

ACCESS4

WHOLESALE TRADING TERMS

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ACCESS4

WHOLESALE GENERAL TRADING TERMS

1. YOUR CONTRACT

1.1 How is this document relevant to you?

- (a) This document contains the General Trading Terms on which Access4 Pty Ltd ACN 609 946 796 ABN 66 609 946 796 (**we, us, our**) provides its Services to its customers (**you, your**).
- (b) We agree to supply Services, and you agree to acquire the Services, on the terms of your Contract which is comprised of the following four parts:
 - (i) the Partnership Agreement;
 - (ii) this document which sets out the standard terms and conditions on which we supply our Services and products to you (**General Trading Terms**);
 - (iii) the standard service-specific terms which apply to the specific Services which you are receiving and which may be set out in a service schedule or other document (**Standard Service Terms**); and
 - (iv) the additional information, including the charges for our Services, which is set out in any order for Services which we have accepted through the Software Application (**Accepted Order**),(together, this constitutes and is known as your **Contract**).
- (c) Your Contract shall commence with effect for a particular Service upon the execution of the Partnership Agreement or as otherwise specified in the Partnership Agreement or your Contract
- (d) The Services we provide to you are governed by your Contract. To the extent of any inconsistency, the components of your Contract will be read in the following order of precedence:
 - (i) any Accepted Order;
 - (ii) any Variation;
 - (iii) your Partnership Agreement;
 - (iv) Standard Service Terms; and
 - (v) General Trading Terms.
- (e) If a provision of your Contract is void, voidable or unenforceable in the jurisdiction in which any Service is or is to be provided to you, it must be read down to the extent necessary to be valid and, if it cannot be so read down, it will be severed and the remainder of the provisions of your Contract will not be affected.

1.2 Changes to our General Trading Terms and Standard Service Terms

- (a) You acknowledge that we may make changes to our General Trading Terms, Standard Service Terms (including any pricing) and Partnership Agreement from

time to time, including, without limitation, in circumstances where one of our Suppliers changes a service or its associated technology or changes the terms and conditions which apply to the services they supply to us. If we make any change to either or both of our General Trading Terms or Standard Service Terms, we will comply with this **clause 1.2**.

- (b) If we intend to make a change to either or both of our General Trading Terms or Standard Service Terms and the change could be reasonably expected to adversely affect you, we will use reasonable endeavours to notify you at least 30 days prior to making that change. We may notify you:
- (i) by mail (to any of the last address given by you to us, the address of the Premises and, if you are a corporation, your registered address or principal place of business last known to us);
 - (ii) by email (to the last email address given by you to us);
 - (iii) by a message on a bill or any other notice we issue to you; or
 - (iv) by rendering a notice legible in a Software Application that we have given you access to.

We may also provide notice of the change on our website.

1.3 Your rights if changes to our General Trading Terms or Standard Service Terms do not have a material detrimental impact on you

Your rights to notification under **clause 1.2** do not apply if we make changes to our General Trading Terms or Standard Service Terms that we reasonably believe will not have a material detrimental impact on you.

1.4 Where can you obtain a copy of our most recent General Trading Terms, Standard Service Terms and details of pricing applicable to you?

You can get a copy of our most up-to-date General Trading Terms and Standard Service Terms through our Software Application that we have given you access to or by requesting an electronic copy to be emailed to you. We will promptly provide you with details of pricing applicable to you following receipt of your request.

2. BECOMING AN ACCESS4 WHOLESALE CUSTOMER

2.1 Making an application

If you want to become our wholesale customer, you must first enter into the Partnership Agreement.

2.2 Your representations and warranties about your capacity to enter into your Contract

You represent and warrant to us that:

- (a) if you are a company:
- (i) you are duly incorporated under the jurisdiction of your incorporation, with all requisite power and authority, to enter into your Contract and perform all obligations under your Contract;
 - (ii) you have obtained all necessary consents and approvals to enter into your Contract; and

- (iii) the person who has signed the Partnership Agreement or any other document forming part of your Contract is authorised by you to sign the document, and that we are not liable in any way if that person does not have that authority;
- (b) if you are a person who signs the Partnership Agreement or any other document on behalf of a company, you agree to guarantee the performance of the company's obligations set out in your Contract in the event that your Contract is not enforceable against the company because you did not have the appropriate authorisation referred to in **clause 2.2(a)(iii)**; and
- (c) in all cases:
 - (i) you are not subject to an Insolvency Event and that you are not aware of any circumstances likely to cause you to become subject to an Insolvency Event;
 - (ii) you enter into your Contract in your own capacity and you do not enter into your Contract as a trustee of any trust or settlement;
 - (iii) neither the entering into your Contract or the performance of your obligations under your Contract will cause you to be in breach of any agreement to which you are party or are subject.

2.3 **Your representations and warranties about information**

You represent and warrant to us that:

- (a) all information in the Partnership Agreement and any Accepted Order is true, accurate, complete and is not misleading or deceptive or likely to mislead or deceive; and
- (b) where you have provided us information about any individual who is a customer or an end user of the Services, the customer or end user has consented to you disclosing the information to us and to us using or disclosing the information to provide the Services and exercise any rights and perform any obligations in respect of the Services.

2.4 **Your acknowledgement**

You acknowledge that, if we decide to enter into your Contract (including, without limitation, the Partnership Agreement), we do so having been induced by, and in reliance on, your representations and warranties in **clause 2.2** and **clause 2.3**.

2.5 **Entering into your Contract with you**

We will decide whether to enter into your Contract with you by considering a number of factors, including but not limited to:

- (a) your eligibility to be our partner;
- (b) your ability to on-sell and support our Services;
- (c) whether you meet our credit requirements;
- (d) the accuracy of the information you give us; and
- (e) any past dealings which we may have had with you (including any past non-compliance by you with the terms and conditions relating to a previous supply by us to you) and any entities you have been associated with.

