the Customer (and the Customer's Personnel and any End User) must stop using that Service;
- (b) the Customer must immediately, and at the Customer's cost, return or allow Optus to remove any Optus Equipment or other Optus material that's on the Customer's Premises or that is in the Customer's possession or control;
- (c) and is a Service that remains active and continues to be used, the Customer must continue to pay the applicable charges; and
- (d) each party's accrued rights and obligations will be unaffected, unless this Agreement expressly states otherwise.

14. Risk allocation

Liability and Indemnity

- 14.1 Optus is only liable to the Customer to the extent provided in this clause. Optus is not liable to the Customer for Consequential Loss in connection with or arising from the Services or this Agreement.
- 14.2 Optus will be liable for the Customer's Loss (excluding any Consequential Loss) where the Customer's Loss arises from:
- (a) personal injury or death to the Customer or the Customer's Personnel to the extent this was caused or contributed to by Optus' negligence;
- (b) breach of Optus' obligations under clause 20 (Confidentiality);
- (c) breach of Intellectual Property Rights in respect of third-party claims; or
- (d) fraud solely caused by Optus, in connection with this Agreement.
- 14.3 To the extent that Optus is liable to the Customer in connection with this Agreement and/or any other agreement Optus has with the Customer, in any given

5 year period , whether in contract (including breach, anticipatory breach and repudiation), tort (including negligence), statute, under an indemnity or otherwise, the aggregate liability of **Optus** under this **Agreement** is limited to the lesser of the following:

- (a) an amount that is equal to 12 months charges paid by Customer to **Optus** for the period before the event leading to the claim; or
- (b) \$5 Million in aggregate (i.e., relating to this **Agreement** and/or any other agreement **Optus** has with the Customer). If **Optus** has paid the Customer as a result of a previous claim in any given 5 year period, this \$5 Million maximum aggregate liability will be reduced for subsequent claims by the amount **Optus** has already paid to the Customer. As an example, if **Optus** has paid the Customer \$2 Million in a given 5 year period, and the Customer makes another claim during that same 5 year period, whether under this **Agreement** or another agreement **Optus** has with the Customer, **Optus'** maximum aggregate liability to the Customer under this **Agreement** will be adjusted to \$3 Million.

14.4 The **Customer** has a duty to mitigate its **Loss**. The liability of **Optus** for the **Customer's Loss** is reduced to the extent that:

- (a) the **Customer** fails to notify **Optus** promptly of any claim in connection with an indemnity;
- (b) the **Customer** causes or contributes to the claim, action, proceeding, damage, loss, liability cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis) outgoing or payment made or paid by the **Customer**;

- (c) the **Customer** has failed to take reasonable steps to mitigate the claim, action, proceeding, damage, loss, liability cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis) outgoing or payment made or paid by the **Customer**; or
- (d) it is caused or contributed to by an **Excluded Event** or a **Force Majeure Event**.

14.5 **Optus** is not liable to **End Users** in connection with the **Service** or for any **Content** that's obtained using the **Service** or used in connection with the **Service**, for example, software applications. The **Customer** is liable for a claim by an **End User** arising out of or in connection with the use of attempted use of the **Service**.

Roles and responsibilities

14.6 The **Customer** acknowledges that while **Optus** can make recommendations with regard to the suitability of a **Service**, it is the **Customer's** responsibility to conduct relevant risk assessments in order to decide which **Service** to purchase from **Optus**.

14.7 To enable **Optus** to provide the **Service**, the **Customer** must:

- (a) have support agreements and software in place including:
 - (i) maintaining, or authorising **Optus** to enact and maintain, valid licence and support agreements on behalf of the **Customer** at its expense;
 - (ii) downloading any requisite virtual software onto its public cloud infrastructure and loading the **Optus** generated token within one hour to enable **Optus** to complete the configuration,

