



Opticomm Ltd
ACN 117 414 776

RSP Master Agreement

with

[RSP entity]
ACN XXX XXX XXX



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This agreement is made on the [date] of [month] [year]

between **Opticomm Ltd** ACN 117 414 776 of Level 1, 22 Salmon St, Port Melbourne, Port Melbourne VIC 3207 (**Opticomm**)

and **[RSP entity]** ACN XXX XXX XXX of [address] (**Customer**)

Purpose of Agreement

- A Opticomm is a Carrier and is the owner of the Network or has the right to use or provide Services on the Network for the purposes of this agreement.
- B The Customer is a carriage service provider and wishes to acquire Services from Opticomm, delivered over the Network, in order for the Customer to provide carriage services to End-users.

Now it is agreed as follows:

1. Preliminary

1.1 Service Requests and Service Orders

- (a) The Customer will submit Service Requests specifying the matters set out in clause 4.1.
- (b) When accepted by Opticomm under clause 4.2, a Service Request becomes a Service Order.
- (c) Service Requests will be submitted by the Customer and accepted by Opticomm using the methods and processes specified by Opticomm from time to time.

1.2 Agreement

Each Service Order forms a contract between Opticomm and the Customer for the provision of the Services consisting of:

- (a) the Master Services Agreement Signature Form (where applicable);
- (b) this RSP Master Agreement;
- (c) the terms set out in the Service Level Agreement;
- (d) the terms set out in the Wholesale Price List;
- (e) the terms set out in the Initial Pricing Construct (where applicable);
- (f) the terms set out in the Acceptable Use Policy;
- (g) the terms set out in Annexure B – Operations Governance Framework;
- (h) the terms set out in the Service Schedules; and
- (i) the terms set out in the Service Order.

Together, the documents set out in clauses 1.2(a) to (i) constitute the Agreement.

1.3 Precedence of Documents

Unless expressly stated otherwise, if any of the documents set out in clause 1.2 is inconsistent with the others, then, to the extent only of such conflict or inconsistency, the documents will prevail in the order set out in clause 1.2.

2. Cooperation of Parties

2.1 Resource Cooperation

Each party will:

- (a) provide sufficient Personnel as are necessary to perform its obligations under this Agreement and ensure that its Personnel have the requisite skills and experience;
- (b) provide the other party with information and assistance reasonably necessary to enable that party to comply with this Agreement; and
- (c) promptly do all things (including executing all documents) reasonably necessary to give full effect to this Agreement.

2.2 Joint Marketing

The parties will consult about undertaking joint marketing of the Customer's Services and the Network.

3. Term

3.1 Agreement Term

This Agreement commences on the Commencement Date and continues until terminated under clause 21.

3.2 Service Term

- (a) Opticomm will provide each Service to the Customer on and from the relevant Service Date and will continue to provide that Service for the Service Term unless it is otherwise cancelled or terminated in accordance with this Agreement.
- (b) If Opticomm decides not to continue providing a Service when the Service Term expires, Opticomm will notify the Customer in writing no less than 30 days before the Service Term expires.
- (c) When the Service Term (if any) of a Service expires, unless Opticomm has given notice in accordance with clause 3.2(b), Opticomm will continue to provide that Service after the expiry of that Service Term (at the then current Fees for that Service) until:
 - (i) the Customer cancels the Service by giving Opticomm written notice for at least the notice period specified in the Service Schedule for that Service (such notice to be given in accordance with clause 4.10(a)), with cancellation taking effect on the date that Opticomm processes the cancellation request or on expiry of the applicable notice period (whichever occurs first); or
 - (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; or
 - (iii) either party otherwise cancels the Service in accordance with this Agreement.

4. Services

4.1 Provision of Services

If the Customer wishes Opticomm to provide a Service under this Agreement, it will submit to Opticomm a Service Request setting out:

- (a) the type of Service requested;
- (b) the address of the proposed Service and its point of interconnect;
- (c) the contact details of the property owner(s) and/or occupier(s) for the purpose of arranging access;
- (d) the date by which the proposed Service is required;
- (e) the Customer's reference number;
- (f) any Supplemental Work that may be required; and
- (g) any other relevant information.

4.2 Acceptance of Orders

A Service Request will become a Service Order on the date that Opticomm notifies the Customer that Opticomm accepts the Service Request. If Opticomm requires, acting reasonably, changes to a Service Request in order for it to be acceptable, Opticomm may require the Customer to submit a new Service Request.

4.3 Supplemental Work

- (a) The Customer agrees that Opticomm or a Supplier may be required from time to time to contact End-users to arrange installation of Equipment to provide the Services. During this installation Opticomm, a Supplier, or their nominated agents may be required to perform certain works (being works which are additional to the standard installation works performed by Opticomm to enable a premises within the Network) (**Supplemental Work**) such as:
 - (i) trenching, ducting or cabling between the boundary of an End-user's property and the Service Delivery Point;
 - (ii) any other work that may be required to be undertaken by Opticomm to connect Opticomm's Equipment to a point at any location beyond the Service Delivery Point;
 - (iii) any work required at the End-user's Premises to enable connection of the Service; or
 - (iv) other work which is the responsibility of, or has been caused by any action of, the End-user.
- (b) 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. Customer will pay any such approved charges in accordance with clause 9.4.
- (c) Nothing in this Agreement obligates Opticomm to perform any Supplemental Work until Opticomm's charges for performing that Supplemental Work have been approved by the Customer.

4.4 Performance

- (a) Opticomm will deliver each Service in accordance with the terms of this Agreement.
- (b) 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 in accordance with clause 4.2.

4.5 No exclusivity

Opticomm acknowledges and agrees that it is not an exclusive provider of the internet services to Customer.

4.6 Compliance

- (a) Opticomm must:
 - (i) comply with all applicable Laws in respect of the Services and the performance of its obligations under this Agreement; and
 - (ii) maintain all authorisations and licences required to provide the Services.
- (b) Customer must:
 - (i) comply with all applicable Laws in respect of the performance of its obligations under this Agreement; and
 - (ii) maintain all authorisations and licences required (as either a Carrier, Carriage Service Provider or Content Service Provider) to receive the Services.

4.7 Permitted uses of the Service

- (a) In using the Service, the Customer must:
 - (i) ensure that any use by the Customer (and its Personnel) of the Service is lawful and is in accordance with this Agreement; and
 - (ii) comply with, and make all reasonable endeavours to ensure that End-users comply with, any reasonable directions by Opticomm.
- (b) The Customer must not use, and must use all reasonable endeavours to ensure that its End-users do not use, the Service:
 - (i) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by Opticomm, its Suppliers, or another carrier;
 - (ii) in any way which may damage any property or injure or kill any person;
 - (iii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (iv) in any other way which contravenes Opticomm's Acceptable Use Policy.
- (c) Opticomm may (acting reasonably) ask the Customer to stop, or request the Customer to ask the relevant End-user to stop, doing something that Opticomm reasonably believes is contrary to this clause 4.7. If the Customer does not comply with such a request within a reasonable timeframe notified by Opticomm (having regard to the nature of the non-compliance) or the infringement continues, Opticomm may take any steps reasonably necessary to ensure compliance with this clause or the request.

4.8 Changes to this Agreement

- (a) Unless expressly stated otherwise in this Agreement, this Agreement can only be varied by a written agreement between the parties.
- (b) Other than in respect of any change(s) pursuant to clauses 4.8(d)(i), 4.8(e), 4.8(f) and 9.1(b)(i)(A), if Opticomm exercises a unilateral right to change this Agreement and the change(s) have a material detrimental impact on the Customer, then the Customer may immediately terminate:
 - (i) this Agreement; or
 - (ii) if the change(s) to the Agreement change the terms of a Service, that Service, by notice within the 30 days immediately following implementation of the change without incurring additional termination charges, and Opticomm will refund to the Customer any money paid in advance for the Service that is being cancelled on a pro-rata basis.
- (c) For the purposes of clause 4.8(b) only, a change that is materially detrimental to all or a significant number of the Customer's End-users is deemed to have a material detrimental impact on the Customer.
- (d) Subject to the terms of clause 5 (where applicable), Opticomm may:
 - (i) remove a Service from its product catalogue so that the Customer can no longer order that Service (ie a "cease sale") by giving the Customer at least 6 months' written notice;
 - (ii) change the terms of a Service Schedule (including any description of the Service contained therein) by giving the Customer:
 - (A) 6 months' written notice if that change has a material detrimental impact on the Customer; or
 - (B) 1 month's written notice for all other changes;
 - (iii) after consulting with the Customer, change its:
 - (A) systems and standard processes; or
 - (B) Acceptable Use Policy,
 by giving the Customer at least 30 Business Days' notice of that change.
- (e) Opticomm may:
 - (i) change this 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 the Customer; or
 - (ii) change the Service Level Agreement (including, in each case, by withdrawing it or any aspect of it) if that change is:
 - (A) necessary to comply with any applicable Law; or
 - (B) reasonably necessary to comply with, or is otherwise required by, a Regulatory Event.
- (f) If there is an Intervening Event, then Opticomm will inform the Customer 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 (where applicable), if the actual direct costs to Opticomm of providing any Service to the Customer increase as a result of the Intervening Event (**Affected Service(s)**), then Opticomm may pass on the additional cost to the Customer 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, the Customer 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 the Customer 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.