2.6 Credit Rating and giving of security

- (a) We may ask you to provide, within seven (7) days of a request:
 - (i) a letter signed by you or any a director, officer, partner or owner of you (as we may request) that, on an unconditional and unqualified basis, you are not subject to an Insolvency Event and that you are not aware of any circumstances likely to cause you to become subject to an Insolvency Event (**Solvency Letter**); and
 - (ii) any further information, to assess your Credit Rating.
- (b) You also authorise us to conduct checks and searches of your Credit Information to assess your Credit Rating from time to time.
- (c) You authorise us to use any information that you provide to us (including, without limitation, any Personal Information, Credit Information or Confidential Information comprised in that information) to assess your Credit Rating and for credit management purposes and to disclose such information and any information we obtain through checks and searches of your Credit Information to a credit reporting agency or any collection agent for credit management purposes.
- (d) We may ask you, as a condition of us entering into your Contract, to first supply security in a form and terms acceptable to us (for example a deposit, bank guarantee or general security agreement), but your provision of such security does not affect your obligations to us, including your obligation to pay charges as they become due and payable. We may, from time to time during the term of your Contract, request you to provide a security (where no security was initially provided) or increase the amount of the existing security if, in our sole and absolute discretion, we form the opinion that there is a risk that you will not be able to comply with your obligations to pay any charge owing to us. If you fail to provide the requested security within 7 days, this will be deemed to be a material breach of your Contract.
- (e) We will retain the security for the term of your Contract, and we may apply the whole or any part of any security to satisfy any amount you are required to pay to us from time to time and that is overdue, without prejudice to any of our other rights in your Contract or at law. If we do so you must provide us with any further amount of security we request from time to time and we may use it as provided for in this **clause 2.6**.
- (f) Providing you do not owe us any outstanding amounts and have returned all our goods to us in the same condition we provided it to you (fair wear and tear excepted), we will return any remaining security to you within 30 days from the date we last invoice you.
- (g) We may from time to time set a credit limit for you (**Credit Limit**) and, if you exceed the Credit Limit at any time or from time to time during the term of your Contract, we may suspend the provision of any Service to you until such time as you reduce the Credit Limit to at least 50% below the Credit Limit. You agree that we may from time to time and with 14 days' notice to you vary the Credit Limit to an amount we determine in our sole and absolute discretion and you agree to comply with that variation. We will notify you of that variation as soon as it is practicable for us to do so.

2.7 Term of your Contract

- (a) If we decide to enter into your Contract with you, we may issue our executed Partnership Agreement to you.

- (b) your Contract commences on the dates referred to in **clause 1.1(c)**.
- (c) your Contract comes to an end when it is cancelled or terminated by you or by us in accordance with the provisions of your Contract or any law which governs your Contract.
- (d) If you have agreed to a Minimum Term, and that Minimum Term is reached, then, unless you validly gave us written notice to cancel or terminate s before the expiry of the Minimum Term, your Contract for that Service will continue on the same terms except that there is no Minimum Term and the Service may be terminated by either party giving not less than 30 days' written notice to the other party.

2.8 Changes in your details and notices

- (a) You must notify us in writing of any change to your details (including, without limitation and where applicable, your ACN/ABN, contact details and/or the details of the person specified as the relevant contact person for you in the Partnership Agreement).
- (b) Any notice that we give you under your Contract will be effectively served if:
 - (i) we deliver the notice by hand or send the notice by mail to:
 - (A) an address listed in the Software Application (including any Premises) or such other address as notified by you as your current address from time to time (whether or not you are a corporation and, if you are a corporation, whether or not that address is your registered address of the corporation); or
 - (B) if you are a corporation:
 - (I) to your registered address; or
 - (II) to your principal place of business,
 as set out in a document provided to us by ASIC or its agent; or
 - (ii) we send the notice by email to an email address listed in the Software Application or as subsequently notified to us; or
 - (iii) we render the notice legible in a Software Application that we have given you access to.
- (c) Any notice that you give us under your Contract will be effectively served if:
 - (i) you deliver the notice by hand or send the notice by mail to our principal place of business, or such other address as notified by us as our current address from time to time (whether or not that address is our registered address of the corporation); or
 - (ii) you send the notice by email to accounts@access4.com.au or such email address as subsequently notified by us as our current email address from time to time.
- (d) Notice is deemed to be received by a person:
 - (i) when delivered by hand;
 - (ii) if sent by mail, five (5) Business Days after posting;

- (iii) if sent by email, one (1) hour after sending unless the sender receives a report or notice indicating the email has not been delivered within that one (1) hour period;
- (iv) when rendered legible in a Software Application, two (2) Business Days later or when we record you as having logged into the Software Application, whichever occurs first.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5.00 pm at the addressee's location, it is deemed to be received at 9.00 am on the next Business Day.

- (e) If you fail to notify us in accordance with **clause 2.8(a)**, and we send a notice to you to the contact details as listed in the Software Application (or the most recent contact details notified by you to us in accordance with **clause 2.8(a)**), and we act in accordance with that notice, you acknowledge and agree that:
 - (i) such act does not constitute a breach of your Contract by us;
 - (ii) we have no liability to you whatsoever (whether based in contract, tort (including negligence), statute or otherwise) for any Loss suffered or incurred by you arising directly or indirectly from such act; and
 - (iii) our right to cancel or suspend your Service in accordance with **clause 12.2** is not affected in any way whatsoever.

3. YOUR RESPONSIBILITIES

3.1 Ordering of Services

- (a) You may place an order for one or more Services from time to time through the Software Application.
- (b) We are not liable to provide to you any Service until we have accepted your order.

3.2 Your responsibility for the Services

- (a) You must co-operate with us to allow us to provide the Services to you or your customers.
- (b) You must:
 - (i) ensure that, for each Service, you meet and continue to meet during the term of your Contract any pre-requisite or condition for supply of that Service specified in the Standard Service Terms for that Service;
 - (ii) obtain any necessary permits, licences and authorisations, including without limitation, any permits, licences and authorisations from any of your customers, required for installation and use of equipment (whether supplied by you or us) in connection with the Services;
 - (iii) provide us with all information that we reasonably require to provide the Services (including, without limitation, any information to perform service qualification for any Services and to comply with all our reasonable directions to enable us to confirm your compliance with this **clause 3**);

- (iv) follow all instructions provided by us in relation to the upgrade and configuration of software and devices connected to our network within the timeframes specified; and
 - (v) not unreasonably withhold or delay any action, approval, direction, determination or decision which is required of you under your Contract or for us to perform any Service.
- (c) Subject to **clause 4.5**, you are responsible for understanding how to access, use and operate the Services. We may, for an Additional Charge, train you on how to access, use and operate the Services.
 - (d) You are responsible for providing Initial Level 1 Support to your clients and managing the relationship with your clients. You may escalate issues to us for investigation by logging a support request, but this must be done in accordance with our Support Process.
 - (e) You are responsible for all information and data carried over Our Network as a result of your customers' use of the Service.
 - (f) You are also responsible for all charges and other obligations relating to the Services (whether or not you or your customers have authorised the use of the Services) and must pay us for any use of any Services that we provide to you by the due date set out on the invoice we issue to you.
 - (g) If you and one or more others are the customer for a particular Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.
 - (h) You are liable for all charges relating to any use of any Services we provide to you if your customers allow another person to occupy the premises or use the Services. For avoidance of doubt, one of the circumstances where your customers will be taken to have allowed another person to use the Services is if your customers do not install appropriate security measures including, without limitation, implementing password protection and other safeguards to prevent unauthorised use of the Services and, as a consequence, an unauthorised person uses the Services.
 - (i) You are also liable for all charges relating to any use of any Services we provide to you by any other person, whether or not you or your customers authorised the particular use of the Services by the other person, resulting from a virus, Trojan, worm or other malicious computer code, denial of service attack, hacking incident (including a SIM, PABX, IP PBX or SIP gateway device hack of your or your customer's network or equipment) or other means of exploiting a weakness in your network, equipment or security measures.
 - (j) If your customers vacate any premises and do not either disconnect any Services we provide to you at those premises or transfer legal responsibility for those Services to the new occupant of those Premises with our prior agreement (which may be given, withheld or be given subject to conditions at our sole and absolute discretion), you will be liable for any use of the Services by the new occupant or other third parties. You must pay us for the use of the Services even after your customer has vacated the premises if you did not arrange for the Services to be discontinued or did not give us sufficient notice to discontinue the Services before your customer vacated the premises.