- (b) take care of its infrastructure including:
 - (i) ensuring that a site is ready and available for [Optus](#) or its representatives to provide any necessary services (either on-site or remote), including ensuring that all necessary access is available;
 - (ii) in the event of any fault or alarm being raised as part of the [Service](#), comply with all reasonable requests made by [Optus](#) including, if requested, resetting or rebooting customer premises equipment;
 - (iii) providing [Optus](#) with reasonable notification in writing if it intends to replace or change any equipment located on the [Customer's](#) premises, or under the direction or control of the [Customer](#), that is managed by [Optus](#);
 - (iv) maintaining the necessary security to ensure that the infrastructure managed by [Optus](#) is not subject to unauthorised interference or change and to prevent loss of or damage to any infrastructure managed by [Optus](#). It includes Wi-Fi access points, switches and security appliances and may also include hardware, software and configuration items;
 - (v) allowing configuration of the management components such as agents and probes to enable [Optus](#) to actively monitor infrastructure managed by [Optus](#);
 - (vi) allowing storage of all relevant configurations in [Optus'](#) secure configuration management database; and
 - (vii) providing any consumables needed in association with the [Service](#). The consumables may incur additional costs which will be charged to the [Customer](#),
 - (c) provide reasonable written notice to [Optus](#) including:
 - (i) notification of any changes, projects or strategic direction that may impact the performance or scope of the [Service](#);
 - (ii) notification of any changes (e.g. new equipment or sites are added) to the [Services](#);
 - (d) train its [Personnel](#) including ensuring that any employees or other [Personnel](#) with administrative access are trained to use relevant dashboards to minimise the likelihood of them causing an incident or other event that impacts the security, functionality, performance or availability of any system or network required for the [Service](#). Any applicable service levels breached change by the [Customer](#) will not apply and [Optus](#) may charge the [Customer](#) to restore or reconfigure the system or network in the event of any such incident.
- 14.8 If [Optus](#) did not design and install the infrastructure that will be used to provide the [Service](#), then prior to the transition of [Services](#) to the [Customer](#), the [Customer](#) must provide [Optus](#) with the following:
- (a) operational and technical documentation and diagrams of the components of the

- infrastructure to be managed by **Optus**;
- (b) an inventory of equipment located on the **Customer's** premises, and any equipment under the direction or control of the **Customer**, including specifications of all relevant hardware and software;
- (c) written confirmation of the appropriate vendor maintenance (and its expiry date) for the relevant hardware and software; and
- (d) management configuration of the infrastructure that will be covered by the **Service**.

14.9 If the **Customer** fails to meet its obligations under clauses 14.7 and 14.8 and that failure materially impacts on **Optus'** ability to provide the **Service**, then:

- (a) **Optus** reserves its right to increase the service charges; and
- (b) **Optus** will be relieved of its service level obligations in respect of the **Services**.

15. Warranties

15.1 **Optus** warrants that:

- (a) it has the requisite power and authority to enter into this **Agreement**;
- (b) the **Optus Products** will perform in accordance with the specifications set out in **Service Module**; and
- (c) **Optus** will use adequate numbers of suitably qualified, experienced and competent **Personnel** in the provision of the **Services**.

15.2 **Optus** reserve the right, using its reasonable discretion to:

- (a) determine which **Personnel** will perform the **Services**;
- (b) replace or reassign any **Personnel** performing the **Services**; and

- (c) sub-contract suitably qualified **Subcontractors** to perform the **Services**, or any part of the **Services**.

15.3 **Optus** excludes all conditions and warranties implied into this **Agreement** to the extent permitted by law. If the law implies any term into this **Agreement** and **Optus** breaches that term, then **Optus** is liable to the **Customer**. In those circumstances **Optus** is only liable for repairing or replacing the relevant goods, resupplying the relevant or equivalent services, or paying the **Customer** the cost of doing so.

16. Intellectual Property

16.1 **Intellectual Property Rights** in:

- (a) the **Customer Material** will be owned by the **Customer**;
- (b) **Products** manufactured and developed by a third party will be owned by the third party; and
- (c) all **Contract Materials** or **Products** that are not covered by 16.1(a) or (b) will be owned by **Optus**, unless a **Statement of Work** expressly provides otherwise.

16.2 For the **Term** of this **Agreement**:

- (a) the **Customer** grants **Optus** a royalty free, non-exclusive, non-transferable licence for the **Committed Term** of this **Agreement** to use the **Intellectual Property Rights** in the **Customer Material** in the country in which the **Services** are supplied for the purpose of supplying the **Service** to the **Customer**;
- (b) **Optus** grants the **Customer** a royalty free, non-exclusive, non-transferable licence for the **Committed Term** of this **Agreement** to use the **Intellectual Property Rights** in the **Contract Material** in the country in which the **Services** are supplied for the

purpose of receiving the **Services**.
If the **Customer** or an **End User** attempts or purports to licence, sell or commercially exploit the **Contract Material**, **Optus** may terminate this licence immediately.

