

## Statement of Differences – Telstra access agreement

Opticomm Ltd ACN 117 414 776 (**Opticomm**) and Telstra Corporation Limited ACN 051 775 556 (**Telstra**) have entered into an access agreement (the **Telstra RSPMA**) on terms and conditions which are not the same as the terms and conditions set out in the offer to Opticomm’s wholesale customers published at <https://www.opticomm.com.au/legal/> (the **Standard MSA**). The Telstra RSPMA was entered into on 19 May 2022.

The following table describes the differences between the terms and conditions set out in the Telstra RSPMA and the terms and conditions in the Standard MSA. Opticomm provides this statement of differences pursuant to section 151ZH(1) of the *Telecommunications Act 1997*.

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
<b>Agreement</b>	1.2	1.2	<p>The documents that form the Telstra RSPMA are:</p> <ul style="list-style-type: none"> <li>(a) the Master Services Agreement Signature Form (where applicable);</li> <li>(b) the RSP Master Agreement;</li> <li>(c) the terms set out in the Service Level Agreement;</li> <li>(d) the terms set out in the Wholesale Price List;</li> <li>(e) the terms set out in the Initial Pricing Construct (where applicable);</li> <li>(f) the terms set out in the Acceptable Use Policy;</li> <li>(g) the terms set out in Annexure B – Operations Governance Framework;</li> <li>(h) the terms set out in the Service Schedules; and</li> <li>(i) the terms set out in the Service Order.</li> </ul> <p>The Initial Pricing Construct and Annexure B – Operations Governance Framework are documents not contained in the Standard MSA.</p> <p>Further, the Standard MSA includes a Service Level Agreement (<b>Standard SLA</b>). In contrast, the Telstra RSPMA incorporates the relevant Opticomm published Service Level Agreement nominated for a particular Service (<b>New SLA</b>). The Standard SLA provides some service levels, but no rebates in respect of those service levels, for residential services (categorised as ‘Bronze’ level services). The New SLA will apply service levels and rebates to residential services (with such service levels and rebates being equivalent to certain service levels and rebates offered by the nbn on its residential services).</p>
<b>Term</b>	3	3	<p><b>Commencement of Term and Service Term</b></p> <p>The Telstra RSPMA commences on the Commencement Date (the date the Agreement is executed by the last party). Opticomm agrees to provide each Service from the relevant Service Date (being the date Opticomm commences providing the relevant Service to Telstra).</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>In contrast, the Standard MSA states that Opticomm will provide each Service to the Customer for the applicable Service Term (which is the period that commences on the Service Date and specified in a Service Order).</p> <p><b>Expiry</b></p> <p>The terms applicable on the expiry of the Service Term differ between the Telstra RSPMA and the Standard MSA. The Telstra RSPMA provides that if Opticomm has not given Telstra notice in writing no less than 30 days before the Service Term expires that it has decided not to continue providing a Service, Opticomm:</p> <ul style="list-style-type: none"> <li>(a) 'will continue to provide that Service after the expiry of that Service Term (at the then current Fees for that Service)'. This is in contrast to the Standard MSA which provides that Opticomm 'may, at its sole discretion, continue to provide the Service', in the Standard MSA;</li> <li>(b) until either:             <ul style="list-style-type: none"> <li>(i) 'Telstra cancels the Service by giving Opticomm written notice for at least the notice period specified in the Service Schedule for that Service, with cancellation taking effect on the date that Opticomm processes the cancellation request or on expiry of the applicable notice period (whichever occurs first)'. This differs from the Standard MSA which provides that if the Customer wishes Opticomm to cease providing the Service, it must give Opticomm at least 30 days written notice; or</li> <li>(ii) 'Opticomm cancels the Service by giving the Customer written notice (of at least the notice period specified in the Service Schedule for that Service), with cancellation taking effect on expiry of the applicable notice period'. This differs from the Standard MSA which provides that, if Opticomm continues to provide a Service after the Service Term has expired, Opticomm may terminate the Service in accordance with clause 19.1. Clause 19.1 provides, inter alia, that Opticomm may terminate the Agreement by giving the other party no less than 6 months' written notice; or</li> <li>(iii) 'either party otherwise cancels the Service in accordance with this Agreement'. This term is not in the Standard MSA, though clause 22.1 of the Telstra RSPMA provides similar (though not identical) termination rights to each party as clause 19.1 of the Standard MSA.</li> </ul> </li> </ul>
<b>Services</b>	4.2 to 4.8	4.6	<p>Clause 4.2 to 4.8 of the Telstra RSPMA contains terms and conditions not contained in clause 4 of the Standard MSA. Those clauses concern:</p> <p><b>4.2 Acceptance of Orders</b></p> <p>Clause 4.2 of the Telstra RSPMA, regarding acceptance of Service Orders, is similar to clause 5.4 of the Standard MSA. Clause 4.2 differs in that if Opticomm requires any change to a Service Request, it must do so 'acting reasonably'.</p> <p><b>4.3 Supplemental Work</b></p> <p>In many respects clause 4.3 of the Telstra RSPMA has terms and conditions contained in clause 5.5 of the Standard MSA. Differences include that the Telstra RSPMA does not list as examples of Supplemental Work that Opticomm or a Supplier may need to conduct in relation to an installation: (a) installation of End-User premises wiring or equipment; or (b) installation of the lead-in wiring or conduit.</p>

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			<p>The Telstra RSPMA also differs in that it provides that prior to undertaking any Supplemental Work, Opticomm must provide the Customer with Opticomm's charges for performing the relevant Supplemental Work for Customer's approval. Opticomm must not charge Customer for any Supplemental Work unless and until Customer has approved the charges for such Supplemental Work. It also provides that Opticomm is not obligated to perform any Supplemental Work until Opticomm's charges for performing that Supplemental Work have been approved by the Customer.</p> <p><b>4.4 Performance</b></p> <p>Opticomm will deliver each Service in accordance with the terms of the Agreement. Opticomm is not obliged to provide any Service without a Service Order, and must not charge the Customer for any Service unless and until a Service Order is in place for that Service.</p> <p><b>4.5 No exclusivity</b></p> <p>Opticomm acknowledges and agrees that it is not an exclusive provider of the internet services to Customer.</p> <p><b>4.6 Compliance</b></p> <p>Each party must comply with Applicable Laws and maintain all authorisations and licences required.</p> <p><b>4.7 Permitted uses of the Service</b></p> <p>In many respects clause 4.7 of the Telstra RSPMA has terms and conditions contained in clause 5.8 of the Standard MSA. Differences include that the Telstra RSPMA does not include clause 5.8(a) or (b) of the Standard MSA, which require that Customer must not use, attempt to use, or permit an End-user or a Third Party to use the Service to (a) break any law or to infringe another person's rights; or (b) in a way which may expose Opticomm to liability or legal threats by Third Parties.</p> <p><b>4.8 Changes to the Agreement</b></p> <p>The clause provides:</p> <ul style="list-style-type: none"> <li>(a) the Agreement can only be varied by a written agreement between the parties;</li> <li>(b) other than for some specified circumstance, if Opticomm exercises a unilateral right to change the Agreement and the change(s) have a material detrimental impact on Telstra, then Telstra may immediately terminate the Agreement, or if the change(s) to the Agreement change the terms of a Service, that Service. In such case, Telstra must provide notice within the 30 days immediately following implementation of the change without incurring additional termination charges, and Opticomm will refund to Telstra any money paid in advance for the Service that is being cancelled on a pro-rata basis;</li> <li>(c) a change that is materially detrimental to all or a significant number of Telstra's End-users is deemed to have a material detrimental impact on Telstra;</li> <li>(d) Opticomm may: (i) remove a Service from its product catalogue so that Telstra can no longer order that Service (i.e. a "cease sale") by giving Telstra at least 6 months' written notice; (ii) change the terms of a Service Schedule (including any description of the Service contained therein) by giving Telstra 6 months' written notice if that change has a material detrimental impact on Telstra; or 1 month's written notice for all other changes; (iii) after consulting with</li> </ul>