3.3 Your and your customer's use of the Services

- (a) In using the Services, you and your customers must:
 - (i) comply with all laws, all directions by a regulator and all reasonable directions given by us from time to time;
 - (ii) ensure that all your or your customers' equipment used or to be used with Our Network and each Service:
 - (A) is compatible with Our Network and the Service;
 - (B) complies with all industry codes and standards (including, without limitation, any technical standards issued by any Regulatory Authority or us in connection with the equipment);
 - (C) is installed, stored or otherwise located in the premises with adequate and suitable space, ventilation, power supply and a dust-free environment free of excess humidity; and
 - (D) complies with any other requirements specified in the Standard Service Terms for the Service;
 - (iii) comply with all operational and user manuals and specifications provided by us to you in respect of each Service; and
 - (iv) comply with our Acceptable Use Policies and any other restrictions relating to use of each Service in the Standard Service Terms for that Service.
- (b) If we provide a default password (and/or other security safeguard such as a default PIN number) as part of a Service that you or your customers are required to enter in order to access, use and/or operate the Service, it is your and your customers' responsibility to change the password (and/or other security safeguard). You release us from all liability in connection with any Loss suffered or incurred by you if a third party enters the default password (and/or other security safeguard) and is able to access, use and/or operate the Service.
- (c) If a Service involves the access by you or your customers to data (whether your data, your customers' data or a third party's data), you are responsible for that access including setting appropriate passwords to enable you or your customer to access the data.
- (d) You and your customer must not use, configure, reconfigure or rectify any defect or faults in any Service or attempt to use, configure, reconfigure or rectify any defect or faults in any Service:
 - (i) in any way which breaches any law or regulation;
 - (ii) in any way which infringes another person's rights or exposes us or any of our Suppliers to liability or do anything which could bring us or any of our Suppliers into disrepute;
 - (iii) in any way which damages, interferes with or interrupts the Service, or Our Network used to supply the Service;
 - (iv) in any way which makes it unsafe or which may damage any property or injure or kill any person; or

- (v) to transmit, receive, publish or communicate material which is illegal defamatory, offensive, abusive, indecent, menacing, threatening, harassing or unsolicited,

and you or your customer must not procure, assist or allow any person to do any of the above.

- (e) We may at any time restrict or prevent the right of any third party providing or using services through Our Network.
- (f) You must take all reasonable steps, actions and precautions to stop internal and external threats and malicious software from attacking or being present on or adversely affecting Our Network including, without limitation, ensuring that all equipment used by you or your customer in connection with the Services (other than a Supplier Network) is protected by industry standard anti-virus and anti-malware software from a reputable supplier, and that this software is kept up to date and receiving security and signature updates or has such software effectively applied to it at least weekly.

3.4 Access to Premises

- (a) In order to provide Services to you or your customers, we may need access to the Premises or your customers' premises. You agree to, and agree to procure authorisation from your customers to, provide us with safe and prompt access to these premises, your Personnel, your and your customers' equipment, data and information and sources of power, light and ventilation at these premises for the purposes of:
 - (i) commissioning a Service;
 - (ii) installing any equipment for a Service you have requested;
 - (iii) inspecting, testing, maintaining, modifying, repairing or replacing any equipment for a Service you have requested;
 - (iv) recovering any equipment which we own after a Service we have provided to you is cancelled; and
 - (v) performing our other obligations to you in your Contract.
- (b) We or our contractors will give you reasonable notice by email or other method that we determine of the approximate time and date when access to your Premises or your customers' premises is required.
- (c) If you do not own all of the Premises, or your customers do not own all of its premises, you or your customers must obtain each owner's permission for us to access the Premises or your customers' premises (as the case may be) for the purposes specified in **clause 3.4** and that consent must be irrevocable and not lapse while your Contract is on foot. You must notify us immediately when you receive that permission. You must indemnify us and keep us indemnified against any claim, action or demand that the owner of the Premises or the customers' premises (as the case may be) makes against us relating to our entering the Premises or the customers' premises (as the case may be) for the purposes specified in **clause 3.4** in reliance on any representation made by you that you or your customers have obtained that permission. We are not required to first make payment in relation to any such claim before you are liable to pay us in respect of such claim under the indemnity contained in this **clause 3.4(c)**.

- (d) You and your customers accept that any delays in accessing the Premises or your customer's premises may result in delays with provisioning the Services. If the delay in accessing the Premises occurs after you have, or your customer has, agreed or booked a site visit through us, we reserve the right to pass on all costs associated with the prior agreed site visit.

3.5 Channel Partners

- (a) You must not appoint agents, distributors, channel partners or any other third party (together, **Channel Partners**) to resell or otherwise re-supply the Service to any person, except if expressly permitted under the Partnership Agreement or if you request by written notice to us to be entitled to appoint Channel Partners and we have notified you that we have expressly agreed to such request. In the absence of any express notification in writing of our agreement to your right to appoint Channel Partners, nothing in this agreement shall be read or construed as giving you such a right to appoint Channel Partners.
- (b) If we have expressly agreed, in writing, to your request to appoint Channel Partners, the following provisions apply to you:
 - (i) if you appoint a Channel Partner, you must use best endeavours to ensure that the Channel Partner complies with all of your obligations under your Contract as if the Channel Partner were you, including without limitation:
 - (A) entering into an agreement with each Channel Partner which contains obligations no less onerous than your obligations under your Contract; and
 - (B) enforcing your Contract, at your cost, where directed to do so by us;
 - (ii) to the extent you do not comply with paragraph (i), you must indemnify, and keep indemnified, us against any Loss suffered or incurred by us in connection with any claim (whether based in contract, tort (including negligence), statute or otherwise) against us arising from or in connection with any act or commission of the Channel Partner; and
 - (iii) you acknowledge and agree that you are solely responsible for paying all charges in respect of the Service (including, without limitation, any charges incurred as a result of the Channel Partner's acts or omissions).
- (c) A breach of this clause which is not rectified upon receiving notice from us within 7 days will be deemed a breach of a material term of your Contract.