17. Privacy and Personal Information

17.1 Each party:

- (a) must comply with all applicable **Privacy Laws**;
- (b) during and after the **Term** must not do or omit to do anything that would cause the other party to breach any **Privacy Laws**; and
- (c) must co-operate with the other party to resolve any complaint (threatened or actual) or investigation made under any **Privacy Laws**..

17.2 The **Customer** acknowledges and agrees that it has the consent of its **Personnel** and its **End Users** to allow **Optus** to collect and use their personal information as reasonably required in connection with its provision of the **Service**.

18. Data Incident Notification

18.1 If **Optus** is aware that a **Data Incident** has occurred or there are reasonable grounds to believe that a **Data Incident** may have occurred in relation to any **Customer Data**, then **Optus** must, as far as the law permits, notify the **Customer** of that **Data Incident** as soon as practicable following **Optus** first becoming aware of that **Data Incident**. The notice will specify the nature and details, and any assumptions of the suspected or actual breach.

18.2 Within 30 days from the time of notification in clause 18.1, or such other period as the law permits, **Optus** must conduct an expeditious investigation into the **Data Incident** and notify the **Customer** of **Optus'** findings in respect of whether there are

reasonable grounds to believe that a **Data Incident** has occurred, the nature of the **Data Incident** (if any), its consequences and plans to remedy.

18.3 If a **Data Incident** has occurred, then **Optus** must remedy the **Data Incident** as soon as practicable following the conclusion of the investigation referred to in clause 18.2, and notify the **Customer** that the **Data Incident** has been remedied.

19. Data Security

19.1 **Optus** will:

- (a) establish, maintain and enforce information security controls against the unauthorised access, destruction, loss, corruption, alteration, disclosure or misuse of the **Customer Data** in the possession or control of **Optus** and any of its subcontractors. These information security controls will:
 - (i) include policies, procedures and systems (including technical access controls);
 - (ii) be designed, implemented and tested appropriately having regard to the risk and potential consequences of unauthorised access, destruction, loss, alteration, disclosure or misuse of the **Customer Data** in **Optus'** and any of its subcontractors' possession or control; and
 - (iii) be no less rigorous than those implemented through generally accepted industry practice;
- (b) regularly and actively review and, where appropriate, revise its information security controls to reflect changes in vulnerabilities and threats;

- (c) to the extent that it is not inconsistent with Optus' information security controls, comply with the Customer's security procedures that relate to the Customer Data (as notified and provided by the Customer from time to time), including any policies and procedures related to the preservation, installation or handling of the Customer Data, save that if Optus will incur costs in connection with its compliance with this paragraph (c), then the Customer must bear the costs of Optus' compliance.

20. Confidentiality

- 20.1 Each party agrees to keep confidential, and not to disclose the other party's Confidential Information except where necessary under this Agreement, or when it's required by law or by a Regulator.
- 20.2 The Customer agrees that Optus is allowed to refer to the Customer as a customer of Optus in Optus' marketing, sales, financial material or reports. If the Customer doesn't want Optus to refer to the Customer as an Optus customer publicly, the Customer must tell Optus in writing.
- 20.3 Customer agrees that Optus may use and disclose Customer data for credit assessment purposes, including share with credit reporting bodies (CRBs), if reasonably required in connection with the provision of the Services. Data we share with CRBs in exchange for receiving your credit information may be included in future credit reports provided to other creditors to assist them in assessing your credit worthiness. If you fail to meet your payment obligations or we believe you have committed a serious credit infringement, we may also disclose this to the CRBs.
- 20.4 Following the termination of this Agreement, a party may require the return or destruction of its Confidential Information, provided that it's not required by law to be kept.

21. Force Majeure Event

- 21.1 A party is not liable for any delay or failure to perform its obligations (other than to pay money) under this Agreement to the extent that the delay or failure to perform was caused by a Force Majeure Event.
- 21.2 The affected party must immediately let the other party know of the Force Majeure Event and each party must use its best effort to resume performance in accordance with this Agreement as soon as is reasonably practicable. A party's obligations do not otherwise change during this Force Majeure Event.

22. Assignment and Subcontracting

- 22.1 The Customer can assign its rights under this Agreement if the Customer has the prior written consent of Optus, which will not be unreasonably withheld.
- 22.2 Optus can assign some or all of its rights under this Agreement to any person, including another Optus Group Company.