4.9 **Variation of Services**

If the Customer wishes Opticomm to vary an existing Service under this Agreement, it will submit to Opticomm a Service Request setting out:

- (a) the Service to be varied;
- (b) the address of the existing Service;
- (c) the existing Service identification number;
- (d) the date by which the variation is to take effect; and
- (e) any other relevant information.

4.10 **Customer's rights to cancel a Service**

- (a) If the Customer wishes Opticomm to cancel an existing Service under this Agreement, it will submit to Opticomm a Service Request setting out:
 - (i) the address of the Service being cancelled;
 - (ii) the Service identification number;
 - (iii) the date by which the cancellation is to take effect; and
 - (iv) any other relevant information.
- (b) Subject to clauses 4.10(c) and 4.12(g), if the Customer cancels a Service during the Service Term, it must pay any applicable Service Cancellation Fees in accordance with clause 9.3.
- (c) The Customer may cancel a Service immediately, and without incurring any additional charges, if:
 - (i) Opticomm commits a material breach of this 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;
 - (ii) an Insolvency Event occurs in relation to Opticomm;
 - (iii) the Service has been suspended for 14 days, where there is no fault on the Customer's or an End-user's part; or
 - (iv) the Customer is entitled to exercise a right of termination pursuant to clause 21.2.

4.11 Opticomm's rights to cancel a Service

- (a) Opticomm can cancel a Service immediately by notice to Customer if:
- (i) Opticomm reasonably suspects fraud by the Customer, an End-user or anyone using the Service;
 - (ii) Opticomm is required to cancel the Service to comply with a direction from a law enforcement agency or a Regulator. Where permitted to do so, Opticomm will notify the Customer as soon as reasonably practicable upon becoming aware of any such direction;
 - (iii) the Customer fails to remedy a default referred to in clause 9.8(a)(i) within 7 days of receiving the Default Notice;
 - (iv) the Customer has failed to provide the security deposit requested;
 - (v) the Customer fails to comply with a statutory demand issued by Opticomm under the *Corporations Act 2001* (Cth);
 - (vi) an Insolvency Event occurs in relation to the Customer;
 - (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;
 - (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);
 - (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; or
 - (x) Opticomm is unable to supply the Service because of a Force Majeure event for a continuous period of more than 40 Business Days.

4.12 Consequences of cancellation

Where a Service is cancelled:

- (a) the Customer will not be able to use the Service after the cancellation date;
- (b) the Customer agrees to pay for any charges incurred on the Service until the cancellation date;
- (c) any credits on the Customer's account will be applied against any outstanding charges at the cancellation date;
- (d) unless the Customer has other Services or acting reasonably Opticomm considers that the Customer owes or will owe Opticomm money, Opticomm will refund to the Customer any unused portion of any security deposits that it holds;
- (e) Opticomm will refund to the Customer any money paid in advance for that part of the Service that is being cancelled on a pro-rata basis;
- (f) the Customer will return any Opticomm Equipment that it holds (that is no longer required for that Service) to Opticomm within 30 days;
- (g) the Customer may have to pay any applicable Service Cancellation Fee in accordance with clause 9.3, except that the parties acknowledge and agree that no Service Cancellation Fees apply to Services cancelled after expiry of the Service Term; and

- (h) if Opticomm cancels the Service before the end of the Service Term pursuant to clause 4.11(a), the Customer will have to pay any applicable Service Cancellation Fee.

5. NBN Co Equivalence

5.1 Downstream Product Equivalence Objective

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 (**Downstream Product Equivalence Objective**), the parties agree:

- (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:
- (i) the wholesale supply and provisioning methodology adopted by NBN Co for the supply of the NBN Co Services;
 - (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
 - (iii) NBN Co's service standards, service levels and associated service level rebates for the NBN Co Services;
- (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
- (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 **NBN Update**), Opticomm will:
- (i) as soon as reasonably practicable upon becoming aware of the NBN Update, consult with the Customer and other RSPs about the NBN Update;
 - (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
 - (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).

5.2 Opticomm's Equivalent Services

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:

- (a) ELB with usage up to 0.15Mbps (inclusive)

- (b) B25 (25/5)
- (c) B50 (50/20)
- (d) Home Fast (100/20)
- (e) B100/40
- (f) Home Superfast (250/25)
- (g) B250/100
- (h) B500/200
- (i) Home Ultrafast (up to ~1000/50)
- (j) B1000/400,

(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.

5.3 Pricing changes

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% (**NBN Co Price Reduction**), 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.

5.4 Network and service differences

- (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.
- (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).

5.5 IT Interface Requirements

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.

5.6 Application of this clause 5

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.

5A Customer obligations

5A.1 SIP and USO Obligations

- (a) If Customer is the SIP in the Agreed Network, Opticomm must provide Customer with such services and reasonable assistance as required by Customer to ensure that Customer can comply with its SIP obligations, including enabling Customer to resell the Services to ensure that Customer can fulfil its SIP obligations to:
- (i) connect premises in accordance with section 360P of Part 19 of the *Telecommunications Act 1997* (Cth); and
 - (ii) supply eligible services in accordance with section 360Q of Part 19 of the *Telecommunications Act 1997* (Cth),
- until such time as Customer ceases to be the SIP in the Agreed Network.
- (b) If the Customer is subject to the Universal Service Obligation, Opticomm must provide Customer with such reasonable assistance as required by Customer to ensure that Customer can comply with its Universal Service Obligation.

6. Operations

6.1 Operations

- (a) The parties will comply with the Operations Manual for the Services.
- (b) The Operations Manual:
- (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;
 - (ii) must be consistent with the IT interface requirements in clause 5.5; and
 - (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 (including 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.
- (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 the Customer under this Agreement. A framework for the governance forum is set out in Annexure B. The Customer may request Opticomm participate in a governance forum review from time to time, and Opticomm will not unreasonably refuse any such request.

7. Maintenance and Faults

7.1 Maintenance

- (a) The parties acknowledge and agree that Opticomm will conduct maintenance on the Network in accordance with the Service Level Agreement, and this may result in Service outages during the period of maintenance works.

- (b) Opticomm will give the Customer notification before all planned maintenance which Opticomm anticipates will interfere with the Customer'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:
 - (i) 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
 - (ii) Opticomm must notify the Customer 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.
- (c) At the Customer's request, Opticomm will consult with the Customer on any concerns raised by the Customer regarding any planned maintenance notified to the Customer pursuant to clause 7.1(b). If the planned maintenance will have a materially adverse effect on the Customer, Opticomm will have reasonable regard to those concerns raised.
- (d) For the avoidance of doubt, any maintenance downtime on the Network affecting Services is not a 'suspension of Services'.

7.2 Faults

The parties acknowledge and agree that:

- (a) Opticomm does not warrant that the Services will be free of blockages, interruptions, delays or Faults, but will remedy any Fault or problem in accordance with the Service Level Agreement;
- (b) if the Customer becomes aware or reasonably suspects the existence of a Fault or any event or circumstance that is causing or likely to cause an interruption or degradation to a Service or otherwise detects a degradation in a Service that could lead to a Fault occurring, it will notify Opticomm as soon as reasonably possible using the process specified in the Service Level Agreement; and
- (c) unless caused by Opticomm's negligence or fair wear and tear, the Customer is responsible for the reasonable cost of repairing damage to Opticomm facilities that are installed on End-user premises.

7.3 Monitoring and data retention

- (a) Opticomm may monitor the Network for the purposes of:
 - (i) maintaining the Network at an optimum performance;
 - (ii) diagnosing problems associated with the Network,
 and may intercept and retain data transmitted on the Network or relevant to communications for the purpose of complying with its obligations under Law, or the requests of Regulators or government agencies.
- (b) 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).

