

General Terms and Conditions

1. CONTRACT

- 1.1. The **Contract** will consist of the following documents:
- (a) Reseller Agreement (if any); and
 - (b) the Service Specific Terms and Conditions (if any); and
 - (c) these General Terms and Conditions; and
 - (d) Charges Schedule (if any); and
 - (e) Application Form (if any); and
 - (f) Service Level Agreement (if any).
- 1.2. If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 1.1.

2. TERM

- 2.1. Subject to termination in accordance with clause 16:
- (a) The Initial Term shall commence on the Commencement Date.
 - (b) Unless either party notifies the other party in writing no later than 60 days prior to the expiration of the Initial Term, this Contract continues on a monthly basis which either party may terminate on 60 days' notice ending on any day ("Extended Term"). [Any Special Offers do not apply to the Extended Term.]
- 2.2. For the avoidance of doubt, the Term of the Contract shall mean the Initial Term plus the Extended Term, if applicable.

3. CHARGES AND PAYMENT

Invoiced Charges

- 3.1. The Customer shall pay the fees by the Due Date as specified in the invoice throughout the Term.

Additional Charges

- 3.2. In addition to the fees and charges disclosed in the Application Form, the invoice or such other fee disclosure document provided by Comwire IT to the customer, additional charges may also be applicable including but not limited to the following:
- (a) If Comwire IT is requested by the Customer to provide the Service at a different site to the Premises prior to the delivery of the Service, the Customer must pay Comwire IT's reasonable costs and fees arising from the change of site;
 - (b) If the information the Customer provided to Comwire IT to determine the infrastructure and installation required was incomplete or inaccurate;
 - (c) If an Excluded Event occurs Comwire IT may also charge the Customer the costs incurred to service, modify, repair or replace the Service or any equipment, as a result of an Excluded Event;
 - (d) If a cyber threat and/or ransomware attack occurs, Comwire IT may also charge the Customer the costs incurred to service, modify, repair or replace the Service or any equipment, as a result of any cyber threats and ransomware attack;
 - (e) If a Customer has engaged in any Phishing Activity Comwire IT may also charge the Customer the costs incurred to

service, modify, repair or replace the Service or any equipment, as a result of the Phishing Activity;

- (f) If Comwire IT reasonably determines that a Fault arises out of or in connection with any Customer Equipment or the Customer's facilities, networks and systems, then irrespective of whether there was an actual Fault or not, Comwire IT may require the Customer to pay Comwire IT's reasonable costs and expenses in investigating the Fault, dealing with or remedying that Fault and such cost and expense shall be a debt due and payable by the Customer on demand to Comwire IT;
- (g) If there is any loss, injury or damage that occurs due to the Customer failing to follow any recommendations and/or advice provided by Comwire IT then Comwire IT may, at its own discretion, require the Customer to pay Comwire IT's reasonable invoices, costs and expenses for works associated with investigating, dealing with and remedying such loss, injury or damage. Such recommendations and/or advice provided by Comwire IT includes but is not limited to the following:
 - (i) Recommendations and/or advice associated with the replacement of old and/or damaged servers and/or servers that should be replaced due to low capacity;
 - (ii) Recommendations and/or advice associated with the replacement of old and/or damaged desktops, switches, routers and any other equipment;
 - (iii) Recommendations and/or advice associated with the Customer improving their security;
 - (iv) Any recommendations and/or advice to prevent the Customer from being attacked by ransomware; and
 - (v) Any other recommendations and/or advice that Comwire IT shall give to the Customer at any time.
- (h) If there is any loss, injury or damage that occurs, including not limited to a loss of data, due to a backup that did not complete due to software or hardware issues that are out of the control of Comwire IT and/or software and hardware that belongs to the Customer, then Comwire IT may require the Customer to pay Comwire IT's reasonable costs and expenses in investigating, dealing with and remedying any issues associated with the backup;
- (i) If there is any loss, injury or damage that occurs, including but not limited to a loss of data, due to a cloud backup that did not complete due to issues that are out of the control of Comwire IT, then Comwire IT may require the Customer to pay Comwire IT's reasonable costs and expenses in investigating, dealing with and remedying any issues associated with the cloud backup;
- (j) Any costs and charges associated with restarting hardware or software related backups and/or cloud backups; and
- (k) Any other costs and charges agreed between the Customer and Comwire IT from time to time.

Overdue Payments

- 3.3. Comwire IT reserves the right to charge interest on any overdue amount payable to Comwire IT by the Customer under the Contract. Interest will be charged from the Due Date until payment is received at a rate 2% above the Commonwealth Bank Corporate Overdraft Reference Rate or such other equivalent interest rate basis plus 2% should the Commonwealth Bank Corporate Overdraft Reference Rate be no longer published. The Customer will be liable to pay to Comwire IT all expenses

(including reasonable legal costs and expenses and the fees of Comwire IT's debt recovery agents) incurred by Comwire IT in relation to recovering payments due under the Contract.

- 3.4. Comwire IT reserves the right to withdraw any discounts or Special Offers that the Customer receives from Comwire IT in connection with the supply of the Service where payment is not received by the Due Date other than where a billing dispute has been raised in accordance with clause 9.

Commission or referral fees payable

- 3.5. The Customer acknowledges that Comwire IT may pay commissions to any dealer, or referral fees to any person, who introduced the Customer to Comwire IT.