3.6 Power supply and third-party infrastructure

- (a) Our supply of Services to you may rely on an electricity supply. You acknowledge and agree that arranging and paying for any electricity supply at the Premises or your customers' premises necessary to facilitate our supply of Services to you is your sole responsibility and failure of, or interruption to, any Service due to an irregular or interrupted or non-existent electricity supply does not constitute a breach of your Contract by us.
- (b) Our supply of Services to you may also rely on:
 - (i) Supplier Networks;

- (ii) equipment, infrastructure and services provided by a third party whether or not that third party has an agreement or understanding with you including, without limitation, a third party who provides Carriage Services;
- (iii) your or your customers' infrastructure; and
- (iv) your or your customers' equipment,

(Third Party Facilities).

- (c) Without limiting any other clause of your Contract, you acknowledge and agree that:
 - (i) the effective delivery of a Service may be reliant on the effective provision and operation of one or more Third Party Facilities. We will not be able to provide you with the Service if there is a delay in the provision of, or there is a defect or failure in, one or more Third Party Facilities;
 - (ii) the effective delivery of a Service may be reliant on one or more third parties providing us with equipment or a service. We will not be able to provide you with the Service if one or more third party delays in providing, or does not provide, us with the equipment or service required to provide a Service to you;
 - (iii) due to reasons beyond our control, a defect or failure in one or more Third Party Facilities may cause a delay, failure or interruption to a Service (including, without limitation, the failure of you to receive an electronic communication such as a voicemail message or e-mail);
 - (iv) we are not responsible in any way for any Loss (including Consequential Loss) you or your customers may incur or suffer as a result of any defect, failure or delay referred to in this **clause 3.6(c)**; and
 - (v) the occurrence of any defect, failure or delay referred to in this **clause 3.6(c)** does not constitute a breach of your Contract by us.
- (d) If you require us to undertake any remedial work to repair a Service as a result of any defect, failure or delay referred to in **clause 3.6(c)** or as a result of an Event not the Fault of Us, we may charge you an Additional Charge at the time we undertake that remedial work, and if we do so, you must pay such Additional Charge. An Additional Charge will be payable by you even if, when we first commence that work, you or we thought that the failure or interruption was caused by us but we subsequently discover that, in our reasonable opinion, the failure or interruption was caused by any defect, failure or delay referred to in **clause 3.6(c)**.

3.7 End users

You must use all reasonable endeavours to ensure that all your and your customers' end users of each Service comply with this **clause 3** as if any reference to "you" was a reference to each of your "end users" and any reference to "your customer" was a reference to each of "your customer's end users".

4. OUR RESPONSIBILITIES

4.1 Compliance with agreement

We will provide the Services to you in accordance with any agreed start dates, subject to **clause 3.6(c)**, and other terms and conditions that apply to your Contract for a particular Service.

4.2 Reasonable care and skill

We will provide the Services to you with reasonable care and skill, but we do not guarantee that the Services will be free of interruptions, delays, faults or errors. Except as expressly provided in these General Trading Terms or the Standard Service Terms for the relevant Service, we are not liable (whether in contract, tort (including negligence), statute or otherwise) to you or any other third party for any interruption, delays, faults or errors in any Service (in part or in full) for any reason whatsoever.

4.3 Compliance with laws and standards

We will make sure that all equipment which is owned by us and provided to you for use in connection with any Services complies with all laws and relevant technical standards issued by any Regulatory Authority.

4.4 Delivery of Services to Network Boundary Point

We will deliver Services to you up to the Network Boundary Point. You and your customers are responsible for all equipment, cabling and wiring beyond the Network Boundary Point.

4.5 Training

At or soon after the commencement of your Contract we will, at our sole and absolute discretion, provide your Personnel with what we consider to be reasonable training on how to access, use and operate a Service. However, you acknowledge that we are not responsible for the provision of any training to your end users, your customers or your customers' end users unless otherwise expressly stated under your Contract.

5. WORKS AND EQUIPMENT

5.1 Works

You acknowledge and agree that:

- (a) we (or our Supplier or any person authorised by our Supplier) may conduct works (including, without limitation, installation, inspection, testing, maintenance, modification, repair, replacement and recovery) on Our Network;
- (b) we do not always have control over the timing of those works and that we make no guarantee that scheduled works will be conducted outside of your normal business hours but where the timing of such works is within our direct control and we consider that the works do not need to be carried out at a particular time, we will use reasonable endeavours to ensure the works are not carried out between 9.00 am and 5.00 pm on a Business Day; and
- (c) those scheduled works may interrupt the supply of the Services and, if so, such interruption does not constitute a breach of your Contract by us.

5.2 Equipment

- (a) We may provide or lease Our Equipment to you for the purposes of you or your customers' use of the Services. There is no transfer in title of Our Equipment and Our Equipment shall remain the property of us or our Supplier (as the case may be).
- (b) We may, at our discretion, change Our Equipment we provide or lease to you during the term of your Contract. If we do, we will notify you of this and make arrangements for the replacement and return of such equipment. You agree to comply, and ensure your customers comply, with those arrangements, including any reasonable timeframe we notify you of for the return of equipment. You acknowledge and agree that such replacement and return does not give you any right to cancel a Service.
- (c) Subject to **clauses 5.2(e) and 5.2(g)**, title in Our Equipment is not transferred to you. You or your customers hold Our Equipment as bailee for us. Risk in Our Equipment passes to you on delivery to you. You are responsible for any damage to (save for fair wear and tear), or destruction or theft of, Our Equipment, except to the extent that it is directly caused by our negligence. You must, on demand, pay us:
 - (i) for any damage or destruction to Our Equipment for which you or your customers are responsible, the cost of repair or the cost of replacement equipment; and
 - (ii) for any theft of Our Equipment for which you or your customers are responsible, the cost of replacement equipment,together with an Additional Charge in respect of the delivery and installation of repaired or replaced equipment.
- (d) You must not, and you must ensure your customers do not, enter into agreement to transfer, sell or grant any Security Interest in respect of Our Equipment. You and your customers must not obscure or remove any identification marks on Our Equipment, unless with our express written consent in writing. You and your customers must ensure that Our Equipment is not altered, relocated, maintained, repaired or disconnected, or connected, to any electricity supply except by us or as we may expressly permit you to do so on a case-by-case basis in writing.
- (e) You must return Our Equipment, if we request you to do so, within five (5) Business Days after receiving that request. In addition, you must return Our Equipment to us within five (5) Business Days after the end of the Minimum Term or the end of your Contract (whichever is the later). It is your responsibility to return such equipment to us, and at your cost unless and to the extent we otherwise direct. If Our Equipment is not returned to us, or is not returned to us in the same condition as we provided it to you (excepting fair wear and tear), you are deemed to have made an offer to purchase such equipment from us and we are deemed to have accepted that offer. The price for such equipment will be set out in a notice that we will issue to you (such price to be the current standard purchase price for equipment or comparable equipment as at the day it was due to be returned) and you must pay such amount to us within the time stated in that notice.
- (f) Unless otherwise agreed, you must, and you must ensure your customers:
 - (i) allow us to install, inspect, test, modify, repair or replace Our Equipment; and