8. Suspending a Service

8.1 Opticomm's rights to suspend a Service

- (a) Subject to clause 8.1(b), Opticomm may, without liability, suspend a Service if:

- (i) there is an Emergency;
 - (ii) 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;
 - (iii) doing so is necessary to avoid:
 - (A) endangering the health or safety of any person; or
 - (B) damage or interference with the Network;
 - (iv) Opticomm would be entitled to cancel the Service under clause 4.11(a);
 - (v) an Insolvency Event occurs in relation to the Customer;
 - (vi) 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. Opticomm will notify the Customer as soon as reasonably practicable upon becoming aware of any such order, instruction or request;
 - (vii) Opticomm is issued with a competition notice under Part XIB of the *Competition and Consumer Act 2010* (Cth) in respect of the Service, or the Service is declared under Part XIC of the *Competition and Consumer Act 2010* (Cth);
 - (viii) a Supplier of services to Opticomm which are necessary for the provision of the Services ceases or suspends provision of those services to Opticomm; or
 - (ix) Opticomm is temporarily unable to supply the Service to the Customer because of a Force Majeure Event.
- (b) If Opticomm exercises its rights under clause 8.1(a), it will provide the Customer 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.
 - (c) Opticomm will recommence providing the Service as soon as reasonably possible after the reason for the suspension has ceased.

8.2 What happens when a Service is suspended?

When the Service is suspended:

- (a) the Customer and End-users will not be able to use the Service;
- (b) the Customer will not be liable to Opticomm for any charges in respect of the suspended Service during the period of suspension; except in the event that the suspension was as a result of:
 - (i) the Customer's breach of this Agreement; or
 - (ii) Opticomm suspending the Service under clause 8.1(a)(ii); and
- (c) Opticomm will not be liable to pay any rebates under the Service Level Agreement for the period of the suspension.

9. Fees and Payment

9.1 Wholesale Price List

- (a) Opticomm's Fees for the Services are set out in the Wholesale Price List which is available on the Customer Portal.
- (b) Opticomm will:
 - (i) in respect of any:
 - (A) 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; and
 - (B) 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
 - (ii) not apply any price variations during the Service Term of a Service other than as set out in this clause 9.1(b) or clause 4.8.
- (c) The Customer must pay Opticomm all applicable Fees for the Services as set out in the Wholesale Price List. The Customer must pay the Fees monthly in advance, except for those Fees identified as being payable in arrears in the Wholesale Price List.

9.2 Support Fees

- (a) Fees for support services (which are additional to the Fee for a Service) may be levied on the Customer 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;
 - (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 contact an End-user directly to resolve a problem (and the Customer has agreed to the Fee quoted by Opticomm for undertaking this activity).
- (b) Fees for these support services are set out in the Wholesale Price List.

9.3 Cancellation Fees

- (a) Subject to subclauses 9.3(c) and 9.3(d), if the Customer cancels a Service Order before the Service Date but after Opticomm has performed work in relation to the Service, the Customer must, within 30 days of receipt of an invoice, pay Opticomm for the work performed and reimburse Opticomm for any verifiable third party costs incurred by Opticomm in performing that work.

- (b) Subject to subclauses 9.3(c) and 9.3(d), if the Customer terminates a Service during the Service Term, the Customer must pay Opticomm the applicable Service Cancellation Fee within 30 days of receipt of an invoice.
- (c) 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 or for other cause in accordance with clause 4.10(c).
- (d) The Customer may cancel a Service to migrate to another Service, in which case no Service Cancellation Fee will be payable but the Customer will, within 30 days of receipt of an invoice, reimburse Opticomm for any verifiable third party costs incurred by Opticomm in relation to the Service.

9.4 Supplemental Work

- (a) Unless otherwise specified in the applicable Service Order, the Fees set out in the Wholesale Price List do not cover Supplemental Work.
- (b) 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.

9.5 Invoices

- (a) Unless otherwise agreed, Opticomm will issue a monthly invoice to the Customer for payment of the sum of:
 - (i) the GST exclusive amount of the Fees for each Service relevant to that month;
 - (ii) the GST exclusive amount of any substantiated underpayment for a Service or overpayment of the Fees paid to Opticomm up until that time;
 - (iii) the GST exclusive amount of any other payment to be made by the Customer to Opticomm (such as any interest payable) or by Opticomm to the Customer in accordance with the Agreement;
 - (iv) subject to clause 10, the amount of GST payable on the sum of clauses 9.5(a)(i), 9.5(a)(ii) and 9.5(a)(iii) above and 9.5(b)(i) and 9.5(b)(ii) below; and
 - (v) the amount of any agreed damages payable by a party to the other party.
- (b) The parties acknowledge and agree that in respect of clause 9.5(a)(i) above:
 - (i) if the invoice is the first invoice for Fees and Opticomm has provided Services in the previous month then in addition to the amount described in clause 9.5(a)(i) above, the invoice will include a GST exclusive amount for the Services provided in that previous month (which amount will represent a prorated adjustment of the GST exclusive amount of the Fees based on the number of days in that month for which the Services are or will be provided); and
 - (ii) if the invoice is the last invoice for Fees, the amount of the Fee relevant to the month will represent a prorated adjustment of the GST exclusive amount of the Fees based on the number of days in the month for which the Services will be provided.
- (c) 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.

9.6 **Payments**

Subject to clause 9.7, the Customer will pay the amount(s) invoiced by Opticomm in accordance with clause 9.5, no later than 30 days from the invoice date. The Customer will pay any amount due under this Agreement electronically to a bank account nominated by Opticomm, unless otherwise agreed between the parties.

9.7 **Disputed Amounts**

To dispute an invoice in good faith, the Customer must notify Opticomm in writing. This notice must include detailed reasons for the dispute and must be issued within 6 months of the invoice date. If the Customer has notified Opticomm of the dispute by the due date for payment, the Customer may withhold only the disputed amounts of the invoice. If the Customer fails to notify Opticomm by the due date the Customer must pay all sums due in full including the disputed amount. Opticomm will use reasonable endeavours to resolve any such dispute quickly and efficiently. Where a dispute is determined to be unfounded, the Customer must pay Opticomm the amount withheld within 7 days of such determination; or where a dispute is determined to be founded and the Customer has already paid the disputed amount, Opticomm will refund the relevant amount within 7 days of such determination.

9.8 **Payment Default**

- (a) If the Customer:
 - (i) 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 in accordance with clause 9.7; or
 - (ii) withholds an amount from payment in accordance with clause 9.7, which is subsequently agreed or determined to be payable,

Opticomm will notify the Customer via a Default Notice.

- (b) If the Customer:
 - (i) fails to remedy a default referred to in clause 9.8(a)(i) within 7 days of receiving the Default Notice; or
 - (ii) fails to pay an amount determined to be payable as referred to in clause 9.8(a)(ii) within 30 days of receiving the Default Notice,

Opticomm will be entitled, in its sole discretion, to:

- (iii) reduce the speed of Service(s);
- (iv) take any additional actions as provided under this Agreement, including but not limited to the suspension or termination of Service(s); and/or
- (v) charge the Customer, and the Customer 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.

10. GST and Other Taxes

10.1 Definitions

Except for defined terms in this Agreement, capitalised expressions set out in this clause 10 have the meaning given to those expressions in the GST Act.

10.2 Payment of GST

If a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its Value, then the party liable to pay for the Taxable Supply will also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. A party's right to payment under this clause is subject to a valid Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

10.3 Warranty

Each party warrants to the other party that:

- (a) it is registered under the GST Act; and
- (b) it will set out on each Tax Invoice issued by it the total amount of GST payable by it on making the Taxable Supply.

10.4 Adjustment Note

A party will issue an Adjustment Note for or in respect of any Adjustment Event to the other party 5 Business Days prior to the due date for payment (if any) or otherwise, within 10 Business Days of when the party became aware or should have become aware of the Adjustment Event, if there is no payment to be made by the other party.

10.5 Indemnity and reimbursement payments

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.

10.6 Identification of GST

Each party will identify the amount of GST relevant to all pricing and payments.

10.7 Duties

The cost of any stamp duty or transaction duty in relation to this Agreement will be payable by Opticomm.

10.8 Taxes

Except as expressly set out in clause 10, 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.

10.9 Withholding tax

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.

11. Access and Security

11.1 Access to Residential End-user Premises

- (a) If Opticomm or a Supplier must perform work in an End-user's Premises in order to provide or maintain the Services, Opticomm must, and must ensure that the relevant Supplier will:
 - (i) obtain any necessary approvals and permits (including occupant, homeowner or landlord consent as applicable) prior to accessing the Premises; and
 - (ii) make and keep to an appointed time with the homeowner or builder in accordance with the CSG (if applicable).
- (b) The Customer will provide all reasonable assistance to Opticomm to enable Opticomm or the relevant Supplier to meet its obligations in clause 11.1(a).

11.2 Access to Business End-user Premises

- (a) If Opticomm or a Supplier must perform work in a Business End-user's Premises in order to provide the Services, the Customer must procure for Opticomm or the Supplier the following commitment from the Business End-user for access to those Premises:
 - (i) the contact details of the relevant site representative;
 - (ii) ensure that access and work is not impeded; and
 - (iii) ensure that Opticomm's or the Supplier's Equipment is protected.
- (b) Prior to accessing the Business End-user's Premises, Opticomm must, and must ensure that the relevant Supplier will:
 - (i) obtain any necessary approvals and permits (including occupant or landlord consent as applicable); and
 - (ii) give all necessary notices.