4. LIMITATION OF SERVICES

For all **Comwire IT Managed Services** agreements, Comwire IT shall not be responsible for the following: -

- 4.1. Any data cabling except for connecting a computer up to a wall network socket or connecting a network device to an already installed patch panel.
 - 4.2. Any hardware replacement. Hardware that is covered by warranty will be replaced by the manufacturer. Alternatively, Comwire IT can source a replacement at a cost to the Customer.
 - 4.3. Any software replacement. Comwire IT is under no obligation to replace software damaged by the Customer, obsolete, ineffective, faulty or otherwise.
 - 4.4. Carry out any software installation or software updates not included in the Approved Software list contained within this agreement.
 - 4.5. Any major server upgrades that involve a new version of an operating system e.g. server 2019 software upgrade from server 2016 software. Any costs involved (including labour) associated with any upgrade is not covered by this agreement. Comwire IT will provide a separate quotation to the Customer for this type of project work.
 - 4.6. Any major server hardware upgrades that would cause the server operating system to be reinstalled. If the Customer decides to purchase a new server, all costs involved (including labour) in the upgrade is not covered by this agreement. Comwire IT will provide a separate quotation to the Customer for this type of project work.
 - 4.7. Any training on use of any software.
 - 4.8. Any hardware not purchased from Comwire IT that is not already in existence at the Customer's sites at the Effective Date. Comwire IT shall (in its own discretion) decide if any hardware not purchased from Comwire IT is added to this agreement after the Effective Date.
 - 4.9. Any support issues where non-Approved Hardware has been used. The costs of any incident caused by this will be charged to the Customer at the standard Comwire IT casual hourly rate.
 - 4.10. Any server and/laptop or workstation which is greater than 3 years old and/or has not been appropriately maintained and/or which Comwire IT has indicated that it is unable or unwilling to support.
 - 4.11. Any destructive act by any third party including non-approved users such as hackers, ex-employees of the Customer and other such like persons.
 - 4.12. Any intentional damage to or misuse of any software or hardware.
 - 4.13. Any damage or maintenance required directly or indirectly by fire, theft, flood, electrical surge, heat, dust, smoke, corrosion, equipment failure or defect and like matters.
 - 4.14. The purchase cost and/or license fee of any software or computer hardware.
 - 4.15. In certain circumstances where we cannot support 3rd party software and a 3rd party will need to come in to configure. In this case Comwire IT will not be responsible for any charges incurred.
 - 4.16. Setting up any printers that have not been purchased from Comwire IT, unless approved by Comwire IT at its sole discretion.
 - 4.17. Any computer that is monitored as part of a service agreement must be left on each Wednesday night for maintenance to be performed. If these devices are not left on it will be scheduled for the following week. Comwire IT is not responsible for maintenance that has not been completed if the computer is not left on for scheduled maintenance.
 - 4.18. Any circumstances that involve cyber threats or ransomware work, except in the instance where the Customer agrees to pay any additional invoices that are issued by Comwire IT relating to work carried out by Comwire IT due to such cyber threats or ransomware work.
 - 4.19. Any circumstances that involve the Customer engaging in Phishing Activity, except in the instance where the Customer agrees to pay any additional invoices that are issued by Comwire IT relating to work carried out by Comwire IT due to such Phishing Activity.
 - 4.20. Any circumstances that involve the Customer engaging in activity whereby they have failed to follow the recommendations and/or advice of Comwire IT. Such recommendations and/or advice provided by Comwire IT includes but is not limited to the following:
 - (l) Recommendations and/or advice associated with the replacement of old and/or damaged servers and/or servers that should be replaced due to low capacity;
 - (m) Recommendations and/or advice associated with the replacement of old and/or damaged desktops, switches, routers and any other equipment;
 - (n) Recommendations and/or advice associated with the Customer improving their security;
 - (o) Any recommendations and/or advice to prevent the Customer from being crypto locked; and
 - (p) Any other recommendations and/or advice that Comwire IT shall give to the Customer at any time.
- For the avoidance of doubt, if the Customer does not follow the recommendations and/or advice of Comwire IT, then in such case the Customer agrees to pay any additional invoices that are issued by Comwire IT relating to such work.
- 4.21. Any circumstances that involve any loss, injury or damage, including but not limited to the loss of data, which may have been suffered by any person as a result of the Customer's backup software and hardware; and
 - 4.22. Any circumstances that involve any loss, injury or damage, including but not limited to the loss of data, which may have been suffered by any person as a result of software or hardware backup issues and/or any cloud backup issues that are out of the control of Comwire IT.

5. INSTALLATION AND EQUIPMENT

Provision of Equipment

- 5.1. Comwire IT shall provide a Service Interface at a Service Delivery Point ("**Comwire IT Equipment**") at the Premises enabling the Customer to transmit and receive data by the connection of appropriate equipment to be supplied by the Customer ("**Customer Equipment**")

Comwire IT Equipment

- 5.2. Title in the Comwire IT Equipment is not transferred to the Customer and at all times is retained by Comwire IT. The

Customer holds the Comwire IT Equipment as bailee for Comwire IT.

- 5.3. Risk in the Comwire IT Equipment shall pass to the Customer on delivery of the Comwire IT Equipment to the Customer.
- 5.4. The Customer is responsible for any damage to, or destruction of theft of the Comwire IT Equipment, except to the extent it is caused by Comwire IT. The Customer must keep the Comwire IT Equipment in good repair and condition, excluding fair wear and tear and shall not sell, assign or permit any charge, lien, mortgage or encumbrance to be created in relation to it.
- 5.5. Unless otherwise agreed, the Customer must:
 - (a) allow Comwire IT to service, modify, maintain, repair or replace the Comwire IT Equipment; and
 - (b) do all things reasonably required by Comwire IT to make clear the identity of the owner of the Comwire IT Equipment.

Customer Equipment

- 5.6. The Customer may purchase equipment from Comwire IT for use in connection with the Service. Such equipment shall form part of the Customer Equipment for the purposes of the Contract. Title to that equipment passes to the Customer when the Customer pays for it in full in cleared funds. Risk in that equipment passes to the Customer on delivery of the equipment to its nominated location. Comwire IT will use reasonable efforts to transfer to the Customer any manufacturer's warranty in any such equipment from the time title passes to the Customer.
- 5.7. The Customer acknowledges and accepts that Comwire IT is entitled under the Personal Properties Securities Act 2009 to register its interest in any Hardware that Comwire IT supplies to the Customer as a purchase money security interest and the Customer waives its rights to receive a copy of any such registration including the Notice of Verification Statement.
- 5.8. The Customer must ensure that all Customer Equipment and its use in connection with the Service, complies with all laws, directions by a Government Agency and any reasonable directions by Comwire IT, otherwise Comwire IT may disconnect that Customer Equipment from the Service on giving reasonable notice or immediately in an emergency.