- (ii) do all things reasonably required by us to make clear the identity of the owner of Our Equipment.
- (g) We may sell equipment to you for use in connection with the Service (**Purchased Equipment**). Title to Purchased Equipment passes to you when you pay for it in full in cleared funds. Risk in Purchased Equipment passes to you on delivery. We will use reasonable efforts to transfer to you any manufacturer's warranty in any such Purchased Equipment, from the time title passes to you.
- (h) You must ensure that all equipment you and your customers use in connection with the Service that is not Our Equipment, and the way you and your customers use such equipment, complies with all applicable laws and relevant technical standards issued by any Regulatory Authority or us, as well as any reasonable directions issued by us in relation to such equipment. If you do not comply with this **clause 5.2(h)**, we may disconnect that equipment from the Service. We will try to give you reasonable notice before disconnection, but we may disconnect immediately in an emergency.
- (i) You must, and you must ensure your customers, provide adequate and suitable space, ventilation, power supply and dust-free environment free of excess humidity for all equipment used in connection with the Service and located on the Premises or your customers' premises including, without limitation, Our Equipment. If you are unsure about environmental requirements for any equipment, please ask us.

5.3 PPSA

- (a) You acknowledge that, by virtue of your Contract, we have a Security Interest in the Secured Goods for the purposes of the PPSA and to the extent applicable the PPSA applies.
- (b) You acknowledge and agree that we may do anything reasonably necessary, including, without limitation, registering any Security Interest which we may have in the Secured Goods on the PPSR, in order to perfect the Security Interest and comply with the requirements of the PPSA.
- (c) You agree to do all things necessary to assist us to undertake the matters set out in **clause 5.3(b)** (including, without limitation, executing all relevant documents).
- (d) You and we agree that, pursuant to section 115 of the PPSA and to the maximum extent permitted by the PPSA, the following provisions do not apply in relation to a Security Interest in the Secured Goods (words in this provision have the same meaning as in the PPSA):
 - (i) section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;
 - (ii) section 96 (when a person with an interest in the whole may retain an accession);
 - (iii) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
 - (iv) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (v) subsection 132(4) (statement of account if no disposal);
 - (vi) section 135 (notice of retention);

- (vii) section 142 (redemption of collateral); and
- (viii) section 143 (reinstatement of security agreement).
- (e) To the maximum extent permitted by the PPSA, you waive the right to receive all notices which we would otherwise be required to provide to you pursuant to the PPSA in relation to the registration or enforcement (or otherwise) of a Security Interest in the Secured Goods including, without limitation, any notice under section 157 of the PPSA of a verification statement in relation to any registration of a Security Interest on the PPSR.
- (f) Except if section 275(7) of the PPSA applies, you and we agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

6. ONGOING SUPPORT

6.1 Notification of any defect or fault

- (a) If you suspect there is a defect or fault in the Services, you may contact our help desk with the details of the defect or fault. You must follow the steps outlined in the Support Process including but not limited to supplying the correct and required information. Upon receiving those details, as outlined in the Support Process, we will provide you with a reference number of your notification which you must keep in order to keep track of our response to your notification.
- (b) Upon receipt of your notification of a suspected defect or fault in the Services, we will within:
 - (i) a reasonable time of receiving that notification; or
 - (ii) such other specific time that we have agreed with you as set out within the Support Process, Standard Service Terms and/or Variation,investigate the defect or fault in order to determine whether it is a defect or fault in Our Equipment or Our Network and which was caused by us.
- (c) If we determine acting reasonably that the suspected defect or fault in the Services was caused by us, we will within:
 - (i) a reasonable time of making that determination; or
 - (ii) such other specific time that we have agreed with you as set out within the Support Process, Standard Service Terms and/or Variation,rectify the defect or fault at no cost to you.
- (d) We are deemed to have been notified by you of a suspected defect or fault in a Service at the time when we provide you with acknowledgement of receipt of your notification (but excluding any automated notification sent by us outside of Business Hours).

6.2 Exclusions to ongoing support

- (a) We have no obligation to you to rectify any defect or fault in a Service caused or contributed to by:

- (i) any defect or fault in equipment, software or any network infrastructure which does not form part of Our Network;
 - (ii) any defect or fault in a Service which:
 - (A) is caused by your or your customers' own conduct or misuse of the Services or the conduct or misuse of the Services by your or your customers' end users, contractors or third parties who have gained access to the Premises, your customers' premises or the Services;
 - (B) is caused by faults or defects that arise in telecommunication services provided to you or your customers other than under your Contract (even if they are connected, with our consent, to our Services);
 - (C) arise due to equipment or cabling owned or leased by, or in the control of, you, your customers or your end users or your customers' end users; or
 - (D) arise due to failure by you, your customers or any third party (other than our Personnel) to appropriately maintain any equipment or cabling relevant to the supply of the Services;
 - (iii) electromagnetic interference with any Service;
 - (iv) any Force Majeure Event; or
 - (v) scheduled maintenance of Our Network.
- (b) We may agree, but are not obliged to, provide support to you in any of the circumstances in **clause 6.2(a)**, on such terms and conditions (including, without limitation, payment of an Additional Charge) as we may agree with you.
 - (c) Without limiting **clause 6.2(b)**, if during the course of providing support to you we discover that a defect or fault is a result of circumstances in **clause 6.2(a)**, we reserve the right to charge you an Additional Charge reflecting reasonable costs incurred, including time and materials, regardless of whether we rectify the relevant defect or fault.

7. CHARGES AND PAYMENT OPTIONS

7.1 Standard charges

- (a) You must pay the charges for the Services according to the rates set out in the Standard Service Terms for each Service unless expressly specified to the contrary in the Partnership Agreement or any Accepted Order, whether or not you have received any money(ies) the money from your customer(s).
- (b) You must reimburse us for any costs and expenses in accordance with the Standard Service Terms for each Service.
- (c) If we have procured from a third-party customised services for you as part of a Service, you must reimburse to us the amount of any associated charges that we pay to that third party.