11.3 Access to Customer's Facilities

- (a) Opticomm must only access Customer's Equipment, premises or any other facilities for the purposes approved in writing in advance by Customer. In entering, using or accessing any of Customer's Equipment, facilities, premises or Personnel (as applicable), Opticomm must comply with:
 - (i) all of the Customer's reasonable security, administrative and other requirements and directions, including any training or other requirements relating to occupational health and safety;
 - (ii) industry practice in relation to security of premises, facilities and systems.
- (b) Opticomm may only access a Customer System with the prior written approval of the Customer and subject to such terms as agreed with the Customer.

11.4 Access to the Network

Except where specifically stated in this Agreement, the Customer or its End-user has no right to and will not access or interfere with the Network.

11.5 Rights

The rights conferred by Opticomm under this Agreement rest in contract only and nothing in this Agreement creates a tenancy between Opticomm or a Supplier and the Customer or the Customer's End-user, nor does it confer upon the Customer or its End-user any right or interest in:

- (a) the facilities used by Opticomm or a Supplier in providing the Services by way of occupation rights, easements, rights of way or otherwise; or
- (b) Opticomm's, a Supplier's, or any Third Party's Equipment.

12. Credit approval

12.1 Requirement for credit approval

- (a) Opticomm may require credit approval of the Customer:
 - (i) if the Customer is a new customer;
 - (ii) to meet a Supplier's requirements;
 - (iii) for material increases in monthly billing; and
 - (iv) from time to time to ensure that Opticomm is satisfied with the Customer's credit rating.
- (b) To assess the Customer's credit rating, the Customer consents to Opticomm or a Supplier disclosing to a credit reporting agency personal information relating to the Customer in Opticomm's possession. If Opticomm requires additional information from the Customer to properly assess the Customer's credit rating the Customer must promptly supply this requested information.

13. Security Deposit

13.1 Requirement for security deposits

Opticomm may require a security deposit, or an addition to the Customer's existing security deposit to limit Opticomm's financial risk under this Agreement. If Opticomm requires a security deposit the Customer must provide the security deposit within 14 days of the date of Opticomm's request and in a form acceptable to Opticomm. The value of the security deposit must be equivalent to the amount Opticomm reasonably believe is necessary to secure its exposure under this Agreement (for example 2.5 times the Customer's average monthly billings).

13.2 Application of security deposits

Opticomm may utilise the Customer's security deposit to recover any amounts payable by the Customer to Opticomm or Opticomm may compensate itself for any loss, liability or expense suffered or incurred by Opticomm as a result of any breach of this Agreement by the Customer.

14. Rebates

14.1 Entitlement to rebates

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.

14.2 How to claim a rebate

In order to claim a rebate, the Customer must lodge a written claim detailing the incident that gives rise to the claim. Opticomm must receive the written claim within the time frame specified in the Service Level Agreement.

14.3 When rebates do not apply

The Customer is not entitled to a rebate when:

- (a) the Service is not subject to a Service Level Agreement;
- (b) the Customer has any undisputed overdue payments outstanding with Opticomm; or
- (c) failure to achieve the Service Levels is caused by, or arises from or in connection with:
 - (i) a Force Majeure event;
 - (ii) the Customer's breach of this Agreement or any act or omission of End Users;
 - (iii) the Customer's or End-user's equipment (including defects in such equipment); or
 - (iv) a suspension or reduction of the Service allowed under this Agreement.

15. Communications with End-users

15.1 General

Opticomm or a Supplier may communicate and deal with End-users as expressly provided in this Agreement and as otherwise permitted by Law.

15.2 Opticomm or a Supplier communicating with End-users

Subject to clause 15.3, Opticomm or a Supplier may communicate and deal with End-users:

- (a) in relation to goods and services which Opticomm currently supplies or previously supplied to the End-user;
- (b) as members of the general public or a part of the general public or members of a particular class of recipients of carriage or other services;
- (c) where Opticomm or the Supplier performs wholesale operations which require communications or dealings with the End-users, to the extent necessary to carry out such operations;
- (d) in a manner or in circumstances agreed by the parties; or
- (e) in an Emergency, to the extent it reasonably believes necessary to protect the safety of persons or property.

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.

15.3 End-user Initiated Communication

If an End-user initiates a communication with Opticomm:

- (a) in relation to goods and/or services supplied to that End-user by the Customer, Opticomm must advise the End-user that they should discuss any matter concerning the Customer's goods and/or services with the Customer and must not engage in any form of marketing or discussion of Opticomm's goods and/or services;
- (b) in relation to goods and/or services supplied to that End-user by Opticomm, Opticomm may engage in any form of marketing or discussion of Opticomm's goods and/or services; and
- (c) in relation to goods and/or services supplied to that End-user by Opticomm and the Customer, Opticomm must advise the End-user that they should discuss any matter concerning the Customer's goods and/or services with the Customer, but Opticomm may otherwise engage in any form of marketing or discussion of the Opticomm's goods and/or services.

15.4 Records of Communication

- (a) Opticomm will make and maintain records of any communication that Opticomm has with an End-user concerning the Customer's goods or services. Opticomm is not obliged to provide these records to the Customer except as required in the course of resolving a dispute with the Customer concerning Services to the relevant End-user.
- (b) For the purposes of clauses 15.2 to 15.4, inclusive, a 'communication' includes any form of written or verbal communication.

15.5 Representation

Neither party may represent that:

- (a) it has any special relationship with or special arrangements with the other party, including through use of the other party's trade marks, service marks, logos or branding, unless otherwise agreed;
- (b) a Service has any characteristics or functionality other than as specified in the Agreement or in any specifications or marketing material published in relation to the Service; or
- (c) the other party participates in the provision of the first mentioned party's services unless otherwise agreed, provided that a party may, upon enquiry by an End-user, inform the End-user of the nature of its relationship with the other party.

15.6 Attribution

- (a) Where a party communicates with an End-user of either party, the first mentioned party will not attribute to the other party:
 - (i) blame for a Fault or other circumstance; or
 - (ii) the need for maintenance of a Network; or
 - (iii) the suspension of a Service.
- (b) A party must not engage in any misleading, deceptive or otherwise unlawful conduct in observing its obligations under clause 15.6(a).

- 15.7 Any applicable industry standard made by the ACMA pursuant to Part 6 of the Act and any applicable industry code registered pursuant to Part 6 of the Act in relation to communications or dealings with End-users will prevail over the requirements of this clause 15 to the extent of any inconsistency.

16. Force Majeure

16.1 General

- (a) With the exception of payment obligations under the Agreement, a party is excused from performing its obligations under the Agreement to the extent it is prevented from doing so by a Force Majeure event or circumstances.
- (b) A party which is affected by an event of Force Majeure, must promptly and diligently act to mitigate or remove that event and its effect, except that neither party is obliged to settle any strike, lockout, embargo and labour dispute.

16.2 Notice of Force Majeure Event

If a party is prevented from performing an obligation due to a Force Majeure event or circumstances, that party will give notice of the relevant event or circumstances to the other party as soon as reasonably possible, identifying the Force Majeure event or circumstances, the effect it is having and the steps it is taking to minimise that effect.

17. Intellectual Property

17.1 Ownership

- (a) As between the parties and unless otherwise specified in this Agreement, the title to all Intellectual Property rights in the Services and Material provided by Opticomm vests with Opticomm (**Opticomm IP**).
- (b) 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 (**Customer IP**).

17.2 Licence

- (a) Opticomm hereby grants to the Customer a non-exclusive, non-transferrable, royalty-free licence for the Term to use, 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) the Opticomm IP as required to receive, use and otherwise enjoy the full benefit of the Services, including to:
 - (i) deliver the Customer's value-added services over the Network to End-users; and
 - (ii) promote the Services in accordance with this Agreement.
- (b) Customer 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.

17.3 Background IP

Without limiting clause 17.1, any Intellectual Property rights of a party that came into effect prior to the signing of this Agreement will remain the sole and exclusive property of that party and will not be transferred to the other party unless by written agreement.

17.4 **Developed IP**

- (a) Subject to sub-clause 17.5, any Intellectual Property created in the course of this Agreement will be owned by the party who created it (**Developed IP**).
- (b) For clarity, Developed IP owned by:
 - (i) the Customer is Customer IP; and
 - (ii) Opticomm is Opticomm IP.

17.5 **Modified IP**

Any rights in respect of an adaptation based on, or modification or enhancement of, one party's Intellectual Property by the other party is hereby assigned, on creation, to the first-mentioned party and licensed for use to the other party on the applicable terms set out in clause 17.2.

17.6 **Return of Material**

Each party must return all materials containing Intellectual Property of the other party in its possession or control to the other party upon the expiration or termination of the Agreement.