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			<p>Telstra, change its systems and standard processes or Acceptable Use Policy, by giving Telstra at least 30 Business Days' notice of that change;</p> <p>(e) Opticomm may: (i) change the Agreement, other than any Service Level Agreement, where that change is necessary to comply with any applicable Law or reasonably necessary or desirable to comply with, respond to, or is otherwise required by, a Regulatory Event, by giving as much notice as is reasonably practicable of that change to Telstra; or (ii) change the Service Level Agreement (including, in each case, by withdrawing it or any aspect of it) if that change is necessary to comply with any applicable Law; or reasonably necessary to comply with, or is otherwise required by, a Regulatory Event; and</p> <p>(f) if there is an Intervening Event, then Opticomm will inform Telstra as soon as reasonably practicable of any change to any or all of the Services or this Agreement arising from the Intervening Event. Subject to the terms of clause 5 (NBN Co Equivalence) (where applicable), if the actual direct costs to Opticomm of providing any Service to Telstra increase as a result of the Intervening Event (Affected Service(s)), then Opticomm may pass on the additional cost to Telstra subject to the following procedure: (i) Opticomm must give no less than 14 days' written notice of the increase and must provide details of the Intervening Event and the Affected Service(s) in that notice (Cost Increase Notice); (ii) if Opticomm gives a Cost Increase Notice, Telstra may, by written notice to Opticomm, terminate the Affected Service(s) specified in the Cost Increase Notice with effect from the date of the Customer's notice and Telstra will not be required to pay a Service Cancellation Fee; and (iii) Opticomm must take reasonable steps to mitigate the effect of an Intervening Event on Opticomm's cost of providing the Affected Services. This subclause is similar to clause 5.7 of the Standard MSA.</p> <p>The Telstra RSPMA does not include clause 4.6 of the Standard MSA, which concern <b>Additional types of Services</b> and provides that additional types of Services can be added to the Agreement by the Customer providing a Service Request to Opticomm and Opticomm accepting it as a Service Order.</p>
<b>Customer's Right to cancel a service</b>	4.10	4.3	<p>Clause 4.10 of the Telstra RSPMA and clause 4.3 of the Standard MSA each relate to the Customer's right to cancel a Service. There are some differences between the circumstances where the Customer may cancel a Service immediately, without incurring any applicable Service Cancellation Fee.</p> <p>In the Telstra RSPMA, Telstra may cancel a Service immediately, and without incurring any additional charges, if:</p> <p>(i) Opticomm 'commits a material breach' of the Agreement which is not resolved within 14 days of the Customer requesting Opticomm to do so in writing, or which is unable to be resolved – the right in Standard MSA applies if Opticomm 'breaches an essential term';</p> <p>(ii) 'an Insolvency Event occurs in relation to Opticomm' – the right in Standard MSA applies if 'Opticomm become insolvent, bankrupt or unable to pay its debts when due' (i.e. the right does not refer to the defined term 'Insolvency Event');</p> <p>(iii) the Service has been suspended for 14 days, where there is no fault on Telstra's or an End-user's part – the same right applies in the Standard MSA; or</p>

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			(iv) Telstra is entitled to exercise a right of termination pursuant to clause 21.2 (Force Majeure), where the Force Majeure event continues for more than 60 days – the same right is contained in clause 19.2 of the Standard MSA, though the Force Majeure event must apply for 6 months.
<b>Opticomm's right to cancel a service</b>	4.11	4.4	<p>Clause 4.11 of the Telstra RSPMA and clause 4.4 of the Standard MSA each relate to Opticomm's right to cancel a Service. There are some differences between the circumstances where the Customer may cancel a Service immediately. In the Telstra RSPMA, Opticomm may cancel a Service immediately if:</p> <ul style="list-style-type: none"> <li>(i) Opticomm reasonably suspects fraud by the Customer, an End-user or anyone using the Service – the same right applies in the Standard MSA;</li> <li>(ii) Opticomm is required to cancel the Service to comply with a direction from a law enforcement agency or a Regulator – the same right applies in the Standard MSA, however, the Testra RSPMA also provides, 'Where permitted to do so, Opticomm will notify the Customer as soon as reasonably practicable upon becoming aware of any such direction';</li> <li>(iii) the Customer fails to remedy a default referred to in clause 9.8(a)(i) (being a payment default) within 7 days of receiving the Default Notice – the termination right in the Standard MSA applies if 'the Customer has failed to make a payment by the due date and fails to make such payment within 5 business days of receipt of a notice requiring the Customer to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;</li> <li>(iv) the Customer has failed to provide the security deposit requested – the same right applies in the Standard MSA;</li> <li>(v) the Customer fails to comply with a statutory demand issued by Opticomm under the <i>Corporations Act 2001</i> (Cth) – the same right applies in the Standard MSA;</li> <li>(vi) 'an Insolvency Event occurs in relation to the Customer' – the right in Standard MSA applies if 'Opticomm become insolvent, bankrupt or unable to pay its debts when due' (i.e. the right does not refer to the defined term 'Insolvency Event');</li> <li>(vii) the Customer 'commits a material breach' of this Agreement which isn't resolved within 14 days of Opticomm requesting the Customer to do so in writing or which is unable to be resolved – the right in Standard MSA applies if Opticomm 'breaches an essential term';</li> <li>(viii) the Customer or an End-user using the Service is in breach of the Acceptable Use Policy in relation to that Service and has failed to remedy that breach within 10 Business Days of the Service being suspended under clause 8.1(a)(ii) – the right in the Standard MSA applies immediately the Customer, an End-user of anybody using the Service is in breach of the Acceptable Use Policy;</li> <li>(ix) Opticomm becomes aware that delivery of the Service is uncommercial or impractical, 'and Opticomm has provided at least 12 months prior written notice to the Customer' – the right in the Standard MSA applies, but without the notice term; or</li> <li>(x) Opticomm is unable to supply the Service because of a Force Majeure event for a continuous period of more than 40 Business Days – the right is not contained in the Standard MSA.</li> </ul>

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			The Standard MSA also provides Opticomm with an immediate termination right where Opticomm determines that the Customer is in breach of the confidentiality provisions of this Agreement. This right is not contained in the Telstra RSPMA.