23. Faults

- 23.1 Optus doesn't guarantee a continuous or fault-free Service. Optus is not liable for Interruptions to the Service caused by a Force Majeure Event or an Excluded Event or service specific exclusions set out in the relevant Service Description. If Optus is liable for an Interruption and the Customer makes a valid claim in accordance with this Agreement the Customer will be entitled to the rebate amount, if any, specified in the Service Description. This is the Customer's sole remedy against Optus and is in substitution of the Customer's Interruption to a Service.
- 23.2 As soon as the Customer becomes aware of any fault in the Service, the Customer must report that fault to Optus by telephoning the number notified to the Customer by Optus from time to time.
- 23.3 Before reporting a fault to Optus, the Customer must take all reasonable steps to ensure that the fault is not attributable to an Excluded Event.

- 23.4 Where **Optus** determines that the fault is an **Interruption** **Optus** will use reasonable endeavours to restore the **Service** in accordance with the relevant service levels (if any) identified in the **Service Description**. **Optus** will notify the **Customer** when the **Interruption** is rectified.
- 23.5 Any further conditions regarding fault restoration applicable to a **Service** are set out in the relevant **Service Description**.
- 23.6 Notwithstanding anything else in this clause 23, the **Customer** is not entitled to claim a rebate if the **Customer** has undisputed amounts outstanding in favour of **Optus** under this **Agreement** for more than 30 days after the due date for payment in accordance with this **Agreement**.

24. Dispute Resolution

- 24.1 A party claiming that a dispute has arisen out of or in connection with this **Agreement** ("**Dispute**"), must notify the other party in writing ("**Dispute Notice**").
- 24.2 The parties agree to attempt to initially resolve any **Dispute** by conducting good faith negotiations.
- 24.3 If the parties are unable to settle the **Dispute** themselves in accordance with clause 24.2 within 10 **Business Days** after the issue of **Dispute Notice**, or such longer time as agreed between the parties, either party may escalate the **Dispute** to the chief executive officer of the parties (or their nominees).
- 24.4 If the parties cannot resolve the dispute in accordance with clause 24.3 within 10 **Business Days**, or such longer time as agreed between the parties either party may refer the **Dispute** to mediation by the Australian Disputes Centre ("**ACD**") for the resolution in accordance with the then current 'Guidelines for Commercial Mediation' of the **ACD**.
- 24.5 Each party must bear its own costs of resolving a **Dispute** under this clause 24 and the parties to the **Dispute** must bear equally the costs of any appointed person and independent premises used for

resolving or attempting to resolve the **Dispute**.

- 24.6 A party must not initiate arbitration or court proceeding (except interlocutory relief) in respect of a **Dispute** unless it has complied with this clause 24.

25. Risk Governance Forum

- 25.1 The parties may agree to establish and operate a risk governance forum ("**Risk Governance Forum**").
- 25.2 The **Risk Governance Forum** will meet monthly, or at such other intervals agreed by the parties, and each party must make available the appropriate **Personnel** to attend the **Risk Governance Forum** meetings.
- 25.3 At each **Risk Governance Forum**, **Optus** will discuss any issue concerning risks, including the content, preparation and operation of a **Risk Management Plan**.
- 25.4 Each party must answer any reasonable queries that either party may have, or provide any information or material reasonably requested by either party, in respect of any of the matters covered by this clause 25 (**Risk Governance Forum**).

26. Optus insurances

- 26.1 **Optus** will provide the following insurances:

INSURANCE	LIMIT
Public and product liability	\$10 million
Professional Indemnity including Cyber Security Services	\$1 million
Workers' compensation	As required by applicable law

27. Personal Property Securities Act 2009 (Cth) (PPSA)

- 27.1 You acknowledge that this Agreement **does** or may create a security interest in the Optus PSSA Equipment for the purposes of the PPSA and therefore does or may constitute a security agreement for the purposes of the PPSA.
- 27.2 Except where Optus has granted its consent (not to be unreasonably withheld), you must not create or cause to be created a security interest over, or in respect of your rights in, the Optus PSSA Equipment other than any security interest arising under this clause, or other than a security interest over all its assets granted to a bank or other financial institution.
- 27.3 You must do all things and provide all information reasonably requested by Optus to enable Optus to perfect any security interest it has in the Optus PSSA Equipment (including assist Optus to complete the registration of any financing statement or financing change statement (each as defined in the PPSA)).
- 27.4 You agree that the lease or bailment of the Optus PSSA Equipment does not secure payment or performance of an obligation for the purposes of the PPSA, other than in the case of a financing lease. However, if Optus has agreed to allow you to pay for Optus PSSA Equipment over a defined term or Optus has otherwise allowed you more than 30 days to pay for the Optus PSSA Equipment, then you agree that the security created under this agreement will secure your payment or performance of obligations in relation to those deferred payment arrangements with Optus.
- 27.5 If, despite clause 26.4, Chapter 4 of the PPSA applies to any security interest arising under this clause, to the extent permitted by law, you and Optus contract out of the following sections:
- (a) 125 and 143 of the PPSA; and

