

# Master Services Agreement

Netbright

ABN 92 619 152 402

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## 1 Agreement

- 1.1 Netbright provides a range of communication, information and computing services. We agree to supply the Services to you, and you agree to accept the Services from us on the terms and conditions set out in this Agreement.
- 1.2 This agreement consists of:
  - a. any terms stated in the Service Order completed by the parties including:
    - i. the Subscription Term for the Service;
    - ii. the Charges for the Service;
    - iii. our Acceptable Use Policy.
  - b. the Services Schedule applicable to your Service;
  - c. this Master Services Agreement.
- 1.3 To the extent of any inconsistency between these documents, the order of priority of interpretation is the order of the documents listed in clause 1.2 above.
- 1.4 The Standard Form of Agreement terms only apply to customers who have not signed a Master Services Agreement (MSA) with Netbright.
- 1.5 Your use of our Services constitutes your acceptance, by that conduct, of these terms.

## 2 Use of Services

- 2.1 This Agreement commences on the Commencement Date and continues until terminated in accordance with this Agreement.
- 2.2 We will supply the Service to you at the specified Service Level (if applicable) from the Effective Date of the applicable Subscription Term. The Service Schedule sets out the relevant Service Levels.
- 2.3 We will use all reasonable endeavours to meet your requested Effective Date for supply of a revised or new Service but we do not represent or warrant that we will deliver the Service by this date.
- 2.4 We are not liable for any delay in the provision of a Service due to the actions of another party including delays in obtaining access to any property or premises of yours, or third parties, necessary for the provision of the Service.
- 2.5 You must co-operate with us in order to supply a Service safely and efficiently, including, without limitation, ensuring safe access to your premises, ensuring availability of relevant people to provide us with instructions and decisions, and ensuring that your equipment is ready for commissioning of Services.
- 2.6 Provision of Services may be subject to physical site survey and safety regulations.

## 3 End Users

- 3.1 Where the Customer re-sells or re-supplies the Service to an End User, the Customer will be solely responsible for dealing with the provision of End User's services, using the whole or any part of the Service, including fault reports and other complaints or enquiries relating to the Service, and is solely responsible for billing and collecting payment/s from its End Users.
- 3.2 Without limiting clause 3.1, where the Customer re-sells or re-supplies the Service in any way, the Customer acknowledges and agrees that Netbright is not responsible for End User billing and the Customer is responsible for, and must maintain the hardware, systems, and technical expertise necessary to invoice and collect payment/s from its End Users.
- 3.3 The parties acknowledge that Netbright may require the Customer to provide End User details to Netbright, from time to time, as required to:
  - a. provide the Services;
  - b. perform its obligations under this agreement and/or any agreement with a Third Party Supplier;
  - c. comply with its obligations under applicable Law.
- 3.4 The Customer must procure any consents necessary to enable the Customer to provide End User details to Netbright in accordance with clause 3.3, our Privacy Policy and the Privacy Laws.

## 4 Service Quality

- 4.1 We will provide the Services to you:
  - a. in accordance with the Service Levels (if applicable);
  - b. in accordance with the provisions of this Agreement;
  - c. in accordance with applicable Law.
- 4.2 We represent and warrant that:
  - a. we have the legal authority to enter into this Agreement;
  - b. we have all the necessary rights, interests and approvals necessary to lawfully provide the Services; and
  - c. we have, and our Personnel providing the services have, the necessary experience, skills, knowledge, qualifications and competence to provide the Services defined in this Agreement.
- 4.3 You acknowledge that we make no warranty in relation to the performance or characteristics of any service or software supplied by a third party in connection with the Services, but we will actively work with you to assist you to resolve any performance issues with any product or service supplied by a third party.

## 5 Permitted Use

- 5.1 In using the Services, you must comply with all Laws, Standards, Industry Codes, directions by a Regulatory Authority and reasonable directions by us.