<b>NBN Co Equivalence</b>	5	N/A	<p>The Telstra RSPMA includes an NBN Co Equivalence clause, not included in the Standard MSA. the NBN Co Equivalence clause provides:</p> <p><b>5.1 Downstream Product Equivalence Objective</b></p> <p>To enable the Customer to be able to offer Retail Services with consistent features and functions and on the same price and non-price terms to its retail End-user customers in Australia, irrespective of the network used to deliver such services (<b>Downstream Product Equivalence Objective</b>), the parties agree:</p> <p>(a) subject always to clause 5.1(b) and clause 5.3, Opticomm must establish and continuously maintain equivalence with the NBN Co Services in providing the Services to the Customer, including establishing and maintaining equivalence in respect of:</p> <ul style="list-style-type: none"> <li>(i) the wholesale supply and provisioning methodology adopted by NBN Co for the supply of the NBN Co Services;</li> <li>(ii) NBN Co's core product specifications (including speed, AVC and CVC inclusions and pricing) for the NBN Co Services other than where this is inconsistent with the Initial Pricing Construct, which will prevail; and</li> <li>(iii) NBN Co's service standards, service levels and associated service level rebates for the NBN Co Services;</li> </ul> <p>(b) Opticomm will adopt a pricing regime at least consistent with the Initial Pricing Construct in cases where the Opticomm network design underpinning an Opticomm Service differs to that of NBN Co as determined by Opticomm acting reasonably; and</p> <p>(c) Opticomm must, on an ongoing basis, ensure that when NBN Co introduces new NBN Co Services or amends its existing NBN Co Services (each an <b>NBN Update</b>), Opticomm will:</p> <ul style="list-style-type: none"> <li>(i) as soon as reasonably practicable upon becoming aware of the NBN Update, consult with the Customer and other RSPs about the NBN Update;</li> <li>(ii) as soon as reasonably practicable, undertake an analysis of whether Opticomm is capable of implementing or amending existing services to be comparable with the NBN Update, at all times acting reasonably and having regard to the equivalence principles set out in this clause 5.1; and</li> <li>(iii) as soon as reasonably practicable following that consultation and assessment of capability, and subject to the majority of RSPs indicating that the NBN Update would be a core service offering by them and Opticomm determining in its sole discretion under paragraph (c)(ii) above it is capable, implement the NBN Update by either amending the Services or developing new products or services to be comparable to the NBN Update and the requirements in paragraph (a) above (unless, as a result of the consultation process under paragraph (c)(i) above, the Customer and the other RSPs do not require Opticomm to implement the NBN Update).</li> </ul>
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			<p>5.2 <b>Opticomm's Equivalent Services</b></p> <p>Subject to clause 5.3 below but notwithstanding any other terms of this Agreement, Opticomm acknowledges that as at the date of this Agreement, based on the Initial Pricing Construct it is capable of providing equivalent AVC, CVC and headline bundle price terms for the following NBN Co Services offered at 16 December 2020:</p> <ul style="list-style-type: none"> <li>(a) ELB with usage up to 0.15Mbps (inclusive)</li> <li>(b) B25 (25/5)</li> <li>(c) B50 (50/20)</li> <li>(d) Home Fast (100/20)</li> <li>(e) B100/40</li> <li>(f) Home Superfast (250/25)</li> <li>(g) B250/100</li> <li>(h) B500/200</li> <li>(i) Home Ultrafast (up to ~1000/50)</li> <li>(j) B1000/400,</li> </ul> <p>(other than where the Opticomm network service qualification identifies that a product in this clause 5.2 is not capable of being delivered) and Opticomm will ensure that it provides equivalent CVC inclusions to that adopted by NBN Co for the NBN Co Services noted above when providing the corresponding Services to the Customer.</p> <p>5.3 <b>Pricing changes</b></p> <p>Where NBN Co changes its price terms for the NBN Co Services such that the headline price for one or more of the NBN Co Services reduces by more than 9% (<b>NBN Co Price Reduction</b>), Opticomm will discuss in good faith with the Customer and all other RSPs any changes to be made to the pricing in this Agreement as a result of the NBN Co Price Reduction.</p>



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			<p>5.4 <b>Network and service differences</b></p> <p>(a) The Customer and Opticomm acknowledge that the Opticomm Network and Opticomm's products and pricing constructs are not identical to that of NBN Co. Each of the Customer and Opticomm, acting reasonably, will have regard to differences in network design and capability and commercial implications to both parties, when interpreting Opticomm's compliance with the equivalence principles in clause 5.1.</p> <p>(b) For the avoidance of doubt, the equivalence principles in this clause 5 do not preclude Opticomm from offering, in addition to the Services required by this clause 5 to enable the Customer to achieve the Downstream Product Equivalence Objective, other or new products, services, features, price and/or non-price terms to any RSP including the Customer which are different from and/or superior to any offering made available by NBN Co (including the NBN Co Services).</p> <p>5.5 <b>IT Interface Requirements</b></p> <p>Without limiting any other provision of this Agreement, in providing the Services to Customer, Opticomm must provide an IT interface of equivalent nature to the NBN NPIS that applies to the Services. The interface will be based upon TMF OpenAPI standards for B2B interactions.</p> <p>5.6 <b>Application of this clause 5</b></p> <p>Subject to always maintaining the Services required by this clause 5, Opticomm may offer other Services, including other Services that the Customer may offer as Retail Services, which are not subject to this clause 5.</p>
<b>SIP and USO obligations</b>	5A	N/A	<p>The Telstra RSPMA includes Statutory Infrastructure Provider (<b>SIP</b>) and Universal Service Obligation (<b>USO</b>), not contained in the Standard MSA.</p> <p>The terms provide that:</p> <p>(a) if Telstra is the SIP in the Agreed Network, Opticomm must provide Telstra with such services and reasonable assistance as required by Telstra to ensure that Telstra can comply with its SIP obligations, including enabling Telstra to resell the Services to ensure that Telstra can fulfil its SIP obligations to</p> <p>(i) connect premises in accordance with section 360P of Part 19 of the <i>Telecommunications Act 1997</i> (Cth); and</p> <p>(ii) supply eligible services in accordance with section 360Q of Part 19 of the <i>Telecommunications Act 1997</i> (Cth),</p> <p>(b) if Telstra is subject to the Universal Service Obligation, Opticomm must provide Telstra with such reasonable assistance as required by Telstra to ensure that Telstra can comply with its Universal Service Obligation.</p>

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<b>Operations</b>	6	N/A	<p>The Telstra RSPMA includes terms and conditions relating to 'Operations', not contained in the Standard MSA.</p> <p>The terms provide that:</p> <ul style="list-style-type: none"> <li>(a) the parties will comply with the Operations Manual for the Services;</li> <li>(b) the Operations Manual:               <ul style="list-style-type: none"> <li>(i) sets out the details for the provisioning (including any ordering, testing and handover requirements), fault management and maintenance procedures that the parties must follow in respect of the Services;</li> <li>(ii) must be consistent with the IT interface requirements in clause 5.5 (IT Interface Requirements); and</li> <li>(iii) will be updated by Opticomm from time to time during the Term of this Agreement to reflect any operational changes resulting from any changes made to the Services (including the addition of new services by Opticomm and as a result of Opticomm implementing any NBN Update) and otherwise to ensure consistency with this Agreement. Where any proposed update may result in material changes to the Operations Manual, Opticomm will consult with the Customer and other RSPs about that proposed update</li> </ul> </li> <li>(c) The parties will establish and participate in an operational governance forum comprising of the parties' respective representatives that will manage the operational procedures for the Services to be supplied by Opticomm to Telstra under the Agreement. A framework for the governance forum is set out in Annexure B. Telstra may request Opticomm participate in a governance forum review from time to time, and Opticomm will not unreasonably refuse any such request.</li> </ul>
<b>Maintenance and faults</b>	7	6, 5.2	<p>Clause 7 of the Telstra RSPMA and clause 6 of the Standard MSA each relate to Maintenance and Faults. There are some differences between the terms and conditions.</p> <p><b>Maintenance</b></p> <p>In respect of maintenance, the Standard MSA provides:</p> <ul style="list-style-type: none"> <li>(a) that the parties acknowledge and agree that Opticomm will conduct maintenance on the Network in accordance with the Service Level Agreement; and</li> <li>(b) Opticomm will give Telstra notification before all planned maintenance which Opticomm anticipates will interfere with the Telstra's Services. Generally, at least 10 business days' notice will be given, however, the notice period may be less when the maintenance is being performed on a Supplier's network</li> </ul> <p>The Telstra RSPMA has the following, more detailed, terms relating to maintenance:</p> <ul style="list-style-type: none"> <li>(a) that the parties acknowledge and agree that maintenance may result in Service outages during the period of maintenance works;</li> <li>(b) that Opticomm will give Telstra notification before all planned maintenance which Opticomm anticipates will interfere with Telstra's Services (including relevant details such as expected duration, likely impacted Services and location). Generally, at least 10 Business Days' notice will be given, however:</li> </ul>