Scheduled Installation

- 5.9. Comwire IT will advise the Customer of the Scheduled Delivery Date for the Service, having regard to the service delivery targets in the Service Specific Terms and Conditions as well as the Requested Delivery Date and shall use best endeavours to commence installation of the equipment on the Scheduled Delivery Date, however Comwire IT shall not be liable for any Liability incurred by the Customer due to a failure to install on or before the Scheduled Delivery Date.

Comwire IT Network

- 5.10. The Comwire IT Network is and shall remain the property of Comwire IT irrespective of the manner in which any hardware or part of it is attached or secured to any land or buildings.

6. OBLIGATIONS OF THE CUSTOMER

The Customer shall :-

- 6.1. Immediately notify Comwire IT upon learning of any significant problem with the performance of the network.
- 6.2. Co-operate with Comwire IT in connection with its performance of the Services by providing access to the Customer's physical premises as reasonably necessary from time to time.
- 6.3. From time to time, purchase such software and hardware as may be reasonably necessary for the effective operation of the network.

- 6.4. Notify Comwire IT within a commercially reasonable time regarding any change in the identity of the Customer's Administrator and any key staff.
- 6.5. Adopt and maintain usual best commercial practices in the operation, maintenance and protection of its computer system including hardware and software.
- 6.6. Reasonably adhere to all recommendations of Comwire IT in relation to the use and operation of its computer systems.
- 6.7. Only use Approved Software and Approved Hardware.
- 6.8. Make payment by immediately available funds on delivery for all products supplied by Comwire IT strictly within the agreed Trading Terms.
- 6.9. Securely store all manuals, discs, files and other material relating to its computers, systems, hardware and software.
- 6.10. Implement, monitor and enforce appropriate operational and security procedures.

7. MAINTENANCE AND REPLACEMENT

- 7.1. Comwire IT may in its discretion and for so long as it determines, replace any part of the Comwire IT Equipment or Service with similar equipment or Service as may for the time be available. Any replacement shall be subject to the Contact in the same way as if they comprised the original Comwire IT Equipment or Service offered.
- 7.2. Comwire IT may interrupt the Service or Comwire IT Equipment for the Planned Outage Period and will give advance notice to the Customer wherever possible.

8. PROVISIONS APPLICABLE TO THE SERVICE

Co-operation with Comwire IT

- 8.1. The Customer must cooperate with Comwire IT and comply with its reasonable requests to allow Comwire IT to install equipment and establish and supply the Service to the Customer safely and efficiently. This includes meeting Comwire IT's reasonable requests, at no further cost to Comwire IT, to:
 - (a) provide any necessary forecasts and information to Comwire IT, on which Comwire IT will rely in establishing and supplying the Service to the Customer;
 - (b) provide safe and prompt access to the Premises and the Customer's personnel, equipment, data and information for the purpose of inspection, repair, maintenance or adjustment of the Service and to inspect and audit all equipment and devices connected to the Service;
 - (c) provide all necessary space and utility services (such as electricity, earthing and air conditioning) as reasonably required by Comwire IT for the installation, provision and proper operation of the Comwire IT Equipment and Customer Equipment and for the provisions of the Service; If failure to provide necessary space and utility services during a reasonable timeframe prohibits Comwire IT from delivery of service on the scheduled commencement date, billing of monthly service fees will commence;
 - (d) provide all necessary assistance to obtain all licences, permits and other approvals required for the provision of the Service; and
 - (e) provide all assistance and take all safety precautions as may be reasonably necessary or otherwise requested by Comwire IT to ensure safe and proper performance by Comwire IT of all work at the Premises.

Provision of Service

- 8.2. Subject to the Customer's compliance with the Contract, Comwire IT will use its best endeavours to provide the Service in accordance with the Contract.

Customer's Use of Service and Equipment

- 8.3. Unless otherwise agreed in writing, the Customer shall not resell, hire, let or make available the Service for use in any way, including allowing access thereto, to any other person other than a person at the Premises exclusively for purposes directly related to the Customer's business.
- 8.4. Subject to the terms of the Contract and unless otherwise agreed, the Customer must only use the Service for the communication of data between locations and sites for purposes directly related to its business.
- 8.5. The Customer must not use, or attempt to use, the Service:
 - (a) To breach any term of the Contract;
 - (b) For any improper or unlawful purpose or allow others to do so;
 - (c) In breach of any applicable Government Agency requirements, legislation and laws including but not limited to any privacy laws; copyright laws and telecommunications laws;
 - (d) To expose Comwire IT to any Liability;
 - (e) In any way which damages, interferes with or Interrupts the Service, the Comwire IT Network or a Supplier Network;
 - (f) In any way which may damage any property or injure or kill any person; or
 - (g) To transmit, publish or communicate material, which is defamatory, offensive, abusive, indecent, menacing or unwanted.

Customer to Comply with Comwire IT's Directions

- 8.6. The Customer acknowledges that:
 - (a) where the Service is a carriage service, Comwire IT may be required to intercept communication over the Service as directed by an authorised entity; and
 - (b) Comwire IT may monitor the Customer's usage of the Service and communications sent over it for the purposes of billing and network monitoring and management or as otherwise required by any law, legislation, or direction of any Government Agency.
- 8.7. Comwire IT may ask the Customer to stop doing something which Comwire IT reasonably believes is contrary to clauses 8.4 or 8.5. The Customer must immediately comply with any such request. If the Customer does not, then Comwire IT may terminate or suspend the contract or take any steps reasonably necessary to ensure compliance with clauses 8.4 and 8.5 or the request.