17.7 **Transmitted Data**

Nothing in this clause 17 will affect the rights of the Customer or any Third Party with respect to any data transmitted via the Services.

18. Confidentiality

18.1 **Definitions**

In this clause 18:

- (a) **Confidant** means the party to whom the Confidential Information is provided by the Discloser and includes that party's Personnel to whom Confidential Information is provided by the party or by the Discloser.
- (b) **Discloser** means the party providing the Confidential Information to the Confidant.
- (c) **Permitted Purpose** means the performance of this Agreement.

18.2 **Confidential Information**

The Confidant hereby undertakes:

- (a) to keep confidential and secret Confidential Information of the Discloser which has been made available, or which has become known by any means, to the Confidant and to treat the Confidential Information solely as the property of the Discloser;
- (b) to strictly limit disclosure of the Confidential Information of the Discloser to those of its Personnel who require the Confidential Information for the Permitted Purpose;
- (c) that it will make sure that those of its Personnel who receive Confidential Information of the Discloser will be under a duty of confidentiality no less onerous than the obligations imposed by this clause 18.2;
- (d) not to use any of the Confidential Information of the Discloser, or permit it to be used, for any purpose other than the Permitted Purpose;

- (e) not at any time to disclose any of the Confidential Information of the Discloser to any person except as permitted by clause 18.2(b) without the prior written consent of the Discloser;

18.3 Disclosure of Information

The Confidant agrees:

- (a) 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, based on such data as is available in the Confidant's systems;
- (b) to ensure that each person to whom the Confidential Information of the Discloser has been disclosed complies with the obligations of the Confidant under this Agreement, as if that person were the Confidant; and
- (c) to immediately notify the Discloser in writing if any person discloses or is suspected by the Confidant of disclosing or intending to disclose any of the Confidential Information of the Discloser otherwise than in accordance with this Agreement.

18.4 Disclosure to other Carriers or Carrier Service Providers

- (a) Subject to clause 18.4(b), no Confidant will disclose the Confidential Information of the Discloser to any body corporate (other than the parties involved in this agreement) or that body corporate's Personnel if that body corporate holds, or has applied for, a carrier licence or operates or plans to operate as a carriage service provider under the Act (whether or not that body corporate is providing professional advice to the Confidant) without the Discloser's prior written consent.
- (b) Clause 18.4(a) does not prevent the disclosure of Confidential Information to a Supplier.

18.5 Breach of Confidentiality

The Confidant acknowledges that damages may not be an adequate remedy for any breach by the Confidant of its obligations under this Agreement and that the Discloser will be entitled to seek an injunction or other equitable relief in respect of any actual or threatened breach by the Confidant of this Agreement without the need for the Discloser to prove any special damage.

18.6 Disclosure of existence of Agreement

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.

18.7 Disclosure required by Law

- (a) The obligations contained in this Agreement will not prevent the disclosure of information:
 - (i) which is required to be disclosed by an order of any court of competent jurisdiction;
 - (ii) which is required to be disclosed pursuant to any Law or regulation or by any Regulator with whose requirements the Confidant is bound to comply; or

- (iii) which is required to be disclosed in compliance with the requirement of any stock exchange upon which the share of any party or its related corporations are or may be listed.
- (b) If the Confidant is required by Law to disclose all or any part of the Confidential Information of the Discloser and it anticipates or has cause to anticipate that it will or may make such a disclosure, the Confidant must (subject to any overriding contrary legal or stock exchange requirement) immediately notify the Discloser of the actual or anticipated requirement and will use reasonable endeavours to:
 - (i) delay and withhold such disclosure until the Discloser has had a reasonable opportunity to oppose the disclosure by lawful means; and
 - (ii) restrict distribution of the Confidential Information of the Discloser so disclosed to the fullest extent permitted by the relevant Law or order or stock exchange requirement.

18.8 Return of Confidential Information

The Confidant will return to the Discloser, or destroy or permanently de-identify, the Confidential Information of the Discloser, in whatever medium it is held, which is in its possession or control (including all copies, reproductions, records, extracts and notes) immediately upon request by the Discloser, save that a copy of Confidential Information necessary to be kept to satisfy good corporate practice may be kept for so long as is necessary and to the extent necessary for that purpose.

18.9 Data Security

- (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.
- (b) Each party (the **first party**) must promptly notify the other party if the first party becomes aware that:
 - (i) the first party's security standards, as referred to in clause 18.9(a), have been compromised; and
 - (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:
 - (A) Personal Information disclosed or transferred to the first party by the other party in connection with this Agreement; or
 - (B) the information systems or interfaces of the other party that contain such Personal Information.

18.10 Telecommunications Networks Security

Notwithstanding any other provision of this Agreement, if a request or binding direction is issued to a party to this Agreement (**receiving party**) 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 **National Security Directive**), then:

- (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 (**Assistance Request**); and

- (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).

19. Warranties

19.1 General

Each party represents and warrants to the other party that:

- (a) it has the power to execute this Agreement and all necessary corporate and other action has been taken to authorise that execution;
- (b) this Agreement will be executed on the party's behalf by an authorised signatory and the party's obligations under this Agreement constitute its valid and binding obligations enforceable in accordance with their terms;
- (c) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted; and
- (d) it has not suffered an Insolvency Event.

19.2 Customer Equipment

The Customer warrants that the Customer's Equipment is, where required, approved for use in Australia by the relevant authority (e.g. ACMA) and that it complies with all applicable Laws.

20. Liability and Indemnity

20.1 Customer's Indemnities

- (a) 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:
 - (i) the Customer's use of the Services to transmit any illegal, misleading or offensive material; or
 - (ii) the Customer's End-users use of the Services in any way which contravenes Opticomm's Acceptable Use Policy.
- (b) If Opticomm uses a Third Party 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 against the Third Party (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.
- (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 the Services or this Agreement to the extent that such Claim could have lawfully been excluded or limited under the Customer's arrangements with End-Users.

20.2 Mutual Indemnities

Each party indemnifies the other Party for all Loss suffered or incurred by that other party arising from:

- (a) personal injury (including illness and disability) or death caused or contributed to by the indemnifying party or its Personnel; or
- (b) damage to that other party's physical property caused or contributed to by the indemnifying party or its Personnel (up to the value of the damage to the damaged property),

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.

20.3 Implied Terms

Subject to any applicable Consumer Guarantee, and to the fullest extent permitted by law, all terms, conditions, and/or warranties that may otherwise be implied into this Agreement, statutory and otherwise, are excluded.

20.4 Indirect & Consequential Costs

Subject to clause 20.7 and notwithstanding any other provision of this Agreement, neither party will be liable to the other party (whether in contract, tort (including negligence) under statute or an indemnity or otherwise) for any Consequential Loss suffered or incurred under or in connection with the Services or this Agreement.

20.5 Limitation of liability

- (a) Subject to clause 20.7, 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:
 - (A) in respect of the period from the Commencement Date until the end of the first 12-month period (**Year 1**), the greater of:
 - (I) \$500,000; or
 - (II) the amount of the Fees paid or payable to Opticomm by the Customer in Year 1; and
 - (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.
- (b) Except to the extent that the Customer is entitled to any greater remedy for any breach by Opticomm of an applicable Consumer Guarantee, the liability of Opticomm for breach of an applicable Consumer Guarantee is limited, at the option of Opticomm, to any one or more of the following:
 - (i) if the breach of Consumer Guarantee relates to goods:
 - (A) repair of the Goods or the payment of the costs of having the goods repaired; or
 - (B) the replacement of the goods, the provision of new goods or the payment of the cost of replacing or acquiring equivalent goods; and
 - (ii) if the breach of Consumer Guarantee relates to Services:

- (A) provision of the Services again; or
- (B) the payment of the costs of having those Services supplied again.

20.6 Duty to mitigate Loss

Each party must use reasonable endeavours to mitigate any Loss suffered by it under or in connection with this Agreement and a claim for Loss will be reduced to the extent that this is not done.

20.7 Exceptions

The limitations of liability in clauses 20.4 and 20.5(a) do not extend to any liability of a party:

- (a) which it cannot lawfully limit or exclude by contract;
- (b) for loss or damage to Third Party property;
- (c) for infringement of Intellectual Property rights or unauthorised use or disclosure of Confidential Information;
- (d) for personal injury or death; or
- (e) for fraud or the party's breach of any Law.

20.8 Service Levels

Where a Service Level Agreement applies to a Service, to the extent permitted by law, Opticomm's total liability to the Customer in relation a failure of the Service is limited to any applicable rebates under the Service Level Agreement.