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			<ul style="list-style-type: none"> <li>(j) the notice period may be less as specified in the Service Level Agreement or when the maintenance is being performed on a Supplier's network; and/or</li> <li>(ii) Opticomm must notify Telstra of any non-scheduled maintenance on the Network in the event of any Fault or Emergency as soon as is feasible in the circumstances and, if feasible, before the start of the non-scheduled maintenance;</li> <li>(c) at Telstra's request, Opticomm will consult with Telstra on any concerns raised by Telstra regarding any planned maintenance notified to Telstra. If the planned maintenance will have a materially adverse effect on Telstra, Opticomm will have reasonable regard to those concerns raised; and</li> <li>(d) for the avoidance of doubt, any maintenance downtime on the Network affecting Services is not a 'suspension of Services'.</li> </ul> <p><b>Monitoring and Data retention</b></p> <p>Clause 7.3(a) of the Telstra RSPMA sets out circumstances where Opticomm may monitor the Network, including to comply with data retention laws. Clause 6.1 of the Standard MSA has the same terms.</p> <p>However, the Telstra RSPMA adds, that, 'Where permitted to do so, Opticomm will notify the Customer as soon as reasonably practicable upon becoming aware of any requirement to intercept or retain data in accordance with clause 7.3(a).</p>
<b>Suspending a Service</b>	8	5.1, 5.3 and 6.2	<p>Clause 8 of the Telstra RSPMA and clauses 5.1, 5.3 and 6.2 of the Standard MSA each relate to Opticomm's rights to suspend a Service. There are some differences between the terms and conditions.</p> <p>The Telstra RSPMA provides that Opticomm may without liability, suspend a Service if:</p> <ul style="list-style-type: none"> <li>(a) there is an Emergency – this right is in clause 6.2 of the Standard MSA;</li> <li>(b) if the Customer or an End-user is in breach of the Acceptable Use Policy in relation to that Service, and Opticomm has given notice to the Customer and fails to remedy that breach within the reasonable timeframe (having regard to the nature of the non-compliance) specified by Opticomm in writing to the Customer – a similar right is contained in clause 5.1 of the Standard MSA;</li> <li>(c) doing so is necessary to avoid endangering the health or safety of any person or damage or interference to the Network – while these rights are not separately described in the Standard MSA, similar wording is within the definition of an Emergency;</li> <li>(d) Opticomm would be entitled to cancel the Service under clause 4.11(a) (Opticomm's right to cancel a Service) – a similar right is contained in clause 5.1 of the Standard MSA, though that right requires Opticomm to give the Customer reasonably prior notice if possible in the circumstance;</li> <li>(e) an Insolvency Event occurs in relation to the Customer – this right is in clause 6.2 of the Standard MSA;</li> <li>(f) Opticomm is required to do so to comply with a Law, industry code, or an order, instruction or request of an emergency services organisation or other government agency, or a Regulator – this right is in clause 6.2 of the</li> </ul>

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			<p>Standard MSA. The Telstra RSPMA also provides that Opticomm will notify the Customer as soon as reasonably practicable upon becoming aware of any such order, instruction or request;</p> <p>(g) Opticomm is issued with a competition notice under Part XIB of the <i>Competition and Consumer Act 2010</i> (Cth) in respect of the Service, or the Service is declared under Part XIC of the <i>Competition and Consumer Act 2010</i> (Cth) – this right is in clause 6.2 of the Standard MSA;</p> <p>(h) a Supplier of services to Opticomm which are necessary for the provision of the Services ceases or suspends provision of those services to Opticomm – this right is in clause 6.2 of the Standard MSA; or</p> <p>(i) Opticomm is temporarily unable to supply the Service to the Customer because of a Force Majeure Event – clause 5.1 of the Standard MSA provides Opticomm with a right to suspend a Service, by giving reasonable notice, if Opticomm is temporarily unable to supply the Service to the Customer because of a continuing event that is reasonably out of Opticomm's control; for example, earthquake, explosion, natural disaster, sabotage or war.</p> <p>The Standard MSA contains some suspension rights not contained in the Telstra RSPMA, as described below.</p> <p>Clause 6.2 of the Standard MSA provides Opticomm with an immediate right to suspend a Service if:</p> <p>(a) Telstra breaches this Agreement and Opticomm serves a Default Notice;</p> <p>(b) doing so is necessary to allow Opticomm to protect, repair, maintain or service any part of the Network; or</p> <p>(c) Opticomm reasonably suspects fraud by the Customer or any other person in connection with the Service.</p> <p>Clause 5.1 of the Standard MSA provides Opticomm with a right to suspend a Service by giving the Customer reasonable prior notice if possible in the circumstances if:</p> <p>(a) it is necessary to do so to maintain or restore any part of the Network;</p> <p>(b) Opticomm is required to suspend the Service to comply with a direction from a law enforcement, security or intelligence agency, or a regulatory authority such as the Australian Communication and Media Authority (ACMA);</p> <p>(c) Opticomm is temporarily unable to supply the Service to the Customer because a Supplier has temporarily withdrawn its services from Opticomm;</p> <p>(d) the Customer breaches an essential clause of the Agreement.</p> <p><b>Notice</b></p> <p>The Telstra RSPMA provides that if Opticomm exercises its rights under the clause to suspend, it will provide Telstra with as much prior notice of the suspension as reasonably possible in the circumstances. In some circumstances it may not be practicable to give notice in advance of Opticomm's exercise of this right. In this case, Opticomm will notify the Customer as soon as practicable after exercising this right.</p> <p>The Standard MSA provides:</p> <p>(a) in respect of where Opticomm may immediately suspend a Service under clause 6.2, that Opticomm 'will provide the Customer with as much prior notice of the suspension as reasonably possible in the circumstances' and</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>(b) in respect of where Opticomm may suspend a Service under clause 5.1, 'by giving the Customer reasonable prior notice if possible in the circumstances'.</p> <p><b>Recommencement of Services</b></p> <p>The Telstra RSPMA also provides that Opticomm will recommence providing the Service as soon as reasonably possible after the reason for the suspension has ceased.</p> <p>The Standard MSA provides:</p> <p>(a) in respect of where Opticomm may immediately suspend a Service under clause 6.2, that Opticomm 'will recommence providing the Service as soon as reasonably possible after the reason for the suspension has ceased' and</p> <p>(b) in respect of where Opticomm may suspend a Service under clause 5.1, 'that Opticomm will only suspend the Customer Service for a period that is reasonable in the circumstances'.</p>
<b>Fees and Payment</b>	9	7	<p>Clause 9 of the Telstra RSPMA and clause 7 of the Standard MSA each relate to GST and Other Taxes. There are some differences between the terms and conditions.</p> <p><b>Wholesale Price List Variations</b></p> <p>In respect of variations to the Wholesale Price List, the Telstra RSPMA provides that Opticomm will:</p> <p>(a) for 'pricing changes made by NBN Co to an NBN Co Service which are applicable to Opticomm under the terms of clause 5, vary the existing Fees for the Services to reflect such pricing change by NBN Co, and provide the Customer with notice of such variation, within 30 days of the date on which NBN Co's published pricing changes become effective';</p> <p>(b) for 'other pricing changes, provide the Customer with 90 days' prior notice of any variation to existing Fees for the Services unless the pricing change directly relates to a Supplier pricing change in which circumstance Opticomm will provide the Customer with as much prior notice as possible (but in any event, not less than 60 days' prior notice) of any variation to existing Fees for the Services'; and</p> <p>(c) not apply any price variations during the Service Term of a Service other than as set out in clause 9.1(b) or clause 4.8 (Changes to the Agreement).</p> <p>The Standard MSA provides: 'Subject to clause 5.7, Opticomm will provide the Customer with 90 days' written notice of variations to existing Service Fees. Price variations will not occur during the Service Term of a Service other than as set out in clause 5.7 (Intervening Event and Changes to the Service).</p> <p><b>Support Fees</b></p> <p>In the Telstra RSPMA, Fees for support fees may be levied if '<i>Opticomm tests a Customer reported Fault (without visiting the End-user premises) and there is no Fault found or the Fault is outside of the Network, however no fees are payable by the Customer pursuant to this sub clause (i) if less than 5% of the Customer's reported Faults (in a calendar month) are found to not be Faults or are found to be faults outside of the Network;</i> (ii) Opticomm visits End-user premises to test a reported Fault and there is no Fault found or the fault is outside the Network; or (iii) the Customer requests Opticomm to</p>