9. BILLING & BILLING DISPUTES

- 9.1. On and from the Commencement Date Comwire IT will provide the Customer with invoice providing a breakdown of the fees and charges for the Service and any other charges payable pursuant to the Contract in each Invoice Period.
- 9.2. For the avoidance of doubt, Comwire IT's records and/or any other relevant records will be conclusive evidence of usage of the Service and the fees and charges payable by the Customer.
- 9.3. Unless otherwise agreed Comwire IT will bill the customer:
 - (a) in advance prior to installation for the Established Fee, all other once off charges, variable charges; and
 - (b) in advance for the Invoice Period for the monthly Service Fee and all other Recurring Charges and any other charges required by Comwire IT in advance before providing the Service.
- 9.4. Processing and verification procedures (including delays in receipt of billing information) may mean not all fees and charges during the period covered by a bill can be included in that bill. Comwire IT may include those charges in any subsequent bills.

- 9.5. Comwire IT reserves the right to re-issue any bill if any error is subsequently discovered.
- 9.6. The Customer is liable for all charges whether or not the Customer authorised the particular use of Service by another person and the Customer will continue to be liable for the charges if the Customer allows another person to occupy the Customer Premises or use of service.
- 9.7. The Customer may dispute an invoice if the Customer reasonably believes that the Customer is not liable to pay the charges because of an inaccuracy, omission or error in the invoice. Any dispute relating to the payment or accuracy of any invoice must be resolved pursuant to the Billing Disputes Procedure specified in clause 11.

10. CREDIT WORTHINESS

- 10.1. The Customer acknowledges that the provision of the Service, Comwire IT Equipment and any other obligation under the Contract by Comwire IT shall be subject to Comwire IT's privacy policy, the requirements of the *privacy act 1988* (Cth); *Telecommunications Act 1997* (Cth); *Telecommunications (interception and Access) Act 1979*; *Spam Act 2003* (Cth); and other applicable laws, codes and regulations.
- 10.2. For the purposes of processing the application for Service, establishing the Customer's account and the ongoing credit management of the Customer's account Comwire IT may need to disclose to a credit reporting agency personal information relating to the Customer which is in Comwire IT's possession, including but not limited to, information referred to in clauses 10.3 and the Customer hereby consents to such disclosure or use.
- 10.3. Pursuant to clause 10.1 the following represents a list of Customer information relating to the Customer which may be disclosed to a credit reporting agency:
 - (a) Customer name and address, ACN, ABN, business names, partnership details;
 - (b) details of the Customer's application for Comwire IT Services and/or services supplied to the Customer;
 - (c) credit limits on the Customer's accounts;
 - (d) the amount of a payment which are overdue for at least 45 days;
 - (e) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
 - (f) court judgement or bankruptcy orders made against the Customer;
 - (g) that, in the opinion of Comwire IT, the Customer has committed a serious credit infringement;
 - (h) that Comwire IT has ceased to provide Service to the Customer in accordance with the terms of this Contract as a result of Customer default relating to payment/credit; and
 - (i) any additional and relevant information which Comwire IT may wish to use or believes should be disclosed may be disclosed or used.
- 10.4. The Customer agrees that Comwire IT may obtain from any person or body carrying on the business or undertaking involving the provision of information about the commercial creditworthiness of persons, any information concerning the Customer that concerns the Customer's commercial activities or commercial creditworthiness for the purpose of assessing the Customer's application for Service and the ongoing credit management (including collection of overdue amounts) of the Customer's account. Comwire IT may, at its sole discretion, refuse to supply its services to the Customer on the basis of Comwire IT's credit assessment of the Customer, after consultation with the customer to confirm the accuracy of the assessment.

- 10.5. The customer agrees that Comwire IT may disclose a credit report to any credit provider, debt collection agency or any Other Supplier for the purposes of:
- (a) assessment of the Customer's creditworthiness;
 - (b) The collection of payments that are overdue.
- 10.6. In addition, if it should be required, the Customer agrees, within 10 Business Days of Comwire IT's request to provide to Comwire IT any information (including the Customer's Financial Accounts) which is reasonably necessary to assess the creditworthiness of the Customer.

11. DISPUTES PROCEDURE

- 11.1. The parties shall co-operate to investigate promptly and resolve any dispute concerning the accuracy of any billing data, any amount payable and any other issue arising pursuant to the Contract.
- 11.2. In the event of a dispute as to fees and charges, the Customer shall notify Comwire IT of any dispute in writing no later than 21 days for the date of the relevant invoice, providing sufficient information to identify the invoice in question and the grounds of dispute. Failure to make such notification within the time frame shall be deemed to be a waiver of the Customer's rights to dispute the relevant invoice.
- 11.3. On receipt of a notice disputing fees under clause 11.2, the Representatives of both parties shall meet within five [5] Business Days and discuss and do all things reasonably required to expeditiously and amicably resolve the dispute.
- 11.4. In the event the parties are unable to resolve the dispute within [10] Business Days of the commencement of discussions under clause 11.3, each party shall internally escalate to an executive of the party. The executive shall within ten [10] Business Days attempt to resolve and settle the dispute. If the dispute remains unresolved, either party may, on giving written notice to the other party to such effect, commence legal proceedings in an appropriate court to resolve the matter.
- 11.5. During the existence of any dispute, the parties must continue to perform all of their obligations under the Contract, without prejudice to their position in respect of the dispute unless the parties agree otherwise and the Customer must continue to make payments of the amounts of fees and charges or part thereof which are not the subject of dispute.
- 11.6. Nothing in this clause prevents a party from seeking urgent interlocutory relief required in relation to the Contract.