21. Termination of Agreement

21.1 General

- (a) A party may terminate this Agreement in whole:
 - (i) by giving the other party no less than 6 months' written notice;
 - (ii) 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;
 - (iii) if the other party breaches any material provision of this Agreement that is not capable of remedy;
 - (iv) if required to do so pursuant to the Act, any other Law, or by a Regulator;
 - (v) if an Insolvency Event occurs in relation to the other party;
 - (vi) under clause 21.2; or
 - (vii) if Opticomm has exercised a right under and in accordance with this Agreement to suspend all of the Services and the grounds for suspension have not been rectified within 30 days of the date of suspension.
- (b) For the purposes of clause 21.1(a)(ii), a provision of this Agreement requiring a party to pay money is a material provision.

21.2 Force Majeure

A party may terminate this Agreement with immediate effect from the date of service of a notice, or a later date specified in the notice, 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.

21.3 Consequences of Termination

- (a) Termination of this Agreement will not:
- (i) affect, and is without prejudice to, any rights or remedies of a party that have accrued prior to or as a result of termination of this Agreement;
 - (ii) operate as a waiver of any breach of this Agreement by a party;
 - (iii) affect any indemnity given by a party under this Agreement, each of which will survive the expiry or termination of this Agreement, or any other clause of this Agreement that is expressed to survive the termination or expiry of this Agreement; or
 - (iv) affect clauses 9, 17, 18, 19 and 20 each of which will survive the expiry or termination of this Agreement.
- (b) On termination of this Agreement the Customer will:
- (i) in respect of any Equipment supplied by Opticomm, other than by sale:
 - (A) immediately cease, or as applicable procure its End-users to cease, using that Equipment; and
 - (B) permit, or procure permission for, Opticomm to access the premises where that Equipment is located for the purpose of removing that Equipment and not hinder Opticomm in carrying out that purpose; and
 - (ii) in respect of any other Equipment used by the Customer in order to utilise a Service, disconnect that Equipment from the Network and promptly do all things reasonably required by Opticomm to enable Opticomm to disconnect that Equipment from the Network and, where applicable, remove it from the vicinity of the Network.

22. Notices

22.1 Notices to be in writing

Any notice given under this agreement must be in writing and must be signed by the Party giving the notice or any Authorised Officer of that Party. Communications sent by email are taken to be signed by the named sender.

22.2 Address for notices

- (a) Opticomm's address and email address for notices are:

Name: Opticomm Ltd

Opticomm Representative: Natasa Matic

Address: Level 1, 22 Salmon St, Port Melbourne, Port Melbourne VIC 3207

Email: RSP@opticomm.com.au

The Customer's address and email address for notices are:

Name: [RSP entity]

Customer Representative: [insert]

Address: [insert]

Email: [insert]

- (b) A party may change its address or email address by giving notice of that change to the other party.

22.3 Effective time for notices

- (a) Unless a later time is specified in a notice, the notice takes effect from the time it is received.
- (b) A notice is taken to be received:
- (i) if delivered by hand, when so delivered;
 - (ii) if sent by pre-paid post, on the second clear Business Day after the date of posting;
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that:
 - (I) the email has not been delivered; or
 - (II) that the recipient is "out of the office" or equivalent.

23. Insurance

Opticomm must take out, keep current and produce to Customer on request, evidence of valid and enforceable insurance policies for the Term of the Agreement for the following:

- (a) Public liability insurance (on an occurrence basis) of \$20 million per claim; and
- (b) Workers compensation insurance in accordance with the statutory requirements of the relevant jurisdiction in which the obligations of this Agreement are carried out.

24. Subcontracting

Opticomm may use subcontractors or other agents to meet any of its obligations under this Agreement. Where this occurs, Opticomm remains liable in respect of the performance of those obligations under this Agreement.

25. Dispute Resolution

25.1 General

If there is a dispute, difference, controversy or claim (other than a failure by the Customer to pay an invoice in accordance with clause 9) arising out of or in connection with this Agreement or the breach, rectification, termination, frustration or invalidity thereof, ('dispute') the parties will use their reasonable endeavours to resolve the dispute in accordance with this clause 23. Neither party will resort to legal proceedings, except for urgent interlocutory relief, until the process outlined in this clause 23 has been complied with.

25.2 Notice of Dispute

A party claiming that a dispute has arisen will notify the other party in writing. Such notice will:

- (a) state that it is a notice given pursuant to this clause 23;
- (b) adequately describe the particulars of the alleged dispute including if relevant the amount of the dispute; and
- (c) be signed by a director, executive or equivalent of the party.

25.3 Minor Disputes

If the amount in dispute is less than or equal to \$100,000 and the dispute cannot be resolved by negotiation, the dispute will be settled by the final and binding decision of an expert appointed by agreement between the parties, or failing agreement appointed by the Chairperson of the Institute of Arbitrators and Mediators, Australia. The cost of the expert will be shared equally by the parties.

25.4 Major Disputes

If the amount in dispute is \$100,000 or more, the parties will attend at least one meeting to discuss the dispute within 5 Business Days of the notification of the dispute. If the dispute cannot be solved by negotiation within that period, the parties will confer within a further 5 Business Days in order to ascertain whether they agree that the dispute will be referred to the process set out in clause 25.3.

25.5 Litigation

If a dispute to which clause 25.4 applies cannot be resolved in accordance with the procedure set out in that clause 25.4, then either party may commence legal proceedings in relation to the dispute.

25.6 Expert Determination

Expert determination of a dispute in accordance with clauses 25.3 or 25.4 will be carried out in accordance with Institute of Arbitrators and Mediators, Australia's Rules for Expert Determination of Commercial Disputes.

25.7 Conduct of Disputes

Unless agreed otherwise, all dispute resolution proceedings will be conducted in Melbourne, Victoria.

25.8 Continuing Performance

Despite the existence of a dispute, the parties will continue to perform their respective obligations under the Agreement, other than to the extent prevented by the nature of the dispute.

26. General

26.1 Governing Law

This Agreement is governed by the Laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia sitting in Victoria. The rights of a party under the Agreement are cumulative and not exclusive of any rights provided by Law.

26.2 Severance

If any provision of this Agreement is illegal or unenforceable the, to the extent possible, it will be severed from this Agreement and the remaining provisions of this Agreement will continue in force.

26.3 Entire Agreement

This Agreement:

- (a) contains the entire agreement between the parties on its subject matter; and
- (b) supersedes any prior agreement, representations or understanding on the subject matter of this Agreement.

26.4 Assignment and Waiver

- (a) Subject to clause 26.4(b), a party will not assign, novate or otherwise transfer this Agreement or any right or obligation under this Agreement without the prior written approval of the other party, which will not be unreasonably withheld.
- (b) A party may assign, novate or otherwise transfer this Agreement or any right or obligation under this Agreement to a Related Body Corporate.
- (c) Where a party assigns, novates or transfers this Agreement in compliance with clause 26.4(a) or (b) the other parties must immediately execute any documents necessary to give effect to the transaction.
- (d) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. Waiver of a power or right is effective only:
 - (i) in respect of the specific instance to which it relates;
 - (ii) for the specific purpose for which it is given; and
 - (iii) if it is given in writing.
- (e) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

26.5 Variation

Except as otherwise expressly permitted under this Agreement, no variation of this Agreement will be valid unless it is in writing and signed by each of the parties to this Agreement.

26.6 Public Announcements

- (a) Unless permitted under this Agreement or required by Law or by the rules of any stock exchange, no announcement, communication or other disclosure relating to the Network or the subject matter of this Agreement will be made by either party to any person who is not a party to this Agreement without the prior written consent of the other party.

- (b) If an announcement, communication or other disclosure referred to in this clause 26.6 is required by Law or the rules of any stock exchange, the party making it will use reasonable endeavours to agree upon the terms of the announcement, communication or other disclosure with the other party prior to it being made.

26.7 **Costs, expenses and duties**

- (a) Each party must pay its own costs and expenses in relation to:
- (i) the negotiation, preparation, signing, delivering, performance, amendment or registration of the Agreement, or any consent given or made under the Agreement; and
 - (ii) the performance of any action by that party in compliance with any obligation or liability arising under the Agreement,
- or other document entered into or effected under the Agreement, unless expressly provided otherwise by the terms of this Agreement.
- (b) 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 this Agreement is payable by Opticomm.

26.8 **Further Assurance**

Each party must execute any document and perform any action necessary to give full effect to the Agreement, whether before or after performance of the Agreement.

26.9 **Relationship**

The relationship of the parties is one of independent contractors and nothing in this Agreement will constitute a party as the employee, partner, agent, representative, trustee or joint venture partner of the other party.

26.10 **Counterparts**

This Agreement may be executed in any number of counterparts. In such case, each counterpart will constitute an original and the counterparts together will constitute one and the same agreement.

27. Definitions and Interpretations

27.1 **Definitions**

In this Agreement:

ACCC means the Australian Competition and Consumer Commission.

Acceptable Use Policy means the Opticomm published document entitled "Acceptable Use Policy". The applicable version of the Acceptable Use Policy as at the Commencement Date is in Annexure A. Any updates to the Acceptable Use Policy made in accordance with this Agreement will be published by Opticomm at www.opticomm.com.au/legal.