7.2 Additional Charges

- (a) You must pay any Additional Charges as per this **clause 7.2** or as set out in the Partnership Agreement, any Accepted Order or any applicable provisions of the Standard Service Terms.
- (b) We may charge you an Additional Charge:
 - (i) to service, modify, repair or replace the Service or any equipment, as a result of an Event not the Fault of Us;
 - (ii) for installation, if the information you provided to us to determine the installation required was incomplete or inaccurate;
 - (iii) for installation, maintenance or other services which you request us to provide outside the hours of 9.00 am to 5.00pm on a Business Day;
 - (iv) for installation, maintenance or other services which you request us to provide on a day that is not a Business Day;
 - (v) for the installation, maintenance, modification and repair of any further Service you acquire from us or request us to provide to you; and
 - (vi) as expressly provided otherwise in these General Trading Terms.
- (c) We may charge you a credit card processing fee for payments made by credit card. The amount of this fee will be shown on your invoice or communicated at the time of taking payment.
- (d) We may charge you a fee for the provision of hard-copy invoices, for payments by cheque (if that payment method has been agreed by us) and for late fees payable in accordance with **clause 8.1(f)**.
- (e) If your financial institution fails to honour your payment, you must pay the amount owing directly to us, together with an additional amount we may notify to you representing our time, effort and expenses incurred in rectifying such failure, and any charges, transaction costs and/or administration costs we are liable to pay to a financial institution as a result of such failure. You acknowledge and agree that the additional amount payable by you is a reasonable and genuine pre-estimate of the Loss that will we incur or suffer by reason of your financial institution failing to honour your payment.
- (f) We may pass on to you any one or more additional fees, increases to fees, charges, transaction costs or administration costs imposed on us by third parties for ancillary services (for example, credit card transaction fees), new government taxes or levies, international or roaming services and premium or content services, provided we comply with any notification requirements for changes to these General Trading Terms in accordance with **clause 1** of these General Trading Terms or as otherwise required by any law which governs your Contract.

7.3 Calculating and adjustment to charges

- (a) We may round up any charge to the nearest cent.
- (b) If we provide any Service to you at a discounted rate on the basis of you meeting a certain volume of usage of the Service and, at any time, and from time to time, the volume of a Service used by you does not meet the volume of the Service you told us, we may at our discretion:

- (i) charge you our standard charges for the Service on and from the day you did not meet the volume; or
 - (ii) without waiving our ability to exercise our rights under the preceding subparagraph (i) at any time in the future, continue to charge you the agreed discounted rate for the Service.
- (c) If the Partnership Agreement, any Accepted Order or a Variation state we provide certain products and services to you under NFR Terms and we discover that all or any part of those products and services were sold, distributed or otherwise used other than in accordance with the NFR Terms, we reserve the right to charge you a fee that takes into account:
- (i) our obligations to our Suppliers;
 - (ii) the difference between the NFR Price and the price for which you sold or distributed the relevant product or service; and
 - (iii) any other reasonable costs incurred by us arising from your non-compliance with NFR Terms.

7.4 **Minimum Spend**

If your Contract outlines a Minimum Spend amount and a date from when this Minimum Spend commences, we will complete the following

- a. Review your invoice at the end of the month from when the Minimum Spend applies; and
- b. Calculate the charges that contribute to the Minimum Spend, which are defined in the Partnership Agreement; and
- c. Charge you the difference between your actual charges and the Minimum Spend outlined in your contract.

7.5 **Payment**

- (a) Subject to **clause 8.2**, you must pay each amount invoiced in the way and by the due date specified in the invoice. The due date specified in an invoice will be no later than 14 days after the date the invoice was issued unless otherwise outlined in the Partnership Agreement or any Variation we execute from time to time.

7.6 **GST**

Unless otherwise expressly stated, all charges stated for our goods and Services are exclusive of GST. You must pay us, in addition to the charges, an amount equal to any GST payable on the supply of the goods and Service/s. That additional amount is payable at the same time as the relevant charges are payable. We will issue a tax invoice to you for the supply of the goods and Service/s at or before that time.

8. **INVOICES AND BILLING**

8.1 **Invoicing**

- (a) Unless otherwise agreed by us, we may invoice you:
 - (i) for any equipment you purchase from us before, on or after delivery;

- (ii) for any installation charges, before or after installation;
 - (iii) for variable charges, in arrears;
 - (iv) for recurring or fixed charges, in advance; and
 - (v) otherwise, as notified by us from time to time.
- (b) We will notify you of our billing period from time to time. We may also issue interim invoices for accrued charges.
 - (c) We may invoice you using a third-party billing agent.
 - (d) We will try to include on your invoice all charges for the relevant billing period. This is not always possible (for example, because of processing delays or errors with our billing system or delays from our Suppliers). We may include these unbilled charges in any later invoice(s).
 - (e) We may re-issue any invoice if any billing error is later discovered. If you have overpaid any charges as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, we will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us. If you have underpaid any charges as a result of a billing error, you will be required to pay the correct amount to us after the invoice is re-issued to you by the due date specified in that invoice.
 - (f) If you do not pay any amount invoiced by the due date (including any amount which is validly disputed but later agreed or determined to have been due and payable), then we may charge you a late fee that is notified by us to you and which represents:
 - (i) interest calculated daily and on a compounded basis from (and including) the due date until (but excluding) the date of payment in full, at a rate that is 2% higher than the then current interest rate set out in the *Penalty Interests Rate Act 1983 (Vic)*; and
 - (ii) an amount of \$50.00 per invoice or other such amount that we reasonably determine which represents our time and effort in seeking payment of the overdue amount (including, without limitation, any legal or recovery fees we may incur to third parties in seeking assistance to obtain payment from you of the overdue amount).

You acknowledge and agree that the late fee is a reasonable and genuine pre-estimate of the Loss we will incur or suffer by reason of you not paying to us the amount by the due date.

- (g) You may not withhold, deduct or set-off any amount from or against any payment due by you to us in any circumstances. We may withhold or deduct from or set-off against any amount which we must otherwise pay or credit to you any amount payable by you to us.
- (h) If your invoices remain outstanding past the due date for payment we may (without limiting any other rights or remedies available to us under your Contract or at law):
 - (i) restrict hardware orders or request upfront payment; and
 - (ii) restrict you and your customers from provisioning Services to new end customers; and
 - (iii) restrict access to the Software Application we provide you; and

- (iv) restrict your access to the Services, including but not limited to, barring of outbound calls.

8.2 Billing disputes

- (a) You may dispute an amount invoiced by us but only if you do so in accordance with this **clause 8.2**.
- (b) To raise a valid billing dispute:
 - (i) you must make a genuine request by written notice to us via accounts@access4.com.au to investigate the specific charges or invoice, providing at the same time as a minimum, the date and number of the invoice, itemised details of the charges in dispute and specific evidence which demonstrates that a particular charge or invoice is incorrect; and
 - (ii) you may only withhold a disputed amount if the amount relates to a genuinely disputed invoice, you must pay all undisputed amounts and you must pay some or all of the disputed portion within five (5) days if we determine that amount to be payable. The disputed amount may only be withheld whilst the parties follow the dispute process in this **clause 8.2**.
- (c) You may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or you are entitled to a refund for overpayment, if you do so within 60 days of the date of invoice or overpayment.
- (d) If you raise a valid billing dispute, then we will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. Our records (and those of our Suppliers in respect of Supplier Networks) are sufficient proof of your usage of the Services, unless you otherwise prove to us, to our reasonable satisfaction, that they are incorrect. At the end of these investigations, you must pay any outstanding amount that has been shown to be correctly included in your bill or is agreed by the parties to be correct within five (5) days.