12. COMPLIANCE WITH GOVERNMENT AGENCY REQUIREMENTS

- 12.1. In the event the Comwire IT is unable to provide the Service substantially in the form and of the type contemplated under the Contract due to any direction of a Government Agency, law, rule, regulation, statute or ordinance then Comwire IT shall provide notice to the Customer of that fact as expeditiously as possible and shall not be liable for any Liability incurred by the Customer as a result of Comwire IT's failure to provide the Service as contemplated pursuant to this clause 12.
- 12.2. Upon receipt by the Customer of a notice under clause 12.1, the Customer shall be at liberty to terminate the Service without penalty by notice to Comwire IT within 14 days of receipt of the clause 12.1 Notice. If the Customer provides this notice to Comwire IT within the said 14 days the Service shall be deemed to be terminated by the Customer.
- 12.3. In the event that the Customer does not provide a termination notice to Comwire IT under clause 12.2 then the Service shall revert to a Comwire IT Managed Service in accordance with the terms of this contract, except as provided for in writing by Comwire IT.

13. NATURE OF THE CONDUCT

- 13.1. The Contract contains the entire agreement between Comwire IT and the Customer and supersedes all prior communications and negotiations between the parties.
- 13.2. Unless otherwise specified in the Contract, no amendments or variation of the Contract is valid or binding on a party unless made in writing and signed by Customer and Comwire IT.

14. INDEMNITY

- 14.1. The customer shall indemnify Comwire IT from and against any Liability which may be incurred or suffered by Comwire IT arising from any one or more of the following:
- (a) the breach by the Customer of a material term or any of the Customer's obligation under the Contract.
 - (b) any negligent act or omission or wilful misconduct by the Customer arising from the use of the Service, Comwire IT Equipment, Customer Equipment or otherwise arising out of the Customer's obligation under the Contract;
 - (c) the use or provisioning of the Service or the Comwire IT Equipment or the Customer's Equipment;
 - (d) any claims or demands made upon Comwire IT by reason of any loss, injury or damage which may be suffered by any person from the provisioning or use of the Service or the Comwire IT Equipment;
 - (e) any claims or demands made upon Comwire IT by reason of any loss, injury or damage which may be suffered by any person as a result of cyber threats and ransomware attacks;
 - (f) any claims or demands made upon Comwire IT by reason of any loss, injury or damage which may be suffered by any person as a result of Phishing Activity;
 - (g) any claims or demands made upon Comwire IT by reason of any loss, injury or damage, including but not limited to the loss of data, which may have been suffered by any person as a result of the Customer's backup software and hardware;
 - (h) any claims or demands made upon Comwire IT by reason of any loss, injury or damage, including but not limited to the loss of data, which may have been suffered by any person as a result of software or hardware backup issues and/or any cloud backup issues that are out of the control of Comwire IT; and
 - (i) any claims or demands made upon Comwire IT by any loss, injury or damage that occurs due to the Customer failing to follow any recommendations provided by Comwire IT.

15. LIABILITY AND WARRANTIES

- 15.1. Except as expressly provided in the Contract, any terms, conditions, warranties, undertaking, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of the Contract are excluded to the maximum extent allowed by the law.
- 15.2. Where Comwire IT is not permitted to exclude its liability for any loss or damage in connection with Comwire IT's breach of a Consumer Guarantee (as defined under the Australian Consumer Law), but are permitted to limit its liability for such a breach, then, unless the Customer is able to establish that it is not fair and reasonable for Comwire IT to do so, Comwire IT's liability to Customer is limited to:
- (a) in the case of goods:
 - (i) replacement of the goods;
 - (ii) supply of equivalent goods;
 - (iii) repair of the goods;

- (iv) payment of the cost of replacing the goods;
- (v) payment of the cost of acquiring equivalent of the goods; or
- (vi) payment of the cost of having the goods repaired; and
- (b) in the case of services;
 - (i) resupply of the services; or
 - (ii) payment of the cost of the resupply of the services.

- 15.3. The limitation of liability in clause 15.2 do not apply to a breach of any Consumer Guarantee relating to goods or services of a kind ordinary acquired for personal, domestic or household use or consumption.
- 15.4. The Customer acknowledges it has not relied on any representation or warranty made by Comwire IT which has not been stated expressly in the Contract or upon any descriptions or illustrations or specifications contained in any document including any catalogue or material published by Comwire IT.
- 15.5. Except as required by law or regulations or set out in this Contract, Comwire IT expressly excludes all Liability for all warranties, conditions, non-fraudulent representations express or implied concerning the Service, including but not limited to those relating to the availability, performance quality or fitness for purpose of the Service.
- 15.6. Under no circumstances will Comwire IT be liable to the Customer for loss of profit, loss of contracts, loss of use of the Service or any Interruption or for any indirect economic or consequential loss whatsoever, whether arising from negligence, breach of contract, failure of the Service or otherwise.
- 15.7. Comwire IT shall not be responsible for any loss or damage or delay caused directly or indirectly by any cyber threats and ransomware attacks.
- 15.8. Comwire IT shall not be responsible for any loss or damage or delay caused directly or indirectly by any Phishing Activity of the Customer.
- 15.9. Comwire IT shall not be responsible for any loss or damage or delay caused directly or indirectly by the Customer failing to follow any recommendations provided by Comwire IT.
- 15.10. The provisions of this clause 15 survive the termination of the Service.