- 5.2 You agree that you will not use the Services:
- a. to break any law or to infringe on another person's rights;
  - b. in any way that damages, interferes with or interrupts the Services, any network controlled by us, or a Supplier Network;
  - c. in any way which may damage any property or injure or kill any person;
  - d. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or otherwise illegal or unlawful;
  - e. to expose us, or any third party supplier of the Services, to any legal action or liability;
  - f. in any way that contravenes our Acceptable Use Policy.
- 5.3 You acknowledge that we may be required by Law to intercept communications over the Service and may also monitor your usage of the Service and communications sent over the Service.
- 5.4 You must comply with all reasonable requests that we make of you to comply with our regulatory obligations including providing information to police and law enforcement agencies, emergency services and other regulatory authorities/agencies.
- 5.5 If we reasonably believe you are engaging in activity that is contrary to this Clause 5, we may (without having an obligation to) notify you of such activity and direct you to cease such activity. You must immediately comply with any such direction. If you do not, then we may take any steps reasonably necessary to ensure compliance with the direction, including without limitation the suspension of the relevant Services and/or seeking an injunction or other appropriate order from a Court.

## 6 Equipment

### 6.1 Our Equipment

- 6.1.1 To use the Services, you may need to be physically provided with our equipment on your premises. If so, legal title of such equipment remains solely with us, and you hold such equipment as a bailee only. In the event the provision of such equipment constitutes a PPS lease (under the PPSA), then you agree to do all thing necessary to enable it to be registered and will otherwise comply with all requirements of the PPSA.
- 6.1.2 You must take reasonable care of our equipment while it is in your physical possession.
- 6.1.3 You are responsible for, and agree to indemnify us in respect of, the repair or replacement costs of any of our equipment that is lost, stolen or damaged while in your possession, excepting any fair wear and tear.
- 6.1.4 You must provide access to your premises and facilities as reasonably necessary to enable us to install and maintain any equipment on your premises required for the Services.
- 6.1.5 We may enter your premises and uninstall and remove all of our equipment located on your premises at the end of the applicable Services.

- 6.1.6 We will comply with all of your reasonable directions, and reasonable policies and procedures relating to work, health and safety and security while we are at your premises.

## 6.2 Your Equipment

- 6.2.1 If you supply equipment for use in connection with the Services, you must ensure that all equipment you use, and the way you use that equipment, complies with all Laws, directions by any relevant Regulatory Authority and reasonable directions by us.
- 6.2.2 If your equipment, or its use, does not comply with clause 6.2.1, we may disconnect such equipment from the Services. We will endeavour to provide you notice before disconnection but may disconnect immediately in an emergency.

## 7 Service Charges

### 7.1 Charges

- 7.1.1 You must pay all Charges incurred in respect of the Services as specified in the Service Order.
- 7.1.2 Each invoice item, that make up the Services, will be either:
- a Fixed Price Charge, invoiced on a non-recurring basis;
  - a Recurring Monthly Charge, invoiced in advance; or
  - a Usage-based Charge, invoiced in arrears.

Fixed Price Charges include installation and service activation charges; feasibility study charges; service transfer and connection charges; termination charges; service modification charges; service relocation charges, and technical assistance charges.

- 7.1.3 For quota-based services, quantity of data transferred by a Service is measured as the total number of bytes passing from the Internet through to your service. All data quantities are measured in bytes, with 1 Mbyte (MB) = 1,000,000 Bytes, and 1 Gbyte (GB) = 1,000,000,000 Bytes. Data is only metered for traffic coming from the Internet to your Internet Service, unless otherwise mentioned in the service pricing schedule.
- 7.1.4 If you do not pay an invoice for a Charge by its due date, and unless the Charge is being disputed in accordance with clause 7.3, we reserve the right to charge you:
- interest at the rate of 3% above the then current interest rate charged by our current bank on overdue payments, from the due date until payment is received;
  - all reasonable expenses (including, without limitation, legal costs) incurred by us in relation to recovering payments due (or overdue), as reasonably substantiated by us;
  - an equal amount to recoup any bank or financial institution fees incurred by us because your payment (however made) is not honoured.

### 7.2 Invoices and Payment

- 7.2.1 We will usually invoice you monthly for the Services, plus any applicable GST. However, we may issue an interim invoice for the Services at any time.
- 7.2.2 Invoices will be emailed to your default email address. Invoices can be sent by mail on request. We may apply an additional Charge for invoices issued by mail.
- 7.2.3 Your obligation to pay for the Service will accrue on and from the Service Commencement Date for the Service. You will be sent an Invoice each calendar month and you must pay each invoice within 14 days of the Invoice Date.
- 7.2.4 Unless otherwise agreed in writing by us, you must pay the invoice via one of the methods stated on the invoice.