			<p>contact an End-user directly to resolve a problem (<i>and the Customer has agreed to the Fee quoted by Opticomm for undertaking this activity</i>). The italicised words are not in the Standard MSA.</p> <p><b>Cancellation Fees</b></p> <p>In respect of Cancellation Fees, in the Telstra RSPMA, 'the Customer is not obliged to pay the charges under subclause 9.3(b) if the Customer has cancelled the Service as a result of an unresolved breach of this Agreement by Opticomm <i>or for other cause in accordance with clause 4.10(c)</i>'. Clause 4.10(c) sets out circumstances where Telstra may cancel a Service immediately, and without incurring any additional charges. The italicised words are not in the Standard MSA.</p> <p><b>Supplemental Work</b></p> <p>In respect of Supplemental Work, the Telstra RSPMA provides, 'Where the Customer has agreed to Opticomm's charges for performing the relevant Supplemental Work pursuant to clause 4.3(b), Opticomm will then invoice the Customer for that Supplemental Work and the Customer will be required to pay such invoices within 30 days of the date of invoice'. This differs from the Standard MSA which provides, 'Opticomm or its nominated contractor will invoice the Customer for Supplemental Work on a time and materials basis at Opticomm's standard rates and the Customer will be required to pay such invoices within 7 days of the date of invoice. Opticomm is not obliged under this Agreement to supply a Service to an End-user until the invoice is paid'.</p> <p><b>Invoices</b></p> <p>The Telstra RSPMA provides that Opticomm may issue an invoice for 'the GST exclusive amount of any <i>substantiated</i> underpayment <i>for a Service</i> or overpayment of the Fees paid to Opticomm up until that time' and for 'the amount of any <i>agreed</i> damages payable by a party to the other party'. The italicised word is not in the Standard MSA.</p> <p>The Telstra RSPMA also provides, 'Opticomm will not invoice the Customer the Fees for a Service if more than 6 months have passed since the relevant Fees for the Service were incurred unless: (i) Opticomm has given notice, during that 6 month period, of the delay in invoicing and the reason for the delay; or (ii) the Customer agrees to a longer period'. This subclause is not in the Standard MSA.</p> <p><b>Payments</b></p> <p>The Telstra RSPMA provides that Telstra 'will pay the amount(s) invoiced by Opticomm in accordance with clause 9.5, no later than 30 days from the invoice date'. The time period for payments in the Standard MSA is 7 days.</p> <p>The Standard MSA provides that, 'If the Customer does not pay a bill by its due date, Opticomm reserves the right to charge the Customer, and the Customer agrees to pay: (i) interest at the rate of 3% above the prevailing base rate charged by Opticomm's current bank on overdue charges from the due date until paid; (ii) all reasonable expenses incurred by Opticomm (including reasonable legal costs and expenses and the fees of Opticomm's debt recovery agents) in relation to recovering payments due; (iii) an equal amount to recoup any bank or financial institution fees incurred because the Customer's cheque, credit card payment or direct debit is not honoured. While the Telstra RSPMA includes similar terms in clause 9(b)(v), under the Telstra RSPMA Opticomm only has such rights after Telstra has failed to comply with a Default Notice (see in 'Payment Defaults' below).</p> <p><b>Disputed Amounts</b></p>
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Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>In respect of notices of disputed invoices, the Telstra RSPMA provides, 'This notice must include detailed reasons for the dispute and must be issued within <i>6 months</i> of the invoice date'. The timeframe for providing a notice of dispute invoice in the Standard MSA is 60 days.</p> <p><b>Payment Defaults</b></p> <p>In respect of payment defaults, the Telstra RSPMA provides that it Telstra: (a) fails to pay any amount due under this Agreement by the due date for payment, except where an amount is permitted to be withheld pursuant to a billing dispute, 'within 7 days of receiving the Default Notice'; or (b) withholds a disputed amount from payment, which is subsequently agreed or determined to be payable, and then fails to pay an amount determined to be payable 'within 30 days of receiving the Default Notice', then Opticomm may, in its sole discretion: (i) reduce the speed of the Service(s); (ii) take any additional actions as provided under this Agreement, including but not limited to the suspension or termination of Service(s); and/or (ii) charge Telstra, and Telstra agrees to pay: (A) interest at the rate of 3% per annum above the prevailing base rate charged by Opticomm's current bank on overdue charges from the due date until paid; (B) all reasonable expenses incurred by Opticomm (including reasonable legal costs and expenses and the fees of Opticomm's debt recovery agents) in relation to recovering payments due; and (c) an equal amount to recoup any bank or financial institution fees incurred because the Customer's cheque, credit card payment or direct debit is not honoured.</p> <p>In the Standard MSA, 'If the customer fails to remedy that default within 14 days of receiving the Default Notice, Opticomm will be entitled, in its sole discretion, to: (a) reduce the speed of Service(s); (b) apply interest at the rate of 3% above the prevailing base rate charged by Opticomm's current bank on overdue charges from the due date until paid; (c) be reimbursed for any debt collection expenses incurred by Opticomm in respect of the failure to pay when due; and/or (d) take any additional actions as provided under this Agreement, including but not limited to the suspension or termination of Service(s)'.</p>
<b>GST and Other Taxes</b>	10.5, 10.7, 10.8 and 10.9	8.6	<p>Clause 10 of the Telstra RSPMA and clause 8 of the Standard MSA each relate to Fees and Payment. There are some differences between the terms and conditions.</p> <p>The Telstra RSPMA includes that following term, not contained in the Standard MSA.</p> <p><b>Indemnity and reimbursement payments</b></p> <p>If one party must indemnify or reimburse another party (payee) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an Input Tax Credit or would have been entitled to claim as an Input Tax Credit had the other party registered for GST in the event that it was required or entitled to do so, but will be increased under clause 10.2 if the payment is consideration for a Taxable Supply'.</p> <p><b>Duties</b></p> <p>The cost of any stamp duty or transaction duty in relation to this Agreement will be payable by Opticomm.</p> <p><b>Taxes</b></p>



Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>Except as expressly set out in clause 10 (GST and Other Taxes), the Fees payable to Opticomm under this Agreement are inclusive of all Taxes and Opticomm will not be entitled to any additional payment from the Customer on account of any liability for Taxes incurred in connection with this Agreement.</p> <p><b>Withholding tax</b></p> <p>If the Customer is required by Law to make a Tax Deduction from a payment, no additional payment will be made to Opticomm. Each year, the Customer will deliver to Opticomm reasonable evidence that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.</p> <p><b>Taxes Generally</b></p> <p>The Standard MSA provides, 'The cost of any stamp duty or transaction duty in relation to this Agreement will be shared equally by the parties.'</p>
<b>Access and Security</b>	11	9	<p>Clause 11 of the Telstra RSPMA and clause 9 of the Standard MSA each relate to Access and Security. There are some differences between the terms and conditions.</p> <p><b>Access to Residential End-user Premises</b></p> <p>The Standard MSA provides that the work referred to in clauses 9.1(a) will be performed by Opticomm, the Supplier or their appointed contractor, at the Customer's request and, unless the work is required because of a fault in Opticomm or the Supplier Equipment, at the Customer's cost. The Telstra RSPMA does not have these terms.</p> <p><b>Access to Business End-user Premises</b></p> <p>Clause 11.2 to the Telstra RSPMA provides that Telstra must procure for Opticomm or the Supplier the relevant 'commitment from the Business End-user' for access to those Premises'. Clause 9.2 of the Standard MSA provides that 'the Customer must procure for Opticomm or the Supplier the relevant access to the Premise.</p> <p>The Standard MSA provides that the work referred to in clauses 9.2(a) and 9.2(b) will be performed by Opticomm, the Supplier or their appointed contractor, at the request of the Customer and, unless the work is required because of a fault in Opticomm or the Supplier Equipment, at the Customer's cost. The Telstra RSPMA does not have these terms.</p> <p><b>Access to Customer's Facilities</b></p> <p>The Telstra RSPMA provides that 'Opticomm must only access Customer's Equipment, premises or any other facilities for the purposes approved in writing in advance by Customer'. It also provides that Opticomm must comply with industry practice in relation to security of premises, facilities and systems. The Standard MSA does not have these terms.</p> <p><b>Site Specification</b></p> <p>The Standard MSA provides that, 'Where it is necessary for Opticomm to install Equipment in the Customer's premises in order to provide a Service, Opticomm will provide the Customer with specifications of the Equipment. The Customer, at its</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>cost, must arrange for all necessary preparatory work to be performed and provide all necessary utility services in order for Opticomm to be able to access, operate and maintain that Equipment'. These terms are not in the Telstra RSPMA.</p> <p><b>Access to the Network</b></p> <p>The Standard MSA provides that, 'The Customer will make all reasonable attempts to prevent the End-user from attempting to access Opticomm or a Supplier's Equipment located on the End-user premises'. These terms are not in the Telstra RSPMA.</p>
<b>Rebates</b>	14.1, 14.3	12.1, 12.3	<p>Clause 14 of the Telstra RSPMA and clause 12 of the Standard MSA each relate to Rebates. There are some differences between the terms and conditions.</p> <p><b>Entitlement to Rebates</b></p> <p>The Telstra RSPMA provides that, 'Where the Service is subject to a Service Level Agreement and Opticomm fails to achieve the relevant Service Levels, the Customer will be entitled to any applicable rebate calculated in accordance with the relevant Service Level Agreement'.</p> <p>The Standard MSA states that the Customer will be entitled to the applicable rebate where Opticomm fails to achieve the relevant Service levels ' in any one month'.</p> <p><b>When rebates do not apply</b></p> <p>The Telstra RSPMA provides that Telstra is not entitled to a rebate when:</p> <ul style="list-style-type: none"> <li>(a) the service is not subject to a Service Level Agreement – this term is the same in the Standard MSA;</li> <li>(b) the Customer has any undisputed overdue payments outstanding with Opticomm – this term is not in the Standard MSA;</li> <li>(c) failure to achieve the Service Levels is caused by, or arises from or in connection with:             <ul style="list-style-type: none"> <li>(i) a Force Majeure event – this term is the same in the Standard MSA;</li> <li>(ii) the Customer's breach of this Agreement or any act or omission of End Users – the Standard MSA refers to 'any act or omission by the Customer or the Customer's agents, employees, contractors, or End-users';</li> <li>(iii) the Customer's or End-user's equipment (including defects in such equipment) – this term is in the Standard MSA (though without the example); or</li> <li>(iv) a suspension or reduction of the Service allowed under this Agreement – this term is the same in the Standard MSA.</li> </ul> </li> </ul>
<b>Communicating with End-users</b>	15.2	13.2	<p>Clause 15.2 of the Telstra RSPMA and clause 13.2 of the Standard MSA each relate to Opticomm or a Supplier communicating with End-users. While those terms and conditions are the same, the Telstra RSPMA also provides, 'Customer supplied contact details of Customer's End-users is the Confidential Information of the Customer, and may be used by Opticomm or a Supplier to communicate with that End-user where necessary for Opticomm to exercise its rights or perform its obligations under this Agreement other than paragraphs (a) or (b) above'.</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
<b>Intellectual Property</b>	17.1, 17.2, 17.3, 17.4, 17.5	15.1, 15.2, 15.3, 15.4, 15.5	<p>Clause 17 of the Telstra RSPMA and clause 15 of the Standard MSA each relate to Intellectual Property. There are some differences between the terms and conditions.</p> <p><b>Ownership</b></p> <p>The Telstra RSPMA includes terms relating to Customer Materials owned by Telstra, providing, 'As between the parties and unless otherwise specified in this Agreement, the title to all Intellectual Property rights in the Customer Materials vests with the Customer'.</p> <p><b>Licence</b></p> <p>The Telstra RSPMA provides that the licence granted by Opticomm is 'a non-exclusive, non-transferrable, <i>royalty-free</i> licence for the Term to use, <i>reproduce, communicate, adapt and otherwise exploit (and to allow Customer's third party contractors and service providers to use, reproduce, communicate, adapt and otherwise exploit)</i> the Opticomm IP as <i>required to receive, use and otherwise enjoy the full benefit of the Services, including to:</i> (i) deliver the Customer's value-added services over the Network to End-users; and (ii) promote the Services in accordance with this Agreement. The italicised words are not in the Standard MSA.</p> <p>In the Telstra RSPMA, Telstra 'grants Opticomm a non-exclusive, non-transferable, royalty free, personal licence during the Term to use, reproduce, communicate, adapt and otherwise exploit (and to sub-license its subcontractors to use, reproduce, communicate, adapt and otherwise exploit) the Customer IP as required for the purpose of performing its obligations under this Agreement'. This licence is not in the Standard MSA.</p> <p><b>Developed IP</b></p> <p>Both the Telstra RSPMA and the Standard MSA provide that any Intellectual Property created in the course of this Agreement will be owned by the party who created it (<b>Developed IP</b>). The Telstra RSPMA clarifies that Developed IP owner by Telstra is Customer IP and Developed IP owned by Opticomm is Opticomm IP.</p>
<b>Confidential Information</b>	18.3, 18.6, 18.8, 18.9, 18.10	16.3, 16.7	<p>Clause 18 of the Telstra RSPMA and clause 16 of the Standard MSA each relate to Confidential Information. There are some differences between the terms and conditions.</p> <p><b>Disclosure of Information</b></p> <p>In respect of the disclosure of information, in the Telstra RSPMA the Confident agrees, 'from time to time as requested by the Discloser to promptly supply the Discloser with a list of any of the Confidant's Personnel to whom any Confidential Information of the Discloser has been disclosed, <i>based on such data as is available in the Confidant's systems</i>'. The italicised words are not in the Standard MSA.</p> <p><b>Disclosure of existence of Agreement</b></p> <p>The Telstra RSPMA provides, 'The obligations contained in this Agreement will not prevent either party, or a Related Body Corporate of a party, disclosing the fact that the parties have entered into an Agreement and that the Customer has become an RSP of Opticomm, provided that the disclosing party, or where applicable its Related Body Corporate, must provide the material constituting such disclosure to the other party and obtain that party's written approval to the content of such material.'. This clause is not in the Standard MSA.</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p><b>Return of Confidential Information</b></p> <p>The Telstra RSPMA provides that 'The Confidant will return to the Discloser, <i>or destroy or permanently de-identify</i>, the Confidential Information of the Discloser'. The italicised words are not in the Standard MSA.</p> <p><b>Data Security</b></p> <p>The Telstra RSPMA includes terms and conditions about data security, not contained in the Standard MSA.</p> <p>18.9 <b>Data Security</b></p> <p>(a) Each party must apply reasonable security standards in respect of any data or information (including Confidential Information) of the other party (having regard to the nature of the data or information and the party's obligations under applicable Law) that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with those data security standards.</p> <p>(b) Each party (the <b>first party</b>) must promptly notify the other party if the first party becomes aware that:</p> <p>(i) the first party's security standards, as referred to in clause 18.9(a), have been compromised; and</p> <p>(ii) the compromise of the first party's security standards results, in the reasonable opinion of the first party, in a risk that there has been, or will imminently be, unauthorised access by any person to:</p> <p>(A) Personal Information disclosed or transferred to the first party by the other party in connection with this Agreement; or</p> <p>(B) the information systems or interfaces of the other party that contain such Personal Information.</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p><b>Telecommunications Network Security</b></p> <p>The Telstra RSPMA includes terms and conditions about telecommunications network security, not contained in the Standard MSA.</p> <p>18.10 <b>Telecommunications Networks Security</b></p> <p>Notwithstanding any other provision of this Agreement, if a request or binding direction is issued to a party to this Agreement (<b>receiving party</b>) by any minister or government agency in relation to the Telecommunications Sector Security Regime pursuant to Part 14 of the Act or any other national security power (each, a <b>National Security Directive</b>), then:</p> <ul style="list-style-type: none"> <li>(a) subject to paragraph (b), the other party will use reasonable efforts to assist any reasonable request made in writing by the receiving party for the purpose of the receiving party complying with National Security Directive (<b>Assistance Request</b>); and</li> <li>(b) the other party may identify any actual additional costs it will incur in respect of the Assistance Request and will promptly notify the receiving party of such costs in writing. Following a notice from the other party under this clause, the parties will negotiate in good faith to agree such additional costs. Until such time as those additional costs are agreed, the other party will not be obliged to take any action under paragraph (a).</li> </ul>
<b>Liability and indemnity</b>	20.1, 20.2, 20.5, 20.7	18.1, 18.2, 18.5, 18.7	<p><b>Customer's indemnity</b></p> <p>The Telstra RSPMA provides that:</p> <ul style="list-style-type: none"> <li>(a) Telstra indemnifies Opticomm, and will keep Opticomm fully indemnified, from and against any Loss suffered or incurred by Opticomm in connection with an action or claim brought by a Third Party against Opticomm which relates to or arises out of: <ul style="list-style-type: none"> <li>(i) the Customer's use of the Services <i>to transmit</i> any illegal, misleading or offensive material; or</li> <li>(ii) the Customer's End-users use of the Services <i>in any way which contravenes Opticomm's Acceptable Use Policy</i>.</li> </ul> </li> <li>(b) If Opticomm uses a <i>Third Party</i> in providing the Services, the Customer will indemnify Opticomm for all Loss suffered by Opticomm as a result of a claim by the Customer or an End-user <i>against the Third Party</i> (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services.</li> <li>(c) The Customer indemnifies Opticomm, and will keep Opticomm fully indemnified, from and against any Loss suffered or incurred by Opticomm in connection with an action or claim brought by a Third Party against Opticomm which relates to or arises out of a claim made by any End-user (including a claim based in negligence) in any way related to</li> </ul>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>the Services or this Agreement <i>to the extent that such Claim could have lawfully been excluded or limited under the Customer's arrangements with End-Users.</i></p> <p>In contrast, the Standard MSA provides that the Customer indemnifies Opticomm, and will keep Opticomm fully indemnified, from and against any Loss suffered or incurred by Opticomm in connection with:</p> <ul style="list-style-type: none"> <li>(a) an action or claim brought by <i>the Customer or</i> a Third Party against Opticomm which relates to or arises out of the Customer's (or any of Customer's End-users') use of the Services (<i>including as a result of the transmission of any illegal, misleading or offensive material by the Customer or any of the Customer's End-users</i>);</li> <li>(b) if Opticomm uses <i>another supplier</i> in providing the Services, the Customer will indemnify Opticomm for all loss suffered by Opticomm as a result of a claim by the Customer, End-user <i>or a Third Party against the other supplier</i> (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services; or</li> <li>(c) a claim made by any End-user (including a claim based in negligence) in any way related to the Services or this Agreement.</li> </ul> <p><i>(Emphasis added to show differences.)</i></p> <p><b>Mutual indemnities</b></p> <p>In the Telstra RSPMA, each party indemnifies the other party for all Loss suffered or incurred by that other party arising from:</p> <ul style="list-style-type: none"> <li>(a) personal injury (including illness and disability) or death <i>caused or contributed to by the indemnifying party or its Personnel</i>; or</li> <li>(b) damage to that other party's physical property <i>caused or contributed to by the indemnifying party or its Personnel</i> (up to the value of the damage to the damaged property),</li> </ul> <p><i>except to the extent it is caused directly by the negligence or wrongful act or omission of the indemnified party in connection with this Agreement.</i></p> <p><i>(Emphasis added to show differences to the mutual indemnities in the Standard MSA.)</i></p> <p><b>Limitation of Liability</b></p> <p>The Telstra RSPMA provides that subject to clause 20.7 (<b>Exceptions</b>), and except to the extent that the Customer is entitled to any greater remedy for any breach by Opticomm of an applicable Consumer Guarantee, the aggregate liability of each party to the other party in each calendar year for all Loss (including, in Opticomm's case, any rebate payable under the Service Level Agreement) suffered or incurred under or in connection with this Agreement is limited to:</p> <ul style="list-style-type: none"> <li>(A) in respect of the period from the Commencement Date until the end of the first 12-month period (<b>Year 1</b>), the greater of: <ul style="list-style-type: none"> <li>(I) \$500,000; or</li> <li>(II) the amount of the Fees paid or payable to Opticomm by the Customer in Year 1; and</li> </ul> </li> </ul>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>(B) in respect of any period after Year 1, the amount of the Fees paid or payable to Opticomm by the Customer in the 12-month period prior to the date of the event giving rise to liability.</p> <p>In contrast, the limitation of liability in the Standard MSA is the amount of Fees paid or payable to Opticomm by the Customer 'in that calendar year'.</p> <p><b>Exceptions to Limitation of Liability</b></p> <p>In the Telstra RSPMA, the differences to the exceptions in the Standard MSA are:</p> <p>(a) to add as a further exception, 'for fraud or the party's breach of any Law'; and</p> <p>(b) to delete as an exception, 'for repudiation of its obligations under this Agreement'.</p>
<b>Termination of Agreement</b>	21.1, 21.2	19.1, 19.2	<p><b>Breaches not capable of remedy</b></p> <p>The Telstra RSPMA provides that:</p> <p>(a) if the other party breaches any material provision of this Agreement and, if capable of remedy, fails to remedy the breach within 30 days of receiving written notice requesting it to do so</p> <p>(b) if a party may terminate the agreement if the other party breaches any material provision of this Agreement that is not capable of remedy.</p> <p>The Standard MSA does not separately address breaches not capable of remedy. It provides if the other party breaches any material provision of this Agreement and fails to remedy the breach within 30 days of receiving written notice requesting it to do so.</p> <p><b>Force majeure</b></p> <p>The Telstra RSPMA provides that if a Force Majeure event significantly affects the other party's ability to perform its obligations (other than an obligation to pay money) under this Agreement for a continuous period of more than 60 Business Days, either party may terminate the Agreement. In the Standard MSA, the time period is 6 months.</p>
<b>Notices</b>	22.2	20.2, 20.3(iv)	<p>The Telstra RSPMA provides that the address for notices is to a specified Opticomm Representative, rather than a generic 'RSP Manager'.</p> <p>Notices may be given by hand, pre-paid post or email. In contrast to the Standard MSA, notices may not be given by facsimile.</p>
<b>Insurance</b>	23	N/A	<p>The Telstra RSPMA includes an insurance clause, which provides that Opticomm must take out, keep current and produce to Telstra on request, evidence of valid and enforceable insurance policies for the Term of the Agreement for:</p> <p>(a) Public liability insurance (on an occurrence basis) of \$20 million per claim; and</p> <p>(b) Workers compensation insurance in accordance with the statutory requirements of the relevant jurisdiction in which the obligations are carried out.</p>
<b>Subcontracting</b>	24	N/A	<p>The Telstra RSPMA includes a subcontracting clause, which provides that Opticomm may use subcontractors or other agents to meet any of its obligations under the Agreement. Where this occurs, Opticomm remains liable in respect of the performance of those obligations.</p>