16. TERMINATION AND SUSPENSION

Termination by Comwire IT

- 16.1. Comwire IT may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if Comwire IT reasonably determines that it is not technically or operatively feasible or commercially viable to supply the Service to the Customer.
- 16.2. Comwire IT may, without liability, at its option either terminate or suspend the Contract by giving notice to the Customer if:
- (a) the Customer breaches its obligation under the Contract and such breach is not capable of remedy or the Customer does not remedy that breach within 30 days after Comwire IT gives it notice requiring it to do so;
 - (b) if the Customer does not obtain the consent of the owner of the Premises to the supply of the Service.
 - (c) the customer fails to make payment for the Services by the Due date and such amount remain unpaid for 10 Business Days after receiving notice from Comwire IT of such non-payments;
 - (d) Comwire IT reasonably suspects fraud or other misuse by the Customer or any person in connection with the Customer with the Service and the Customer has not

responded to Comwire IT's notice to the Customer of any such event;

- (e) The Customer suffers an Insolvency Event;
 - (f) Comwire IT or a Comwire IT group company is entitled to terminate or cancel any other service supplied to the Customer, or is entitled to (or does) terminate any other agreement with the Customer;
 - (g) Comwire IT is required to do so under a law or to comply with an order, instruction or request of a Government Agency, an emergency services organisation or any other competent authority; or
 - (h) a supplier terminates its agreement with Comwire IT, or ceases to supply services to Comwire IT, and Comwire IT is not able to provide the Service using services supplied to Comwire IT by an alternative supplier on the terms reasonably acceptable to Comwire IT.
- 16.3. If the Service is terminated before the end of the Term pursuant to clause 16.2 (other than clause 16.2), the Customer must pay to Comwire IT an amount calculated by multiplying the Monthly Service Fee by the remaining months (or part thereof) of the Term and any outstanding charges including Establishment Fee or part thereof.

Termination by Customer

- 16.4. The Customer may after the Commencement Date, terminate the Contract, without liability if:
- (a) it does not pursuant clause 12.2;
 - (b) if the Service has been suspended for more than 14 consecutive days through no fault of the Customer other than in case of a force majeure event.
 - (c) Comwire IT commits a serious breach of the Contract and has not remedied that breach within 30 days of becoming aware of that breach.
- 16.5. Except as provided in clause 16.4 the Customer may terminate the Contract:
- (a) Before the Commencement Date and the Customer must pay to Comwire IT all infrastructure and installation costs incurred by Comwire IT in connection with preparation for the provision of the Service; or
 - (b) After the Commencement Date but before the end of the Term by giving 60 days written notice to Comwire IT and must pay Comwire IT an amount calculated by multiplying the Monthly Service Fee by the remaining months (or part thereof) of the Term and any outstanding charges including Establishment Fee or part thereof. Such right of termination is without prejudice to any other rights which the party not in breach may have.

Termination by Either Party

- 16.6. Either party ("Affected Party") may, without liability, terminate the Contract with immediate effect from the date of service of a notice (or with effect from a later date as the Affected Party may nominate in a notice) if any Force Majeure Event prevents the supply of the Service for more than 30 consecutive day.

Suspension by Comwire IT

- 16.7. In Addition to Comwire IT's rights under clause 16.2, Comwire IT may, upon reasonable notice, without liability and with immediate effect suspend the Service for as long as Comwire IT, acting reasonably, consider necessary:
- (a) if doing so is necessary to allow Comwire IT or a third-party supplier to repair, maintain or service any part of the Comwire IT network or Supplier Network used to supply the Service.
 - (b) problems are experienced interconnecting the Comwire IT Network with any supplier Network;

- (c) if Comwire IT believes it is necessary to do so to comply with any law, to protect any person, equipment or Comwire IT's network, or to enable authorised person to attend to any emergency.
- 16.8. If the Service is suspended as a result of the Customer's breach of the Contract or otherwise in accordance with clauses 16.2 or 16.7, then the Customer:
- (a) will have to pay any recurring charges arising during suspension, such as the Monthly Service Fee; and
 - (b) a reactivation charge is reactivation or reinstatement of the Service is necessary after it has been suspended

Following Termination

- 16.9. Upon termination of the Service for any reason Comwire IT, its agents or employees shall have reasonable access to the Premises for the purpose of disconnecting, dismantling and removing the Service and Comwire IT Equipment, and the Customer shall render all reasonable assistance to Comwire IT to enable it to do so.
- 16.10. Comwire IT shall upon removal of the Service and Comwire IT Equipment make good to a reasonable standard, fair wear and tear accepted, any damage caused during the removal of the Service, but without any obligation to repaint or redecorate. This clause shall not apply if removal of the Service by Comwire IT occurs as a result of any breach of the terms of this Contract by the Customer.
- 16.11. Termination of the Contract shall be without prejudice to the right of Comwire IT to receive any amounts which may have become due for payments prior to such termination but which have not been paid.
- 16.12. On termination of the Contract for any reason:
- (a) each party must, on request by the other party, immediately return or destroy the other party's Confidential Information, except to the extent that it is required by law to retain the other party's Confidential Information;
 - (b) Comwire IT may immediately stop supplying to the Customer the Service;
 - (c) unless otherwise permitted by Comwire IT in writing the Customer must immediately stop using the Service and the Comwire IT Equipment;
 - (d) unless the Contract expressly states otherwise, each persons' accrued rights and obligations are not affected; and
 - (e) the clauses of the Contract which are by their nature intended to survive cancellation of the Service will do so, which for the purposes of these General Conditions, include clauses 5.2, 5.4, 5.10, 10.1, 14, 15, 16.11, 17, 19 and 24.

17. CUSTOMER'S ACKNOWLEDGEMENT

- 17.1. Federal legislation relating to the National broadband Network imposes significant penalties on carriers that extend fixed networks to provide broadband services to residential and small business customers. The penalties exceed \$2 million and limit a carrier's ongoing ability to operate its business. A 'small business' is defined as a self-employed person carrying on a business (such as a sole trader) or a business that employs less than 15 people not including casual employees unless employed on a regular and systematic basis. Comwire IT is unable to provide Comwire IT Fibre Services to residential and small business customers who are situated outside the Comwire IT Fibre Services Network Footprint. Accordingly, the Customer;
- (a) warrants that it is not a residential or small business customer;

- (b) agrees that Comwire IT may suspend or terminate the Comwire IT Fibre Service immediately, without notice and without liability to the Customer if it has reason to believe that the Customer is a residential or small business customer;
- (c) agrees to inform Comwire IT immediately if its situation may or does change and it becomes or may become a residential or small business customer; and
- (d) indemnifies Comwire IT for any loss, claim, or damage that Comwire IT suffers or incurs in connection with a breach by the Customer of the warranty in paragraph **Error! Reference source not found.** regardless of any fault or negligence on the part of Comwire IT.