### 7.3 Disputing an Invoice

- 7.3.1 To dispute an invoice you must notify us in accordance with clause 15.8 and the dispute resolution procedure detailed clause 9 will apply.
- 7.3.2 A Notice must include the detailed reasons for the dispute and must be issued within sixty (60) days of the invoice date. If you fail to notify us by this date, you are deemed to have waived all rights to dispute the invoice.
- 7.3.3 You may withhold only the disputed amount (the disputed portion) of the invoice. You must pay the balance (the undisputed portion) of the Charges in the Invoice by the Due Date of that invoice.
- 7.3.4 Where a dispute is resolved under clause 9:
  - a. in our favour, you must pay us the amount withheld within seven (7) days of such determination; or
  - b. in your favour, and you have already paid the disputed amount, we must refund the relevant amount within seven (7) days of such determination.
- 7.3.5 Except for any billing disputes you have with us, if you do not pay your invoice on the due date, we reserve the right to:
  - a. charge additional fees as detailed in clause 7.1.4; and
  - b. take any additional actions as allowed under this Agreement, including the suspension or termination of Services.

## 8 Complaints

- 8.1 Complaints will be managed according to our Complaint Handling Process, the latest version of which is available on our website <https://www.netbright.com.au/complaints-handling>.
- 8.2 If your complaint is not resolved to your satisfaction, you may refer the complaint to the Telecommunications Industry Ombudsman or the Office of Fair Trading.

## 9 Disputes

- 9.1 Before resorting to external dispute resolution mechanisms, the parties must seek to resolve any dispute in relation to the Services by referring the matter to the respective executive officers of the parties or their nominees.

- 9.2 If the parties cannot resolve the dispute in accordance with this clause 9 within 30 days, either party may refer the dispute to mediation by the Australian Disputes Centre (ADC) for resolution in accordance with the Guidelines for Commercial Mediation of the ADC.
- 9.3 Nothing in this clause prevents a party from seeking interlocutory relief from a Court.

## 10 Termination and Suspension of the Services

### 10.1 Your rights to terminate the Services

- 10.1.1 You may terminate your Services immediately if:
- a. you are required to terminate the Services to comply with a direction from a law enforcement agency or a Regulatory Authority;
  - b. any one of the Services is unavailable for a period of more than seven (7) consecutive days;
  - c. an Insolvency Event has occurred with respect to us.
- 10.1.2 If you terminate the Services under clause 10.1.1, there is no penalty or termination fee payable.
- 10.1.3 You may otherwise terminate the Services by giving us thirty (30) days' prior written notice.
- 10.1.4 If you terminate the Services under clause 10.1.3 and you have agreed to a Subscription Term, you must pay a cancellation fee as set out in the Service Order.

### 10.2 Our rights to terminate the Service

- 10.2.1 We may terminate the Services immediately in the following circumstances:
- a. we are required to terminate the Services to comply with a direction from a law enforcement agency or a Regulatory Authority relating to you;
  - b. you have failed to make a payment by the due date and you fail to make such payment within twenty-one (21) Business Days of receipt of a notice requiring you to do so, except where an amount is permitted to be withheld pursuant to a billing or performance dispute; or
  - c. an Insolvency Event occurs with respect to you.
- 10.2.2 We may also terminate the Services by giving you thirty (30) days' written notice if:
- a. the relevant Subscription Term has ended and we do not wish to continue to supply the Services; or
  - d. we are unable to supply the Services to you because of a Force Majeure Event which has occurred and is continuing.

### 10.3 Actions on Termination

- 10.3.1 Where the Services are terminated:
- a. you will not be able to use the Services after the Cancellation Date;



- b. subject to any disputes you have with us, you agree to pay for any Charges for your use of the Services until the Cancellation Date;
- c. any credits on your account will be applied to pay for any undisputed, outstanding Charges at the Cancellation Date;
- d. we will refund to you any money that you have paid in advance for that part of the Services that is being cancelled on a pro-rata basis; and
- e. we will uninstall and collect all of our equipment located on your premises within thirty (30) days and you will provide, or procure the provision of, access to the premises for such removal.