ACMA means the Australian Communications Media Authority.

Act means the *Telecommunications Act 1997* (Cth).

Affected Service has the meaning given in clause 4.8.

Agreed Network means any particular network as agreed by the Customer and Opticomm in writing as being an 'Agreed Network' which is subject to clause 5A of this Agreement.

Agreement means the documents listed in clause 1.2 as amended from time to time.

Australian Consumer Law means the provisions set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means any day except Saturdays, Sundays and gazetted public holidays observed in the place where an act is to be performed or a payment is to be made.

Business End-user means an End-user that is acquiring a Service for business use.

Business Hours means the hours between 9.00am to 5.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise.

Carrier has the meaning given to that term under the Act.

Commencement Date means the date of this Agreement.

Confidential Information means any information which is disclosed to the Confidant by the Discloser, or which is acquired or observed by the Confidant, in connection with this Agreement or the Network and includes the contents of this Agreement, the nature, extent and scope of the Services, information relating to technology, processes, products, samples, drawings, plans, specifications, inventions and designs used, developed or produced by or on behalf of one or both of the parties and trade secrets and know-how and information of a commercially sensitive nature (including, financial information, business and marketing plans, projections and formulae and any geological, processing and engineering information, results, interpretations, reports and analyses), but does not include any information which is in, or comes into, the public domain otherwise than by disclosure in breach of the terms of this Agreement.

Consequential Loss means Loss which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) constitutes loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss or impairment of credit rating, loss of data, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises directly or naturally in the usual course of things from that breach, action or inaction.

Consumer Guarantees means the consumer guarantees set out in Division 1 of Part 3-2 of the Australian Consumer Law.

Consumer Protection Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Cost Increase Notice has the meaning given in clause 4.8(f)(i).

CSG means the *Telecommunications (Customer Service Guarantee) Standard 2011* made under the Consumer Protection Act.

Customer IP has the meaning given in clause 17.1(b).

Customer Materials means all Materials provided by or on behalf of the Customer to Opticomm in connection with this agreement, including data of any kind of the Customer, its related bodies corporate, customers or suppliers.

Customer Portal means a secure site on Opticomm's website that the Customer may access.

Customer Representative the Customer representative name in clause 22.2(a) (or any replacement representative that Customer notifies to Opticomm).

Customer System means any system owned or operated by or on behalf of the Customer.

Default Notice means a notice that provides details of the other party's breach of or default under the Agreement.

Developed IP has the meaning given in clause 17.4.

Downstream Product Equivalence Objective has the meaning given in clause 5.1.

Emergency means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action or other Force Majeure event) which endangers or threatens to endanger the environment, the integrity of the Network, the safety or health of persons, or destroys or damages or threatens to destroy or damage property.

End-user means a person to whom the Customer on-sells one or more Services.

Equipment means any device, electronic or otherwise, which is used in the delivery or consumption of the Service.

Fault has the meaning given to it in respect of a particular Service, as set out in the Service Level Agreement.

Fees mean the fees and charges that are set out in the Wholesale Price List or as otherwise advised to the Customer by Opticomm.

Force Majeure means an event or circumstance beyond the reasonable control of the party claiming force majeure including act of God, epidemic or pandemic, fire, flood, storm, tempest or wash away or high sea inundation, radioactive contamination, act of war (whether declared or not), terrorism, revolution or act of public enemies, riot or civil commotion, strike, stoppage, ban, limitation on work or restraint of labour and, in the case of Opticomm, includes any Third Party damage to the Network, and any suspension or failure by a Third Party to supply goods or services (provided that such suspension or failure by a Third Party was not caused by an act or omission by Opticomm).

GST Act means the *Tax System (Goods and Services Tax) Act 1999* (Cth)

Initial Pricing Construct means the relevant Wholesale Price List and pricing construct applicable for all RSP's effective 1 January 2021, a copy of which is available at www.opticomm.com.au/legal.

Insolvency Event means in respect of a party, being insolvent under administration or insolvent, or having a controller appointed, or being in receivership or receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment, or composition, protected from creditors under any statute, dissolved, or otherwise unable to pay its debts when they fall due (with each of the expressions used in the clause having the meaning given under the *Corporations Act 2001* (Cth)), but, for clarity, does not include a solvent internal restructure or any form of members' scheme of arrangement.

Intellectual Property means all statutory, civil and common law, and other proprietary rights (including rights to require information be kept confidential), whether registered or not or capable of registration or not, and including all applications and the right to apply for any registrations in respect of inventions, copyright, trademarks, designs, patents, circuit layouts, know-how, trade secrets and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967;

Intervening Event means any of the following that materially adversely affects the supply of a Service by Opticomm:

- (a) Regulatory Event;
- (b) the grant of an injunction against Opticomm in relation to a breach or alleged contravention of any Law; or

- (c) any material increase in fees or charges of a Third Party supplying goods or services to Opticomm.

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

Loss means any loss, damage, cost, interest, tax, expense, debt, fee, penalty, fine, forfeiture, assessment, liability or damages suffered or incurred by a person;

Master Services Agreement Signature Form means the 'Master Services Agreement Signature Form' signed by each of Opticomm to the Customer to formalise execution of this Agreement.

Material any software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property rights.

National Security Directive has the meaning given in clause 18.10.

NBN Co means NBN Co Limited (ABN 86 136 533 741).

NBN Co Price Reduction has the meaning given in clause 5.3.

NBN Co Services means:

- (a) the nbn Ethernet Product supplied by NBN Co to service providers to resell for the supply of services to residential premises, as more particularly described in the nbn Ethernet Product Module under the NBN Wholesale Broadband Agreement; and
- (b) NBN Updates.

NBN Update has the meaning given in clause 5.1(c).

NBN Wholesale Broadband Agreement means NBN Co's standard form of access agreement available on the NBN Co website as amended from time to time.

Network has the same meaning as 'telecommunications network' as defined in the Act and, for the purposes of this Agreement specifically means the telecommunication facilities used by Opticomm to provide the Services including facilities and networks owned by Suppliers.

Operations Manual means the OptiComm published document entitled "Operations Manual". Opticomm will publish the Operations Manual, and any updates made in accordance with this Agreement, at www.opticomm.com.au/legal.

Opticomm IP has the meaning given in clause 17.1(a).

Opticomm Representative the Opticomm representative name in clause 22.2(a) (or any replacement representative that Opticomm notifies to the Customer).

Personal Information means all personal information (as defined in the *Privacy Act 1988* (Cth)) which is received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under this Agreement.

Personnel of a party or person means that party or person's employees, officers, agents, contractors, professional advisers or other representatives.

Premises means any land together with its building(s) used as a place of business or residence.

Regulator means ACMA, ACCC, Communications Alliance Ltd, Communications Compliance Ltd, the Telecommunications Industry Ombudsman or any other government or statutory body or authority or any court or tribunal of competent jurisdiction.

Regulatory Event means any change in a Law, including:

- (a) amendments to or repeals of any part of any statute, ordinance, code or Law including the Act, the *Competition and Consumer Act 2010* (Cth) or the introduction of a new statute, ordinance, code, standard or law;
- (b) a directive of, or determination by, a Regulator;
- (c) registration or determination of a new industry code or industry standard under the Act, or amendments to or repeals of any existing code or industry standard;
- (d) the issue by the ACCC of a Competition Notice (as defined in section 151AB of the *Competition and Consumer Act 2010* (Cth) which affects any Services or the subject matter of the Agreement;
- (e) the determination, addition, variation or removal of a Service Provider Rule (as defined by section 98 of the Act) applicable to Opticomm or any Third Party provider; or
- (f) an amendment, declaration, addition or removal of a condition to Opticomm's carrier licence.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Residential End-user means an End-user to whom the Customer is on-selling a Service for personal, domestic or household use by the End-user.

Retail Service means a carriage service or content service supplied by the Customer to an End-user.

RSP refers to a service provider which acquires the Services from Opticomm.

Service(s) means any carriage service or content service to be provided by Opticomm to the Customer over the Network, as described in a Service Order and the applicable Service Schedule. Opticomm may launch new Services from time to time via its Customer Portal.

Service Cancellation Fee means the Fee which may be payable if the Service is cancelled prior to the end of the Service Term as set out in the Service Order and/or Wholesale Price List which the parties agree is a genuine estimate of the loss that Opticomm incurs as a result of the early cancellation.

Service Date means the date that Opticomm commences providing the relevant Service to the Customer.

Service Delivery Point means the point at which a Service is made available for connection to the Customer's Equipment or cabling.

Service Level Agreement means the relevant Opticomm published agreement nominated for a particular Service, that details the service levels in respect of that Service and the consequences if those service levels are not met. Opticomm will publish the Service Level Agreement, and any updates made in accordance with this Agreement, at www.opticomm.com.au/legal.