9. SERVICE STANDARDS

9.1 Customer Service Guarantee

We are not liable to pay any damages to you under section 118A of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) unless you comply with any requirement or direction (including, without limitation, any requirement or direction of a Supplier) in relation to claiming any such damages of which we may notify you from time to time.

9.2 Service disruption

Without limiting anything else in these General Trading Terms and the Standard Service Terms, we may temporarily suspend or restrict any Service without liability during any scheduled maintenance or other works specified in **clause 5.1**.

9.3 Service levels

If the Standard Service Terms for a Service sets out service levels for that Service, then we will use reasonable endeavours to perform that Service in accordance with those service levels. Our liability to you for a failure to meet such a service level is as set out in those Standard Service Terms and if there is none, then we have no liability to you in respect of such a failure, whether the liability arises in contract, tort (including negligence), statute or

otherwise. If the Standard Service Terms sets out a remedy for such failure, that is your only remedy for failure to meet the service level.

9.4 **No liability for failure to comply with operational requirements**

You release us from all liability (including, without limitation, to pay any monetary compensation under the Customer Service Guarantee or to pay any rebate for failure to meet any service levels) in connection with any delay, failure, defect or fault relating to any Service where the delay, failure, defect or fault is caused or contributed to by your failure to comply with the provisions of **clause 3.3(a)**.

10. **FORCE MAJEURE**

Neither party will be liable for any delay or failure to meet its responsibilities under your Contract because of a Force Majeure Event to the extent that, and for the period of time during which, the party is affected by the Force Majeure Event, except for:

- (a) any obligation you owe to pay charges for Services which you have received; and
- (b) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party regardless of whether or not you have received those services as a result of a Force Majeure Event.

11. **LIABILITY**

11.1 **Exclusions of representations, guarantees or warranties**

Subject always to **clause 11.2**, to the maximum extent permitted by law, we make no representation or give any guarantee or warranty (including, without limitation, of merchantability, acceptable quality, fitness for any particular purpose or fitness for disclosed result) in connection with Services.

11.2 **Liability under consumer protection laws not excluded**

- (a) There may be non-excludable statutory guarantees, conditions, warranties or liabilities that we have to you under the Competition and Consumer Act and other consumer protection laws that may apply to the Services that we supply to you and that cannot be excluded (**Non-Excludable Conditions or Liabilities**).
- (b) Nothing in your Contract removes or limits any of the Non-Excludable Conditions or Liabilities under consumer protection legislation and which are not permitted to be excluded.
- (c) If your Contract is considered to be a consumer contract for the purposes of the Competition and Consumer Act, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (d) However, to the extent that our liability can be limited under any applicable legislation, then we limit our liability to you, at our sole discretion, to:
 - (i) in the case of a breach relating to the supply of Services: resupplying the Service or payment of or reimbursement for the cost of having the Services resupplied; and

- (ii) in the case of a breach relating to the supply of equipment: the replacement of the equipment, the repair of the equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the equipment or supplying equivalent equipment,

and you acknowledge that this limitation of liability is fair and reasonable in all the circumstances.

11.3 Our liability to you

- (a) We exclude all liability for any Loss (including, without limitation, any Consequential Loss) suffered or incurred by you or your Personnel which arises in connection with use of the Services while conducting a business and, subject to **clause 11.2**, you agree that we do not have and will not have any such liability.
- (b) Subject to **clause 11.2**, we exclude all liability for any Loss (including, without limitation, any Consequential Loss) suffered or incurred by you or your Personnel which arises in connection with anything outside our actual control, including any services or goods we do not supply to you or your customers and the occurrence of an event which we did not cause.
- (c) We exclude all liability to you (including to your Personnel) in connection with any technical support or any consultancy or technical advice provided to you, your Personnel or your customers in good faith, any inspection or supervision that we agree to provide in respect of your or your customers' equipment or any approval of, or confirmation of completion of works by us in respect of, any design or construction proposal provided by you, your Personnel or your customers.
- (d) We exclude all liability to you (including to your Personnel) for any Consequential Loss suffered or incurred by you in connection with the supply or use of the Services or the supply or use of any equipment we provide to you (whether based in contract, tort (including negligence), statute or otherwise).
- (e) Our total liability to you for any Loss you suffer or incur, and for which we are liable under your Contract (whether based in contract, tort (including negligence), statute or otherwise) is limited to:
 - (i) a maximum amount equal to your actual monthly spend or the Minimum Spend in respect of the affected Service (whichever is greater for each particular month) averaged over the previous consecutive three (3) billing months per incident or series of connected incidents giving rise to liability; and
 - (ii) in aggregate for all incidents, the amount of charges paid by you to us in relation to the affected Service or Services in the 12 month period prior to the last incident giving rise to our liability under your Contract.
- (f) The exclusions of liability in this **clause 11.3** do not apply to any Loss arising from death or personal injury or loss of or damage to your real or tangible property or equipment to the extent it is directly caused or contributed to by a negligent act or omission of us or our Personnel in connection with our delivery of the Services but our liability for any such Loss is limited to the amount payable by our relevant policy of insurance effected from time to time.

11.4 Contribution and mitigation

- (a) Our liability for any Loss suffered or incurred by you under or in connection with our provision of Services to you (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your, your

Personnel's or your customers' acts or omissions or the use of any Third Party Facilities used in connection with our Services, or the acts, omissions or equipment of a third person, caused or contributed to that Loss.

- (b) Our liability to you will be reduced to the extent that you or your customers have not taken reasonable steps to mitigate or avoid the Loss flowing from the event giving rise to our liability to you.

11.5 **Claims against Suppliers**

To the extent permitted by law, we exclude any liability for claims (whether based in contract, tort (including negligence), statute or otherwise) which may be made by you, your customers, your Personnel or any other third party against Suppliers through whom we may directly or indirectly provide Services to you and you release us from any Loss suffered or incurred by you, your customers, your Personnel or any other third party. Furthermore, you indemnify us and our Personnel and hold us and our Personnel harmless from and against any Loss suffered or incurred by us and our Personnel in connection with any such claim made by you, your customers, your Personnel or any other third party.