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<b>Governing Law</b>	26.1	22.1	The Telstra RSPMA specifies that, in respect of the parties submitting to the non-exclusive jurisdiction of the courts of the Federal Court of Australia, it is the Court 'sitting in Victoria'.
<b>Assignment and Waiver</b>	26.4	22.4	The Telstra RSPMA provides that either party may assign, novate or otherwise transfer the Agreement or any right or obligation under the Agreement to a Related Body Corporate. Where a party assigns, novates or transfers the Agreement, the other parties must immediately execute any documents necessary to give effect to the transaction.
<b>Costs, expenses, duties</b>	26.7	22.7	The Telstra RSPMA provides that any duty which may be payable on or in connection with this Agreement and any instrument executed under or in connection with or any transaction evidenced by the Agreement is payable by Opticomm.
<b>Definitions</b>	27.1	23.1	<p>The Telstra RSPMA has the following additional or different definitions:</p> <ul style="list-style-type: none"> <li>• <b>Acceptable Use Policy:</b> defined differently to be the Opticomm published document of that name, as published on the Opticomm website. A copy of the applicable version of the policy at the Commencement Date is annexed. The Standard MSA annexes an Acceptable Use Policy.</li> <li>• <b>Affected Service:</b> used in clause 4.8 (Services).</li> <li>• <b>Agreed Network:</b> used in definition of SIP and in clause 5A.1 (SIP and Universal Service Obligations).</li> <li>• <b>Australian Consumer Law:</b> Used in definition of Consumer Guarantees.</li> <li>• <b>Commencement Date:</b> used in definition of Term and in clause 3.1 (Agreement Term) and 20.5 (Limitation of Liability).</li> <li>• <b>Confidential Information:</b> editorial amendment to definition used in Standard MSA.</li> <li>• <b>Consequential Loss:</b> different definition to Standard MSA, including excluding penalties or fines imposed by a Regulator.</li> <li>• <b>Cost Increase Notice, Intervening Event:</b> used in clause 4.8 (Change to this Agreement).</li> <li>• <b>Critical Fault:</b> removed from the RSPMA and to be dealt with under the Service Level Agreement.</li> <li>• <b>Customer IP, Customer Materials, Developed IP, Opticomm IP:</b> used in clause 17 (Intellectual Property).</li> <li>• <b>Customer Representative, Opticomm Representative:</b> used in clause 22 (Notices).</li> <li>• <b>Customer System:</b> used in clause 11.3 (Access and Security)</li> <li>• <b>Default Notice:</b> defined differently to remove reference to a defined 'Notice'. Definitions of 'Notice' and 'Approval' (used within the definition of Notice in the Standard MSA), removed as a consequence.</li> <li>• <b>Downstream Product Equivalence Objective NBN Co, NBN Co Price Reduction, NBN Co Services, NBN Update, NBN Wholesale Broadband Agreement, Retail Service:</b> each used in clause 5 (NBN Co Equivalence).</li> <li>• <b>Force Majeure:</b> defined differently, to:             <ol style="list-style-type: none"> <li>(a) include an epidemic or pandemic; and</li> <li>(b) in respect of any suspension or failure by a Third Party to supply goods or services, provides that such suspension or failure was not caused by an act or omission of Opticomm.</li> </ol> </li> <li>• <b>Initial Pricing Construct:</b> used in clause 5 (NBN Co Equivalence) and means the relevant Wholesale Price List and pricing construct applicable to all RSPs effective 1 January 2021, available on Opticomm's website.</li> </ul>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<ul style="list-style-type: none"> <li>• <b>Insolvency Event:</b> defined differently, to exclude a solvent internal restructure or any form of members' scheme of arrangement.</li> <li>• <b>Intervening Event:</b> defined differently to include the definition of Regulatory Event.</li> <li>• <b>Major Fault:</b> removed from the RSPMA and to be dealt with under the Service Level Agreement.</li> <li>• <b>National Security Directive:</b> used in clause 18.10 (Telecommunications Networks Security).</li> <li>• <b>Operations Manual:</b> used in clause 6 (Operations) and means the Operations Manual published on Opticomm's website.</li> <li>• <b>Personal Information</b> used in clause 18.9 (Data Security).</li> <li>• <b>Regulator:</b> used differently to include any court or tribunal of competent jurisdiction.</li> <li>• <b>Regulatory Event:</b> used in definition of Intervening Event and in clause 4.8 (Changes to Agreement).</li> <li>• <b>Related Body Corporate:</b> used in clause 81.6 (Disclosure of Existing Agreement) and in clause 26.4 (Assignment and Waiver).</li> <li>• <b>RSP:</b> used variously including in clause 5 (NBN Equivalence).</li> <li>• <b>Service</b> defined differently to refer to a carriage service or content service and to refer to Services described in a Service Schedule and to new Services launched by Opticomm via its Customer Portal.</li> <li>• <b>Service Cancellation Fee:</b> used in clause 4.8 (Changes to Agreement), clause 4.10 (Customer's right to cancel a Service), clause 4.12 (Consequences of cancellation) and clause 9.3 (Cancellation Fees).</li> <li>• <b>Service Date:</b> defined differently to remove the deeming of the date.</li> <li>• <b>Service Level Agreement:</b> defined differently to refer to the relevant Opticomm published agreement nominated for a particular Service, rather than the agreement set out in Annexure A of the Standard MSA.</li> <li>• <b>Service Schedule:</b> defined to be the product and technical description of, and schedule of terms applicable to a particular type of Service, as published on Opticomm's website, rather than a schedule of terms set out in the Customer Portal.</li> <li>• <b>Service Term:</b> defined differently to remove the deeming of a 12 month Service Term where the period is not specified in the Service Order.</li> <li>• <b>SIP, Universal Service Obligation:</b> used in clause 5.1A (SIP and Universal Service Obligations)</li> <li>• <b>Tax Deduction:</b> used in clause 10.9 (Withholding tax)</li> <li>• <b>Taxes:</b> used in definition of Tax Deduction and in clause 10 (Taxes).</li> <li>• <b>Wholesale Price List:</b> defined to be the Opticomm Fees and charges published on its website, rather than set out in the Customer Portal.</li> </ul>
<b>Annexures</b>			
<b>Acceptable Use Policy</b>	Annexure A	Annexure B	<p>The Acceptable Use Policy (AUP) in Annexure B of each of the Telstra RSPMA and the Standard MSA are generally the same.</p> <p>The AUP in the Telstra RSPMA differs:</p> <p>(a) by including, as clause 1.3, If Opticomm exercises a right under clause 1.2, it will give the Customer as much notice as is reasonable in the circumstances. In some circumstances it may not be practicable to give notice in advance of</p>