- (b) 95, 121(4), 130, 132(3)(d), 132(4), 135 and 142 of the PPSA and you irrevocably waive your rights under these provisions.

27.6 These provisions may be contracted out of under the PPSA where Optus PSSA Equipment is not being used predominantly for personal, domestic or household purposes and You may not receive all the notices or protections that apply if you were a consumer using the Optus PSSA Equipment for personal, domestic or household purposes. In addition, where Optus is a controller of Optus PSSA Property, to the extent permitted by s115(7) of the PPSA, you and Optus contract out of the provisions of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA.

27.7 You irrevocably waive any rights you may have to receive notice of a verification statement (as defined in the PPSA) in respect of any financing statement or financing change statement registered by Optus.

28. Integrated Public Number Database

- 28.1 This clause 28 applies to Customer if Optus supplies Customer, including its Personnel, with a number (being a mobile, calling card, freephone, geographic, international, local rate, premium rate or satellite number) for the purpose of, or as part of, providing Customer's Service.
- 28.2 Customer acknowledges the following:
- (a) The Integrated Public Number Database (**IPND**) is a centralised database of all public phone numbers and related customer information. That information is referred to as Public Number Customer Data (or **PNCD**);
 - (b) The IPND is a critical source of information for emergency services, law enforcement and national security agencies. The IPND is also used for non-critical purposes such as publishing public number directories

and electoral, health and government public research;

- (c) Each PNCD record includes (among other things):
- (i) the relevant phone number;
 - (ii) Customer's name and associated details;
 - (iii) Customer's contact information;
 - (iv) Customer's address (which for a mobile service will be the physical address provided by Customer (or Customer's relevant Personnel) and for a fixed service will generally be the service address as installed, unless not technically feasible); and
 - (v) details of the carriage service provider who provides the relevant service;
- (d) As for some Services the service address provided may not be the physical address from where a person is calling, it is particularly important that Customer makes sure that Optus always has up to date details of Customer's contact for a Service. The Customer's contact is a named person who can provide information about the relevant Service;
- (e) Incorrect information in the IPND can (among other things) delay emergency responses, stop phone-based emergency warning systems working properly and compromise investigations by law enforcement and national security agencies. This highlights why it is critical that Customer's PNCD is kept up to date and accurate, and that Customer promptly notifies Optus of any changes. As a carriage service provider, Optus is required to supply correct PNCD to the IPND Manager and keep that information up to date.

- 28.3 Customer agrees to provide Optus with accurate and up-to-date information about Customer's and (where applicable) its Personnel's names, phone numbers,

contact details, service addresses and other PNCD. Customer should inform Optus promptly if any of this information changes. In addition, if at any time Customer wishes to have its PNCD altered in the IPND in any way, Customer will need to contact Optus to arrange this.

29. General

29.1 Unless a [Service Description](#) or the [Telecommunications Legislation](#) allows otherwise, all parties will give any necessary notice under this [Agreement](#) to each other in writing.

29.2 The [Customer](#) must:

- (a) nominate in writing a customer representative as the single point of contact for administration of the [Service](#);
- (b) make available a suitably skilled, qualified, and technically competent person nominated, authorised and directed by the [Customer](#) to provide technical assistance to Optus Personnel as required, to assist in the delivery of the Service.

29.3 The Customer must also nominate in writing at least two authorised operational contacts each of whom is authorised by the Customer to:

- (a) request and / or accept changes to the Customer's Service;
- (b) report faults and request moves, adds or changes to the Service;
- (c) be a point of contact for Optus' support and maintenance Personnel; and
- (d) notify Optus of anyone who is to be added or removed as an End User.

Optus is not required to respond to, and is not liable for, any consequences arising from non-compliance with any requests made by persons who are not authorised operational contacts.

29.4 Any notice or consent required or permitted to be given by one party to the other in writing may be served by:

- (a) delivery to that party's address;
- (b) sending by registered mail to that party's address; or
- (c) transmitting by email to that party's email address, as the case may be.