#### **10.4 Service Suspension**

10.4.1 We may suspend the Services by giving you prior notice where:

- a. any event specified in clause 5.2 has occurred;
- b. we are required to undertake the repair, maintenance or service of any part of the Netbright Network (or an interconnected third party provider is required to undertake such work on its network) to attend to any emergency;
- c. it is reasonably required to reduce or prevent fraud or interference within the Netbright Network;
- d. we are temporarily unable to supply the Services to you because of a Force Majeure Event; or
- e. you breach the Acceptable Use Policy.

10.4.2 We may only suspend the Services for a period that is reasonable in the circumstances.

10.4.3 For the avoidance of doubt, suspension of the Services pursuant to this clause 10.4 does not constitute downtime for the purposes of the Service Schedule and the calculation of any rebates calculated in accordance with this Agreement.

#### **10.5 Actions on Suspension**

10.5.1 When the Services are suspended:

- a. you will not be able to use the Services; and
- b. you will remain liable to us for any Charges for access to or use of the Services during the period of suspension, except where the suspension is as a result of an event that was reasonably out of your control.

## **11 Liability and Indemnity**

11.1 Despite any other provision of this Agreement, Netbright will not be liable to you, or any person claiming through you, in contract, tort, or otherwise (including negligence) for any loss or damage arising from termination or suspension of the Services in accordance with, as the case may be, Clause 10.

11.2 You agree that no supplier of telecommunications services to Netbright is liable to you in respect of Netbright's supply to you of the Services.

#### **11.3 Limitation and Exclusion of Liability**

11.3.1 To the extent permitted by Law, our total liability to you in any 12-month period in respect of any Loss arising out of or in connection with this Agreement will not in any circumstances exceed the value of 3 months' fees for the Services.

11.3.2 Without limiting the above liability cap:

- a. we are not liable for any indirect, special or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs or overhead expenses; and
- b. our liability for your loss under or in connection with this Agreement or the Services is reduced to the extent that your acts or omissions or your equipment and applications cause or contribute to that loss.

11.3.3 The limitations and exclusions in this clause 11 do not extend to any liability of ours:

- a. which by Law we cannot contract out of; and
- b. which arises as a result of any fraud or wilful misconduct of ours or any of our Personnel.

## 11.4 Indemnity

11.4.1 You must indemnify us against all Loss arising from or in relation to:

- a. a claim against us arising out of the death of or personal injury to our Personnel, to the extent that such Loss is caused by a negligent or wilful act or omission, by you or any of your Personnel;
- b. any equipment, network or other tangible property of ours or any third party, to the extent that such loss is caused by a negligent or wilful act or omission, by you or any of your Personnel;
- c. a claim by a third party against us to the extent that the claim relates to any negligent or wilful act or omission of yours or any of your Personnel in relation to this Agreement.

11.4.2 We must indemnify you against all Loss arising from or in relation to:

- a. a claim against you arising out of the death of or personal injury to your Personnel, to the extent that such Loss is caused by a negligent or wilful act or omission, by us or any of our Personnel;
- b. any of your equipment, network or other tangible property, to the extent that such loss is caused by a negligent or wilful act or omission, by us or any of our Personnel; or
- c. a claim by a third party against us to the extent that the claim relates to any negligent or wilful act or omission of yours or any of your Personnel in relation to this Agreement.