18. INTELLECTUAL PROPERTY

- 18.1. Comwire IT owns all material (including the Intellectual Property Rights) developed by it, or its personnel, or at its or their discretion.
- 18.2. Comwire IT may permit the Customer to use this material, or other material licenced by Comwire IT, as part of the Service. This permission is subject to any conditions which Comwire IT may impose from time to time and will cease when the Service is cancelled.

19. CONFIDENTIALITY

- 19.1. Comwire IT and the Customer each agree to keep confidential the other's Confidential Information and to not use the Confidential Information for any purpose than that for which it was disclosed or which may cause the Provider loss.
- 19.2. The provider retains all property rights in the Confidential Information.
- 19.3. The Recipient may disclose Confidential Information (to the extent reasonably necessary) to its Representatives for the sole purpose of assisting the Recipient for purposes related to the supply of the Service (or for the purposes which would be reasonably expected) including billing and account management, business planning and product development.
- 19.4. The obligations of confidentiality in this clause 19 do not apply to the extent disclosure is required by law or the rules of a stock exchange, a direction by Government Agency, or disclosure to professional advisors in connection with the supply of the Service.
- 19.5. The Recipient acknowledges that a breach of this clause 19 may cause the Provider irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Provider may seek injunctive relief against such a breach or threatened or suspended breach.
- 19.6. The Recipient's obligation with respect to the Confidential Information survive termination and bind the Recipient until the relevant Confidential Information has become part of the public domain other than in breach of an obligation of confidentiality.

20. ASSIGNMENT

- 20.1. The Customer shall not sub-let, assign, dispose of or otherwise deal with its interest in or under the Contract without the prior written consent of Comwire IT and if any such consent shall be on terms acceptable to Comwire IT.
- 20.2. Comwire IT shall be entitled to novate, assign or sub-contract its interest in and obligation under the Contract or any part thereof to any third part upon written notice to the Customer. Comwire IT shall have no further obligations to the Customer in respect of any matter relating to such novation or assignment on and from the date of notice provided to the Customer pursuant to this clause 20.2.

21. RELATED BODIES CORPORATE

- 21.1. Comwire IT may provide the Service through the use of any of Comwire IT's Related Bodies Corporate.
- 21.2. The Customer acknowledges and agrees that any debt owed under this Contract is debt owed to Comwire IT and that Comwire IT may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to the debt was satisfied by Comwire IT's Related Bodies Corporate.

22. NOTICES

- 22.1. Notices for the purpose of the Contract shall be in writing. A notice given to a party at that party's address set out on the face or at such other address as may be substituted by written notice from such party to the other shall:
- (a) in the case of prepaid post, be presumed to be given 5 days after the date of posting;
 - (b) be presumed to be delivered at the time of delivery if delivered during normal business hours;
 - (c) be presumed to be given upon receipt by the sender of a satisfactory transmission confirmation report indicating due transmission without error
 - (d) in the case of facsimile transmission.
 - (e) be presumed to be given upon the sender's computer system indicating transmission in the case of an email transmission.

23. WAIVERS

- 23.1. No waiver or indigence by any party to the Contract shall be binding upon the parties unless in writing.

24. GOVERNING LAW

- 24.1. This Contract shall be governed by law Of South Australia and the parties agree to submit to the jurisdiction of the Courts of South Australia.

25. GOODS & SERVICES TAX

- 25.1. In this clause the expressions "consideration", "GST", "input tax credit", "recipient", "supplier", "supply" and "tax invoice" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 25.2. All prices or other sums payable or consideration to be provided and which are expressly stated in this Contract are exclusive of GST unless otherwise indicated.
- 25.3. If GST is payable by the supplier in any supply made under the Contract the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to the supply of a tax invoice that amount will be paid at the same time the consideration for the supply is payable under the agreement and will be paid in addition to the consideration. The supplier shall provide the recipient with tax invoice in respect of the supply.
- 25.4. Where the recipient is required to pay or reimburse an expense or outgoing of the supplier, the amount to be paid by the recipient is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the supplier is entitled to.
- 25.5. Any invoice or claim provided by the supplier under the Contract will be or be accompanied by a tax invoice or other approved document providing the recipient with the ability to claim an input tax credit.

26. COUNTERPARTS

- 26.1. This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each part who has executed and delivered that counterpart.

27. DEFINITIONS

Comwire IT - means either Comwire IT Pty Ltd ABN 32 143 994 441, Comwire ES Pty Ltd ABN 74 607 042 437, Comwire Voice Pty Ltd ABN 94 612 450 076 as specified in the Application Form for a particular Service and its authorized subcontractor and agents.

Comwire IT Equipment - has the meaning set out in clause 4.1.

Comwire IT Infrastructure - means the physical network infrastructure over which Comwire IT will provide the Service. This includes any Comwire IT Equipment and the Comwire IT Network.

Comwire IT Managed Services means a service for which Comwire IT has remote monitoring and diagnostic capabilities for all Comwire IT infrastructure used to provide the service including equipment installed on customers premises.

Comwire IT Network - means any telecommunications network, equipment, or facilities, or cabling controlled or utilized by Comwire IT.

Application Form - means the Comwire IT Service Application Form for the Service.

Approved Software - means software deemed suitable and supportable by Comwire IT and includes all Microsoft Software that is currently supported by Microsoft as well as any other such software approved in writing by Comwire IT. Please note that any Home operating system(s) are not supported.

Apple Mac OS & associated tools and Microsoft Office for Mac versions.