29.5 A notice given to a party in accordance with clause 29.4 is treated as having been given and received:

- (a) if delivered to a party's address, on the day of delivery if a **Business Day**, otherwise on the next **Business Day**;
- (b) if sent by registered mail, on the next **Business Day** after posting; and
- (c) if delivered by e-mail, on the earlier of: the time that the sender receives an automated message that the email was delivered; and 6 hours after being sent unless: the sender receives an automated message that the email was undeliverable or that the recipient is out of office; or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the email was not delivered, in which cases the email is taken not to be delivered and the sender should resend the notice by hand or post.

29.6 For the purpose of providing notices, the address of a party is the registered office or business address of that party set out in the **Agreement**, or the address last notified by the party.

29.7 If a party doesn't exercise a right under this **Agreement** that party doesn't waive its right to exercise that right at another time.

29.8 Where a provision of this **Agreement** is void, voidable or unenforceable, it will be

severed – but the remainder of the **Agreement** will not be affected.

29.9 Each party agrees to pay its own costs and expenses relating to the preparation of this **Agreement**, and any agreement or document that's needed to give effect to it.

29.10 The parties agree that nothing in this **Agreement** constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties, and neither party has the right to bind the other under any circumstances.

29.11 There are parts of this **Agreement** that have been written with the intention that they will continue after a **Service** has been cancelled, and the parties both agree that they will do so.

29.12 This **Agreement** is governed by the laws of New South Wales (NSW), and each party submits to the non-exclusive jurisdiction of the courts of NSW.

29.13 This **Agreement** may be varied in accordance with its terms or in writing when signed by both parties.

30. Dictionary

30.1 In this Agreement capitalised words have the following corresponding meaning:

Agreement means the Standard Pricing Table, Service Description, General Terms and Application/Statement of Work (as the case maybe), relevant to the supply of the Service.

Agent includes an agent who acts not only as a salesperson, or broker, for the principal, but also as a guarantor of credit extended to the purchaser of Services.

Application means a form provided to the Customer by Optus, to document the Carriage Service(s) to be supplied by Optus to the Customer, and which has been duly executed by the Customer and Optus.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act.

Business Day means a day other than a Saturday, Sunday or a public holiday in New South Wales.

Business Hours means the hours between 9am and 5pm on a Business Day.

Carriage Service has the meaning given in the Telecommunications Act, and in addition refers to any management service in connection with a Carriage Service.

Cancellation Fee means the cancellation fee or termination charge (if any) applicable to the Service or Individual Service (where applicable), calculated in accordance with the Application/Statement of Work (as the case maybe), Standard Pricing Table (if any) or Service Description, which is a genuine estimate of the Loss that Optus will suffer as a result of the cancellation or termination.

Committed Term means the period specified in the Application, Statement of Work or **MAC** Notice commencing on the Service Start Date, or if no period is specified, then twelve (12) months from the Service Start Date and, for professional services, the period from the Service Start Date until such time as the works or Services have been provided.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

Confidential Information means all information treated by the disclosing party ("**Discloser**") as confidential of which the receiving party ("**Recipient**") knows or ought to know is confidential but excludes information:

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

disclosed the information); or

- (c) obtained without restriction as to further disclosure from a source other than the Discloser through no breach of confidentiality by that source.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of goodwill, loss of productivity, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss, and any forms of special, indirect, contingent, punitive or exemplary loss or damages, and any penalties or fines imposed by a Regulator, (even if such loss arises directly, naturally or in the usual course of things from any breach, action or inaction in question).

Content means:

- (a) all forms of information including text, pictures, animations, video, sound, recordings, information-based updates, multimedia, software, whether separate or combined; and
- (b) any content service (as defined in the Telecommunications Act 1997 (Cth)), sent and received across a network.

Contract Material means all materials, information, know how, systems, processes, software (including enhancements or modifications) and technology of any nature that's created or used in connection with this Agreement.

Credit Risk means if the Customer:

- (a) suffers an Insolvency Event or is likely to;
- (b) has a material judgement entered against it;
- (c) fails to pay an invoice in accordance with the Agreement;
- (d) is, or any of the Customer's directors or principals are, identified

- by a credit reporting agency as presenting a credit risk;
- (e) fails or refuses to provide financial and trading information satisfactory to Optus upon reasonable request by Optus;
- (f) employs less than one hundred and fifty (150) Personnel;
- (g) is trading as a trust;
- (h) relocates its main office to a country other than Australia; or
- (i) fails our credit checking process prior to the Service Start Date.