## 12 Confidentiality and Privacy

### 12.1 Confidentiality

- 12.1.1 Each party agrees to keep in confidence and not to use or disclose any Confidential Information of the other party.
- 12.1.2 Subject to clauses 12.1.3 and 12.1.5, neither party will use or disclose the other party's Confidential Information for any purpose, other than to the extent necessary to perform its obligations or exercise its rights under this Agreement (including that Netbright may disclose your Confidential Information to its Personnel).
- 12.1.3 The obligations of confidentiality in this clause 12.1 do not apply to:
- a. the extent disclosure is required by Law or the listing rules of a stock exchange, a direction by government authority or a Regulatory Authority;
  - b. disclosure to a party's legal or other professional advisers in relation to this Agreement; or
  - c. in the case of Netbright:
    - i. disclosure to its third-party suppliers in connection with the provision of the Services; or
    - ii. disclosure of this Agreement in whole or in part to a Regulatory Authority.
- 12.1.4 Each party acknowledges that a breach of this confidentiality clause 12.1 may cause irreparable damage to the other party for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, either party may seek and obtain injunctive relief against such a breach or any threatened or suspected breach by the other party. Following the expiry or termination (for whatever reason) of this Agreement, each party must return the Confidential Information of the other party immediately upon request by the other party.
- 12.1.5 Nothing in this clause 12.1 will prevent us from disclosing any information to a party undertaking due diligence enquiries in relation to us, provided that party is bound by confidentiality restrictions similar to those set out in this clause 12.1.

## 12.2 Privacy and Personal Information

- 12.2.1 Netbright may collect, use and disclose Personal Information provided by or in respect of you for purposes relating to the supply of a Service under this Agreement, or for purposes that would reasonably be expected as part of the Service. Netbright agrees to handle Personal Information obtained in respect of you in accordance with our Privacy Policy and the Privacy Laws.
- 12.2.2 Netbright must not disclose Personal Information provided by you to any person other than its Personnel, its third-party suppliers in connection with the provision of the Services or as otherwise permitted by the Privacy Laws or other Laws.
- 12.2.3 You must comply (and must ensure that your Personnel comply) with all applicable provisions of the Privacy Laws, including giving any notifications and obtaining any consents required under the Privacy Laws for:
- a. you to transmit, disclose or make available the Personal Information to Netbright under this Agreement; and;

- b. Netbright to process, store and disclose (including to its Personnel and its suppliers engaged in connection with the supply of the Services to you) the Personal Information as required under this Agreement.

## 13 Intellectual Property

### 13.1 Your intellectual property

- 13.1.1 We must not use your Intellectual Property Rights without your prior written consent.

### 13.2 Our intellectual property

- 13.2.1 You acknowledge that our Intellectual Property Rights remain our sole property and no rights are conferred on you with respect to our Intellectual Property Rights except as specifically expressed in this Agreement.
- 13.2.2 All Intellectual Property Rights created by us in delivering the Services to you remain our sole property.

### 13.3 Warranty

- 13.3.1 We warrant that:
  - a. the supply of the Services to you does not and will not infringe any Intellectual Property Rights of any third party; and
  - b. we are entitled, and will remain entitled, to deal with the Intellectual Property Rights as required under this Agreement.

### 13.4 Survival

- 13.4.1 Clauses 11, 12 and 13 survive the expiry or termination (for any reason) of this Agreement.

## 14 Variations

### 14.1 Changing our Agreement

- 14.1.1 During the term of our Agreement, we may propose a change to the terms of our Agreement, for a variety of reasons, due to circumstances beyond our control, including without limitation changes in Law, urgent changes required for security reasons, changes by one of our suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. If we propose a change, we will notify you as set out below in clause 14.2, except where clause 14.3 applies. You agree this clause is reasonably necessary to protect our legitimate interests.
- 14.1.2 In addition to changes pursuant to clause 14.1.1, we may also propose to make changes, due to circumstances within our control, for our own legitimate business purposes during the term of this Agreement. If we propose such a change, we will notify you as set out below in clause 14.2, except where clause 14.3 applies. You agree that this clause is also reasonably necessary to protect our legitimate interests.

14.1.3 You acknowledge and agree that in accordance with clauses 14.1.1 and 14.1.2, we may propose to change the terms of this Agreement and that if we do we will give you notice in accordance with clauses 14.2 and 14.3 below.

#### 14.2 Your rights if we propose a change of the Agreement

14.2.1 Subject to the exceptions permitted by clause 14.3, we will give you at least 30 days' written notice, prior to the date such changes are to take effect, of any changes we propose.

14.2.2 Subject to the exceptions permitted by clause 14.3, if the changes we propose to make will cause material detriment to you (for example, if the changes will result in a material increase in the Charges or unreasonably change the characteristics or functionality of the Service we initially agreed to supply to you), then you may terminate the affected Service, without incurring any Termination Fee. You may do so by giving us notice of termination in writing, to that effect, within 14 days of receiving notice from us of the proposed change/s pursuant to clause 14.1.1 or 14.1.2.