MYOB and Quickbooks are supported for minor upgrades only.

Software not on the Approved Software list above are excluded from this agreement for example, iTunes, Games will not be covered. Comwire can still resolve issues with this software, but charges will apply.

3rd Party Software Support is limited to providing remote access for that vendor to fix the issue if it is an issue with their software (Note – Comwire IT will not pay for any 3rd party software support and any support costs will be directly payable by the Customer).

Approved Anti-Virus or Endpoint Security or such other software approved in writing by Comwire IT.

Approved Backup solutions or any other such software as approved by Comwire IT from time to time.

Approved Hardware - means hardware that connects to the network switch, server or any desktop/laptop computer which is approved, in writing, by Comwire IT.

Business Day - means a business day on the city where the Service is provided.

Commencement Date - means, unless otherwise agreed, the day Comwire IT completes physical installation of the Service at the Premises so that it is able to provide the Service.

Confidential Information - of a party means all information of a confidential nature relating to that party including anything which is indicated to be subject to an obligation of confidence which is disclosed by that party to the other party in relation to this Contract to supply service or comes to the knowledge or into the possession of the other party in connection with this Contract but does not include information:

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

Customer – means the customer described in the Application Form and any of its employees, sub-contractors, agents and representatives.

Customer Equipment - has the meaning set out in clause 5.1.

Day or day - means any day not limited to a Business Day.

Due Date – the due date on any invoice unless specified otherwise by Comwire IT in writing.

Establishment Fee – means the establishment fee repayable by the Customer and set out in the Application Form.

Excluded Event – means:

- (a) a breach of the Contract by the Customer;
- (b) a Force Majeure Event;
- (c) a negligent or fraudulent act or omission of the Customer Customer's personnel; or
- (d) a failure of any of the Customer's Equipment.

Fault – means any circumstance physically related to the Service which renders the Service unusable or significantly impaired.

Phishing Activity – means activity whereby an individual is induced into providing personal information for fraudulent purposes.

Force Majeure Event – means:

- (a) any act of god or act of nature, fire, flood, storm, explosion, sabotage, riot, act of war whether declared or not, requirement or restriction of governmental authorities, inability or delay in the grant of governmental or other approvals, consent, permits, licences or authorities or any other like event; or
- (b) any strike, lockout, work stoppage or other industrial dispute of any kind; or
- (c) any act or omission of a third party which affects the provisions of the Services, including a failure to provide goods and services or access to premises; or
- (d) any other similar circumstances beyond the reasonable control of the affected party.

General Terms and Conditions – means the general term and conditions contained in this document.

Government Agency – means any government or governmental, semi-governmental, administrative, municipal, fiscal, or judicial body, department, commission, authority, tribunal, agency, or other statutory entity including but not limited to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman and any other government or statutory body or authority.

Initial Terms – means the term and specified in the Application Form.

Insolvency Event – means:

- (a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- (b) any step that is taken to enter into any scheme or arrangement between the Customer and its creditors;
- (c) any step is taken by a mortgage to enter into possession or dispose of the whole or any part of the Customer'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 Customer or to the whole or any part of the Customer's assets or business;
- (e) the Customer suspends payment of its debts generally; or
- (f) the Customer is or becomes unable to pay its debts when they are due, or it is or is presumed to be insolvent for the purposes of any provision of the Corporation Act 2001 (Cth).

Intellectual Property Rights - means any intellectual or industrial property rights (including any registered or unregistered trademarks,

patents, designs, or copyright) and includes the right to have Confidential Information kept confidential.

Interruption – In the supply of goods or a service (including the Service) means a delay in supply, a failure to supply or an error, defect in the supply of, those goods or that service and **Interrupts** has a corresponding meaning.

Invoice Period – means the period for which advanced payment of the Monthly Service Fee is required as set out in the Application Form or such other period as notified by Comwire IT from time to time.

Liability - means any direct or consequential liabilities, claims, losses, cost, charges, damages, injury or expenses of any nature.

Monthly Service Fee - means the monthly service fee specified in the Application Form.

Planned Outage Period – means a period during which the Service may become unusable or impaired due to Comwire IT undertaking necessary work on its facilities, network or systems for any reason, including arising out of or in connection with:

- (a) Installation of infrastructure;
- (b) Maintenance requirements (including Scheduled Maintenance Windows); and
- (c) software or infrastructure upgrades.

Premises - means locations at which Comwire IT provides the Service, and locations to which Comwire IT needs to have access to supply the Service including Site A and Site B.

Provider - means a party that discloses its Confidential Information to another party.

Recipient - means a party that receives or obtains Confidential Information of another party.

Related Body Corporate has the meaning given to that expression in the Corporation Act 2001 (Cth).

Representative – means a director, officer employee or agent

Requested Delivery Date - means the Customer's preferred date for commencement of the Service as specified in the Application Form.

Scheduled Delivery Date – means the date, as advised to the customer Comwire IT, on which Comwire IT has planned to make the Service available.

Scheduled Maintenance Window – means the period set out in the Contract or at such other times as Comwire IT may advise the Customer from time to time during which Comwire IT will endeavor to conduct all service disrupting planned maintenance work on its facilities, networks or systems.

Service – means the service with options and features requested in the Application Form and as specified in the Contract, and any related goods (including equipment) and ancillary services which Comwire IT supplies to the Customer in connection with that Service.

Service Delivery Point - means the location at which Comwire IT will install the Comwire IT Equipment necessary to provide the Service Interface as specified in the Application Form.

Service Interface - means the physical interface at the Service Delivery Point by which the Customer connects to the Service.

Special Offers - Promotional offers that Comwire IT may make from time to time, including, but not limited to, free usage, discounts, or bonus months.

Supplier Network - means any telecommunications network, equipment, or facilities, or cabling controlled by a third-party supplier.

Term - has the meaning given in clause 2.2.