Subject	Telstra RSPMA Clause no.	Standard MSA Clause no.	Differences between the Telstra RSPMA and the Standard MSA
			<p>Opticomm's exercise of such right, in which case Opticomm will notify the Customer as soon as practicable after exercising such right;</p> <p>(b) by not including the prohibited use in clause 2.1(b) of the AUP in the Standard MSA, which reads: 'for any purpose if Opticomm has previously advised the Customer that such purpose is prohibited'; and</p> <p>(c) by amending the prohibited use in clause 2.1(c) of the AUP in the Standard MSA, which reads: 'in any way which damages or interferes (or threatens to damage or interfere) with the operation of a Service or with the efficiency of Opticomm's Network <i>or a Supplier's Network</i> (including as a result of attempts by the Customer to increase the capacity or performance of the Customer's system or Equipment)', by not including the words in italics; and</p> <p>(d) by amending the obligation in clause 4 of the AUP in the Standard MSA, which reads: 'The Customer <i>and End-users</i> must use reasonable endeavours to secure any device or network within the Customer's <i>or End-user's</i> control against being used in breach of this Acceptable Use Policy <i>by third parties</i>', by not including the words in italics and amending the obligation relating to residential End-users..</p>
<b>Operations Governance Framework</b>	Annexure B	N/A	<p>The Telstra RSPMA includes an Operational Governance Framework, not contained in the Standard MSA.</p> <p>Clause 5 of the Telstra RSPMA provides for an operational governance forum comprising of the parties' respective representatives that will manage the operational procedures for the Services to be supplied by Opticomm to Telstra under the Agreement. The Operations Governance Framework in Annexure C is a framework for the governance forum.</p>
<b>Service Level Agreement</b>	N/A	Annexure A	<p>Telstra RSPMA does not include an embedded Service Level Agreement. Rather, the definition of 'Service Level Agreement' incorporates the relevant Opticomm published agreement nominated for a particular Service. With the NBN Co Equivalence requirements, Opticomm will work through publishing a new Service Level Agreement that reflects the nbn service levels and rebates applicable to residential ethernet services.</p>