14.2.3 You acknowledge and agree that if you do not give notice to us within the 14 day period referred to in clause 14.2.2, you are deemed to have accepted our proposed changes from the date those changes are to take effect and that this Agreement, as amended by those changes, will govern the relationship between you and us from that date.

#### 14.3 Exceptions

14.3.1 You acknowledge and agree that our obligation to give you 30 days' notice of our proposed changes will not apply (i.e. no notice period will apply, but notice will still be given) in relation to:

- a. urgent changes we are required to make by Law, for security reasons or technical reasons necessary to protect the integrity of our network;
- b. the introduction of a new fee or an increase in an existing Charge due to an additional tax or levy imposed by Law;
- c. the introduction of a new fee or an increase in existing administrative fees for ancillary services such as credit card transactions fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original fee);
- d. increases in Charges due to increases imposed on us by other suppliers for the following types of Services and Charges:
  - i. wholesale services (including for voice, data, hosting and other services) the current rates for which are available on our website; or
  - ii. content and services which we resell to you from a third party, including where we collect fees from you on behalf of that third party;
  - iii. software licensing Charges.

Nothing in this clause 14.3 affects your ability to terminate this Agreement pursuant to clause 14.2.2. You agree this clause 14.3 is reasonably necessary to protect our legitimate interests.

## 15 General

### 15.1 Costs

15.1.1 Each party must pay its own costs in respect of the negotiation, execution and performance of this Agreement.

### 15.2 Relationship

15.2.1 Nothing in this Agreement gives rise to any relationship of partnership, employer and employee or principal and agent between Netbright and you.

### 15.3 Assignment

15.3.1 A party cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of each other party.

### 15.4 Waiver and exercise of rights

15.4.1 A waiver by a party of a provision of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

15.4.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

15.4.3 A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.

15.4.4 Failure by a party to exercise, or delay in exercising, a right does not prevent its exercise or operate as a waiver.

### 15.5 Severability

15.5.1 Any term of this Agreement which is wholly or partly void, unenforceable or illegal is severed to the extent it is void, unenforceable or illegal. The validity, enforceability or legality of the remainder of this Agreement is not affected.

### 15.6 Entire agreement

15.6.1 This Agreement (which includes any other terms incorporated by express reference, e.g. our Privacy Policy) constitutes the entire agreement between the parties about its subject matter and any previous contracts, understandings, negotiations and representations on that subject matter cease to have any effect.

### 15.7 Governing law

15.7.1 This Agreement is governed by the laws from time to time in force in Queensland and the parties submit to the exclusive jurisdiction of the courts of Queensland and the appeal courts therefrom.

### 15.8 Notices

15.8.1 A notice, approval, consent, or waiver to be given under or in connection with this Agreement must be in writing, and signed by the sender and in the absence of evidence to the contrary will be taken to be received:

- a. if left at the address of the addressee, at the time it was left;
- b. if sent by ordinary post, on the third Business Day after posting;

- c. if sent by express post, on the next Business Day; and
- d. if sent by electronic email, on the day sent if a Business Day, otherwise on the next Business Day, provided the sender receives no advice that the message was undeliverable.

## 15.9 Interpretation

- 15.9.1 Where words and expressions used in this Agreement are not defined in clause 16 but are otherwise defined in the Telecommunications Act, then such words and expressions will have the meanings given in the Telecommunications Act.
- 15.9.2 A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- 15.9.3 The singular includes the plural and vice-versa.
- 15.9.4 Headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.
- 15.9.5 Different grammatical forms of the same word have the corresponding meaning.
- 15.9.6 A reference to a clause is to a clause in this Agreement, unless otherwise stated.
- 15.9.7 References to each party include references to its successors in title, permitted assignees and novatees.
- 15.9.8 Any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words.

## 16 Definitions

**Acceptable Use Policy** means the policy issued by us, the latest version of which is available on our website [www.netbright.com.au/acceptable-use](http://www.netbright.com.au/acceptable-use).

**Business Day** means a day banks are open for business in Brisbane, Queensland, but excludes any Saturday or Sunday or any Public Holiday in Queensland.