Service Order means a written order established between the parties in accordance with clause 4.2.

Service Request means a request from the Customer for the provision, variation or cancellation of a Service provided by Opticomm, made in accordance with clause 4.1.

Service Schedule means the product and technical description of, and schedule of terms applicable to, a particular type of Service. Opticomm will publish each Service Schedule, and any updates made in accordance with this Agreement, at www.opticomm.com.au/legal.

Service Term means the period that commences on the Service Date and continues for the period specified in a Service Order.

SIP means the party designated as the statutory infrastructure provider for an Agreed Network under Part 19 of the *Telecommunications Act (1997)* (Cth).

Supplemental Work is defined in clause 4.3.

Supplier means a carrier that provides wholesale services to Opticomm that are used in the provision of Services to the Customer.

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Taxes means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by Law or government authority or agency other than GST or any tax imposed on, or calculated having regard to, net income.

Tax Invoice has the meaning given to that term in the GST Act.

Term means the period commencing on the Commencement Date and continuing until such time as the Agreement is terminated in accordance with clause 21.

Third Party means a person who is not a party to this Agreement.

we, us, or our means Opticomm.

Wholesale Price List means the list of Opticomm's Fees and charges under this Agreement. Opticomm will publish the Wholesale Price List, and any updates made in accordance with this Agreement, at www.opticomm.com.au/legal.

you or your means the Customer.

Universal Service Obligation means, if applicable to an RSP, those obligations which an RSP has as the universal service provider to supply standard telephone services and public payphone services in accordance with the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the Telstra USO Performance Agreement between that RSP and the Commonwealth of Australia.

27.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation,
- and, unless the contrary intention appears:
- (b) undefined words and expressions if defined in the Act have the same meaning as in the Act;
 - (c) a reference to any legislation or any provision of any legislation includes a reference to any modification or re-enactment of, or any provisions substituted for, such legislation or provisions;
 - (d) if a corporation, authority, institute or association or other body referred to in this Agreement (other than a party to this Agreement) is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity;

- (e) if a corporation, institute or association or other body referred to in this Agreement (other than a party to this Agreement) ceases to exist, the Agreement is deemed to refer to that entity which serves substantially the same purpose or objects as the former entity;
- (f) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Agreement and a reference to this Agreement includes any schedule or annexure;
- (g) a reference to any document or instrument includes the document or instrument as amended, novated, supplemented or replaced from time to time;
- (h) the singular includes the plural and vice versa;
- (i) a word denoting a gender includes all genders;
- (j) a reference to a person includes a corporation, firm association, joint venture, unincorporated body, partnership, authority, government or governmental authority or other entity;
- (k) examples are illustrations only and do not limit general words;
- (l) the words 'includes', 'including' and similar expressions are not words of limitation;
- (m) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (n) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the relevant provision in the Agreement;
- (o) if an act must be done on a specified day, which is not a Business Day, it must be done instead on the next Business Day;
- (p) money is in Australian dollars; and
- (q) all lump sums and rates stated in this Agreement (including each Service Order) will be deemed not to include GST, unless expressly stated otherwise.

Executed as an agreement

Signed for and on behalf of **Opticomm Ltd**
ACN 117 414 776 by its duly authorised
representative:

Authorised Representative

Name
(BLOCK LETTERS)

Signed for and on behalf of **[RSP entity]** ACN
XXX XXX XXX by its duly authorised
representative:

Authorised Representative

Name
(BLOCK LETTERS)

Annexure A – Acceptable Use Policy

(Version: April 2022)

Rules of interpretation and capitalised terms used in this Acceptable Use Policy are defined in this Agreement.

1 About our Acceptable Use Policy

- 1.1 To ensure the availability of our Services to customers and their End-users, Opticomm has an Acceptable Use Policy that is designed to protect our Network from abuse.
- 1.2 We may immediately suspend, cancel or restrict the supply of the Service to the Customer or an End-user under clauses 4.11(a)(viii) or 8.1(a)(ii) of the Master Services Agreement if the Customer or an End-user use the Service, or if any person who accesses the Services uses the Service in any way which breaches this Acceptable Use Policy.
- 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 Opticomm's exercise of such right, in which case Opticomm will notify the Customer as soon as practicable after exercising such right.

2 Prohibited use

- 2.1 The Customer, an End-user, and any person who accesses the Service, must not use, or attempt to use, the Service:
 - (a) for illegal purposes or practices;
 - (b) 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 (including as a result of attempts by the Customer to increase the capacity or performance of the Customer's system or Equipment);
 - (c) in any way which makes it unsafe or which may damage any property or injure or kill any person;
 - (d) to transmit, publish or communicate any material or engage in any conduct which is defamatory, abusive, menacing or harassing;
 - (e) to engage in abusive behaviour toward Opticomm's staff;
 - (f) to make inappropriate contact with children or minors;
 - (g) to access, store, reproduce, distribute, publish or commercially exploit any information or material of any kind that infringes any copyright, patent, trademark, design or other intellectual property right;
 - (h) to send, relay or distribute any electronic data, the contents or properties of which have been manipulated for the purpose of maliciously or illegally impersonating or obscuring the original source of that data. This does not include the use of Virtual Private Networks or similar concepts in circumstances where this is legal and otherwise complies with this Policy;
 - (i) to access, monitor, use or control any other person's equipment, systems, networks or data (including usernames and passwords) or to otherwise probe, scan or test the vulnerability of any other person's equipment, networks, systems or data, without that person's consent;

- (j) to access, or attempt to access, the accounts or private information of others, or to penetrate, or attempt to penetrate Opticomm's or a third party's security measures, computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data. This does not include conducting network security testing specifically requested by the owner of the targeted network or system;
 - (k) to use or distribute software (such as password guessing programs, keyboard loggers, viruses or trojans) with the intent of compromising the security of any network or system;
 - (l) to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as 'pyramid schemes', 'Ponzi schemes', and 'chain letters';
 - (m) to engage in any unreasonable activity which impairs the ability of other people or systems to use Opticomm's Services or the Internet. This includes any malicious activity resulting in an adverse effect such as denial of service attacks against another network host or individual user, flooding of a network, overloading a service, improper seizing or abuse of operator privileges, and attempts to harm a system or network. For the avoidance of doubt, this clause does not capture an activity solely because it unintentionally contributes to network congestion;
 - (n) to access, store, reproduce, distribute or publish any content which is prohibited or unlawful under any Commonwealth, State or Territory law or classification system, or to provide unrestricted access to material that is unsuitable for minors; or
 - (o) to support carrier or service provider data aggregation applications, such as backhaul for mobile base stations or other networks or facilities, the provision of services to another carrier or carriage service provider to enable that carrier or carriage service provider to use the Service to provide retail services to End-users, multiplexed access systems and/or networks, or the provision of services to End-users on networks or facilities other than networks or facilities owned or operated by Opticomm.
- 2.2 Due to Payment Card Industry (PCI) requirements, the Customer, and any person who accesses the Service, must not use, or attempt to use, Opticomm's web-hosting Services to store credit card data without Opticomm's express consent in writing.

3 Spam

- 3.1 In this clause 3, "Spam" includes one or more unsolicited commercial electronic messages with an "Australian link" as contemplated by the Spam Act 2003.
- 3.2 The Customer, an End-user, and any person who accesses the Service must not use the Service to:
- (a) send, allow to be sent, or assist in the sending of Spam;
 - (b) use or distribute any software designed to harvest email addresses; or
 - (c) otherwise breach the Spam Act 2003 or any regulations made under the *Spam Act 2003*.

4 General

- 4.1 The Customer must use reasonable endeavours to secure any device or network within the Customer's control against being used in breach of this Acceptable Use Policy, including where appropriate:
- (a) the installation and maintenance of antivirus and firewall software;

- (b) the application of operating system and application software patches and updates;
 - (c) protecting account information and passwords and taking all reasonable care to prevent unauthorised access to the Service, including taking reasonable steps to secure any Wi-Fi network operated;
 - (d) for residential End-users, using all reasonable endeavours to ensure that the End-user using the Service complies with this Acceptable Use Policy; and
 - (e) for business and government End-users, maintaining and enforcing appropriate workplace and guest user policies that are consistent with the requirements of this Acceptable Use Policy.
- 4.2 Unless otherwise stated, Opticomm's rights to suspend, cancel or restrict the supply of the Service to the Customer or an End-user applies regardless of whether the breach or suspected breach was committed intentionally, or by means not authorised by the Customer or End-user (such as through Trojan horses, viruses or other security breaches).

Annexure B – Operations Governance Framework

1. Governance Forum Framework

The parties' representatives will review:

- (a) the performance by the parties of their respective obligations under this Agreement;
- (b) issues (if any) that have arisen in connection with this Agreement; and
- (c) any matter the parties may agree.