Customer means the entity entering into the Agreement.

Customer Data means data, information and other materials provided to, or obtained or generated by, Optus in the provision of the Services relating to any of the Customer's [End Users](#), including any Personal Information.

Customer Group means the Customer and each of the Customer's Related Bodies Corporate.

Customer Group Entity means an entity in the Customer Group, other than the Customer.

Customer Material means any document, methodology or process, documentation, data or other material in whatever form provided by the Customer to Optus.

Data Incident means:

- (a) there is unauthorised access to, or unauthorised disclosure of Personal Information, or a loss of Personal Information which is supplied by the Customer or collected by [Optus](#) on the Customer's behalf in the provision of the Services by Optus to the Customer, that Optus holds that is in breach of Privacy Laws; and
- (b) it is reasonable to believe that the

unauthorised access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the Personal Information relates.

Downgrade means any modification to the Service which reduces the capacity, use or utility of that Service.

Downgrade Charge means the relevant charge (if any) calculated by Optus, if a Downgrade is requested by the Customer and accepted by Optus, in accordance with the Standard Pricing Table (if any), Service Description or otherwise as agreed between the parties. The Downgrade Charge is a genuine estimate of the Loss Optus will suffer as a result of the Downgrade.

End User means any person or entity that uses or desires to use a Service, whether or not the Customer allows them to.

Excluded Event means a breach of the Agreement by the Customer, an act or omission of the Customer, the Customer Personnel or an [End User](#), the failure, unavailability or fault in the Customer Products, infrastructure or services (including where provided by a third party other than Optus) or any deliberate or malicious attempts by a third party to affect the Service.

Fair Go Policy means the documented policies, as amended from time to time, located at:

<http://www.optus.com.au/about/legal/standard-forms-agreement/appendices#Appendices>.

Financial Security means any form of security for the performance of the Customer's obligations, including, for example, a deposit of funds, payment in advance, debtors insurance, a Guarantee, change of payment terms and conditions, or a Letter of Credit. If *prior* to the Committed Term Optus will typically request 3 months' worth of monthly charges that Optus will invoice the Customer. If the request is made *during* the Committed Term, Optus will typically request 3 months' worth of monthly charges invoiced to the Customer in the previous 3 months from the date the

request is made.

Force Majeure Event affecting a party means any event outside that party's reasonable control, and includes failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that party and its own Personnel), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any Regulator, but excluding a Subcontractor).

General Terms means this document which sets out the standard form of agreement for the Service and any addendum attached.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means an unconditional guarantee in a form approved by Optus and provided by an Australian bank licensed by the Australian Prudential Regulation Authority (APRA).

Individual Service means each individual service, circuit, connection component or link making up a Carriage Service. For clarity, there may be more than one Individual Service making up a Carriage Service.

Information Communications and Technology Service or **ICT Service** means any service provided by Optus that is not a Carriage Service.

Insolvency Event means, in respect of a party:

- (a) bankruptcy proceedings are commenced against the party, or the party is declared bankrupt;
- (b) any step is taken to enter into any scheme of arrangement between the party and its

creditors;

- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the party's assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the party or to the whole or any part of the party's assets or business;
- (e) where the party is a partnership, the partnership is dissolved, or an application is made to dissolve the partnership;
- (f) the party suspends payment of its debts generally; or
- (g) the party is or becomes unable to pay its debts when they are due, or the party is or is presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

Interruption means a delay in supplying or a failure to supply or an error or defect in the supply to the extent that a Service is rendered unavailable or unusable, whether that occurs before or after the Service Start Date.

Late Payment Rate means an interest rate of 2% above the Optus corporate overdraft rate at the time payment was due.

Letter of Credit means a letter of credit in a form approved by Optus and provided by an Australian bank licensed by the Australian Prudential Regulation Authority.

Loss means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss.

MAC Notice means the notice of changes, revised charges or changed terms

applicable to any move, add or change request.

Optus means Optus Networks Pty Limited (ABN 92 008 570 330).

Optus Equipment means equipment, cabling or any other item owned or controlled by Optus including where installed on the Customer's premises.

Optus Group Company means Singapore Telecommunications Limited (ARBN 096 701 567) and each of its Related Bodies Corporate.

Optus Network means the telecommunications network, Optus Equipment and facilities owned or controlled by Optus.