**Business Hours** means 9:00am to 5:00pm on a given Business Day.

**Charges** means all charges incurred in respect of the Service(s) under this Agreement calculated in accordance with the pricing specifications set out in the Service Order Form.

**Commencement Date** means either the date on which we accept (by signing it) your Service Order Form and communicate that acceptance, or alternatively, the date specified to be the Commencement Date as expressed in writing on the Service Order Form.

**Complaint Handling Process** means the policy published by us, the latest version of which is available on our website [www.netbright.com.au/complaint-handling](http://www.netbright.com.au/complaint-handling).

**Confidential Information** means information concerning a party that is by its nature confidential or is marked "confidential", and in respect of you, includes but is not limited to, your Customer Data, but does not include:

- a. information already known to the receiving party at the time of disclosure by the other party; or
- b. information already in the public domain, other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement.

**Customer** means a party that contracts with us for a Service, or who otherwise acquires a Service, or who seeks to do either of these.

**Customer Data** means data owned by you that is held by us, regardless of whether or not it is held for the purposes of and in fulfillment of our obligations in providing the Service(s).

**Force Majeure Event** means any event or circumstance or combination of events or circumstances which prevents a party from performing its obligations under this Agreement and which is (are) beyond the reasonable control of or could not have been reasonably avoided (by the taking of any precaution which might reasonably be expected to have been taken) by the affected party including:

- a. acts of God, epidemics, cyclones, tidal waves, landslides, lightning, earthquakes, floods or fire;
- b. strikes, lockouts, work bans, boycotts, barricades, picketing or other industrial disturbances;
- c. acts of public enemy, war declared or undeclared, sabotage, blockade, revolution, riots, insurrections, civil disturbances;
- d. any changes in Law or government directives that materially adversely impacts the costs of providing the Services;
- e. any epidemic or pandemic declared by the World Health Organisation or other state/territory, national or international health authority, including, without limitation, Covid-19.

**GST** means the tax created by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other goods and services tax, or any tax applying to this agreement in a similar way and the terms used in the said Act have the same meaning.

**Insolvency Event** means in relation to a party, any one or more of the following events or circumstances:



- a. being in liquidation or provisional liquidation or under administration;
- b. having a controller (as defined by the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property;
- c. being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- d. being unable to pay its debts as and when they fall due or being otherwise insolvent;
- e. becoming an insolvent under administration, as defined in section 9 of the *Corporations Act 2001* (Cth);
- f. entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- g. any analogous event or circumstance under the Laws of any jurisdiction; or
- h. taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party (which approval must not be unreasonably withheld or delayed).

**Intellectual Property Rights** means any copyright, moral right, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before on or after the date of this Agreement, and including any similar right granted to a party under licence, where that licence permits dealing with the subject rights as contemplated under this Agreement.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

**Loss** means loss, cost or damage or any cost or expense suffered or incurred, however caused.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**Personnel** of a party means that party's employees, contractors, service providers and/or agents.

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

**Privacy Laws** means the *Privacy Act 1988* (Cth) and any applicable state or territory law protecting Personal Information.

**Privacy Policy** means the policy issued by us, the latest version of which is available on our website [www.netbright.com.au/privacy-policy](http://www.netbright.com.au/privacy-policy).

**Regulatory Authority** means the Australian Competition and Consumer Commission, the Australian Communications and Media Authority (or any replacement agency or authority) and any other governmental body having regulatory oversight in connection with the Services.

**Service Level(s)** means the level of service that we provide to you specified in the Services Schedules that form part of this Agreement and the Service Order Form.

**Service Order Form** means the form signed by us and you for any particular Service.

**Services** means the list of communications or computing based functions provided by us to you as specified in a Service Order Form.

**Services Schedules** means the Schedules that form part of this Agreement detailing terms and conditions specific to particular Services.

**Subscription Rate** means the rate for a Charge for us to provide a Service to you, as may be specified in the Service Order Form.

**Subscription Term** means the applicable term for a Service as specified in the Service Order Form for that Service.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth) and associated Acts, regulations and determinations, each as amended from time to time.

**Termination Fee** means the applicable fee payable when a Service is terminated prior to the expiry of Subscription Term.