Optus PSSA Equipment means Optus Equipment and any other equipment, facilities, devices or other items that are supplied to Customer and/or its End Users by Optus and/or its Personnel for which the customer has agreed to provide payment after the date of supply (including on 30-day terms or under an instalment payment program).

Personal Information has the same meaning as it is given in the *Privacy Act 1988* (Cth) as amended from time to time.

Personnel of a party means that party's employees, agents, contractors or other representatives and, in the case of Optus, includes the employees, agents, contractors or other representatives of any Optus Group Company.

Premises means locations at or to which Optus supplies the Service, and locations to which Optus requires access to supply the Service.

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth);
- (b) Part 13 of the Telecommunications Act; and
- (c) any legislation (to the extent that such legislation applies to Optus or the Customer or any other

recipient of Personal Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data

Privacy Policy means the documented policy, as amended from time to time, located at: www.optus.com.au/privacy.

Products means goods, equipment, hardware, software and software tools, and includes any related technology and/or documentation.

Property means real or personal property.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or any other relevant government authority or statutory body with authority to enforce regulation.

Related Bodies Corporate has the same meaning as in section 50 of the *Corporations Act 2001* (Cth).

Risk Management Plan means a formal document describing how the parties will deal with specific risks and what risk managing actions can be taken in order to mitigate or remove threats to the project activities and outcomes.

Service means:

- (a) the Carriage Service requested in the Application and has features as described in the Service Description (including any appendix to the Service Description); and/or
- (b) Products requested in an Application or a Statement of Work; and/or
- (c) ICT Services agreed under a Statement of Work and has features as described in the Service Description (including any appendix to the Service Description), and/or

any related materials (including equipment) and ancillary services that Optus supplies to the Customer in connection with that Service. Each of the selected Carriage Service options and features, and/or Products and/or ICT Services are a separate Service and a reference to "Carriage Service" includes a reference to an "Individual Service". The reverse does not apply.

Service Description means the part of the Agreement entitled or described in the "Service Description" which is the Optus standard service description describing the Service.

Service Module means:

- (a) an Application in the case of provision of Carriage Services; and
- (b) a Statement of Work in the case of ICT Services,

in each case together with the Service Description and relevant Standard Pricing Table for the Service.

Service Start Date for the Service or an Individual Service means the date on which Optus starts supplying that Service or Individual Service to the Customer or is deemed to do so.

Standard Pricing Table means the Optus standard rate plan, pricing and charges list for the Service.

Statement of Work means a statement of work provided to the Customer by Optus to document the ICT Service(s) supplied by Optus to the Customer, and which has been duly executed by the Customer and Optus.

Subcontractor means any supplier of goods or services which are used by Optus to supply the Products or Services (but excludes a provider of telecommunications services over a Supplier Network or a provider of Products or [Services](#) that are on supplied by Optus as contemplated in clause 4).

Supplier Network means the telecommunications network, equipment, facilities and cabling controlled by a third

party.

Suspend or Suspension means stop, reduce, restrict or limit supply in circumstances where at the relevant time, there is no intention that it is permanent or indefinite.

Tax means any withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority but does not include GST or any taxes on income or capital.

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

Telecommunications Legislation means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) and Part XIB, Part XIC, related provisions of the Competition and Consumer Act, including the Australian Consumer Law each as amended or replaced from time to time, and any relevant mandatory industry codes of practice.

31. Interpretation

31.1 If there is any inconsistency between the terms of the documents that form this Agreement, they will be interpreted in the following order of precedence:

- (a) Standard Pricing Table;
- (b) Service Option Terms of the Service Description;
- (c) Service Family Terms of the Service Description;
- (d) Optus Enterprise General Terms; and
- (e) Application/Statement of Work (as the case maybe), except to the extent of any inconsistency in pricing (in which case the Application overrides the Standard Pricing Table).

31.2 Undefined words and expressions have the same meaning as in the Telecommunications Legislation.

- 31.3 This is the entire agreement between the Customer and Optus in relation to the Services.
- 31.4 A reference to a party includes that party's successors and permitted assigns.
- 31.5 A reference to a party includes a reference to a person, firm, corporation or other legal entity.
- 31.6 A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- 31.7 The singular includes the plural and vice versa.
- 31.8 Different grammatical forms of the same word have the corresponding meaning.
- 31.9 A reference to a clause is to a clause in that document, unless otherwise stated.
- 31.10 Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.