11.6 **Your liability to us**

- (a) You must indemnify us and our Personnel and hold us and our Personnel harmless from and against any Loss including, without limitation, reasonable legal costs that any of those indemnified may suffer or incur arising out of or in connection with your breach of your Contract or arising out of or in connection with wilful misconduct or unlawful, fraudulent or negligent acts or omissions by you, your Personnel or your customers and which relate to:
 - (i) the use (or attempted use) of the Service; or
 - (ii) equipment used in connection with the Service.
- (b) You assume liability for, and indemnify and hold us and our Personnel harmless from and against, any claim by a third party arising from your use or your customers' use of the Services (including, without limitation, claims for breaches of Intellectual Property Rights and as a consequence of your use or your customers' use of the Service being contrary to the law).
- (c) You are not liable for any Consequential Loss suffered or incurred by us or our Personnel in connection with the supply of the Services or any equipment we provide to you (whether based in contract, tort (including negligence), statute or otherwise) provided that such an exclusion of liability for Consequential Loss does not apply to **clause 11.6(b)**, any Consequential Loss arising from a breach of **clauses 14(b) and 15(c)**, or any Consequential Loss arising from death or personal injury or loss of or damage to your real or tangible property or equipment to the extent it is directly or indirectly caused or contributed to by a negligent act or omission of you, your Personnel or your customers.

11.7 **Integrated Public Number Database (IPND)**

- (a) Without limitation to **clause 2.3(a)**, you represent and warrant to us – with the expectation that we rely upon that representation – that at or before the time we commence the supply of any Service under any order we accept, you will give us the correct end user company name (Enterprise Name) and address at which that Service is utilised by your customer in that order. This obligation to provide the correct end user address is a requirement for the duration of your Contract.
- (b) You acknowledge that we will supply the end address you give us in respect of a Service as we are permitted to or required to under any law.

- (c) You must indemnify us and our Personnel and hold us and our Personnel harmless from and against any Loss including, without limitation, reasonable legal costs that any of those indemnified may suffer or incur arising out of or in connection with your failure to provide us with a correct end user details and address or to provide us with any change to that end user details and address or any matter which prevents or delays us from accessing details of any end address you have given us.
- (d) You assume liability for, and indemnify and hold us and our Personnel harmless from and against, any claim by a third party relating to failure to provide us with a correct end address or to provide us with any change to that end user details and address or any matter which prevents or delays us from accessing details of any end address you have given us.

12. CANCELLATION OR SUSPENSION

12.1 Your right to cancel a Service

You may cancel your Service without liability at any time:

- (a) if we commit a material breach of your Contract for that Service and:
 - (i) you have notified us in writing of that breach and, within 30 days after you give us notice:
 - (A) in circumstances where such breach is caused by circumstances beyond our control, we have failed to provide you with a rectification plan setting out a reasonable time by which the breach will be rectified or, having provided such a rectification plan, we have failed, in a material respect, to comply with that rectification plan; and
 - (B) in any other circumstances, we failed to remedy the breach; or
 - (ii) you have notified us in writing of that breach and the breach cannot be remedied; and
 - (iii) For the avoidance of doubt, we will not have committed a material breach of your Contract if there is a Force Majeure Event and in those circumstances clause 10 will apply; and
- (b) where no Minimum Term applies to a Service, if you give us at least 30 days' notice.

12.2 Our right to cancel or suspend

- (a) We may, without liability, cancel a Service and any related Service and end the Contract:
 - (i) if no Minimum Term applies to the Service, at any time if we give you at least 30 days' notice;
 - (ii) if a Minimum Term applies to the Service, at any time after the expiry of the Minimum Term if we give at least 30 days' notice to you;
 - (iii) at any time before we start providing a Service to you, if we reasonably determine that it is not technically or operationally feasible or commercially viable to supply the Service to you, by giving notice to you;

- (iv) at any time if you no longer satisfy any pre-requisite for the supply of the Service; or
 - (v) if we can no longer provide you with the Service (including, without limitation, due to any geographical coverage, capacity, Supplier or technical limitation) or we cease to offer the Service generally.
- (b) We may, without liability, immediately suspend or cancel a Service and any related Service and end the Contract at any time by giving notice to you if:
- (i) you breach any of your obligations relating to the use of the Service or otherwise misuse the Service (including, without limitation, any use of the Services for illegal or unlawful purposes);
 - (ii) we reasonably suspect fraud by you, your Personnel, your customers or any other person in connection with the Service or that any Service is being used in connection with any illegal activity or contrary to law;
 - (iii) we believe it is necessary to do so to:
 - (A) comply with any law or an order or request of any relevant Regulatory Authority or person responsible for the enforcement of law;
 - (B) protect any person, equipment or to attend to any emergency; or
 - (C) protect or minimise the potential for loss of or damage to data or goods regardless of who they belong to;
 - (D) minimise further expenses because we reasonably believe the Service(s) has/have been compromised and unauthorised charges are being incurred.
 - (iv) except in respect of any amount that has been validly disputed under **clause 8.2**, any amount owing to us is not paid by its due date (as specified in the relevant invoice or notified by us);
 - (v) we cannot enter the Premises because of your, your Personnel's, your customers' or a third party's act or omission when we need to do something in connection with the Service in order to supply the Service or make the Service or related equipment safe;
 - (vi) in respect of a Service at particular premises, you vacate the Premises or your customers vacate its premises (as the case may be);
 - (vii) you or your customers breach the terms of any of our Acceptable Use Policies or if we reasonably consider that your use or your customers' use of a Service is excessive or unusual under those Acceptable Use Policies (though if we do suspend or restrict a Service, you continue to be liable to pay for any charges incurred by you or your customers for any excessive or unusual usage);
 - (viii) you breach a material term of your Contract for a Service and:
 - (A) we have notified you in writing of that breach and you have failed to remedy it within 30 days after we give you notice requiring you to do so; or
 - (B) we have notified you in writing of that breach and the breach cannot be remedied;

- (ix) a Supplier through whom we directly or indirectly supply Services to you terminates their agreement with us, or ceases to supply services to us, and we are not able to provide the Service using an alternate supplier on terms reasonably acceptable to us;
 - (x) you suffer an Insolvency Event or appear reasonably to us likely to do so;
 - (xi) you suffer a Change in Control and we reasonably believe that it will or may affect us, our interests or your ability to comply with your obligations under your Contract;
 - (xii) we reasonably consider that you no longer meet our Credit Rating requirements or we otherwise reasonably consider that you are likely to be unable to pay the charges for the Service;
 - (xiii) if you are an individual, you die or, if you are a partnership, the partnership is dissolved or an application is made to dissolve the partnership;
 - (xiv) we are otherwise entitled to do so under another term of your Contract or at law; or
 - (xv) we are required to do so by law.
- (c) We may also suspend or cancel a Service if any Force Majeure Event prevents the supply of the Service for more than 14 days.

12.3 Consequences of suspension by us

- (a) If a Service is suspended or cancelled and/or the Contract is ended in accordance with these General Trading Terms before the date we start providing the Service to you, then:
 - (i) you must pay to us all installation costs incurred by us in connection with preparation for the provision of the Service; and
 - (ii) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated charges that we pay to that third party, even if they are ongoing, for such time as we are required to pay those associated charges to that third party.
- (b) If the Service is suspended in accordance with these General Trading Terms, then you will not be liable to pay usage-based charges for the Service while it is suspended or cancelled but otherwise you must pay all charges arising before, during and after suspension.

12.4 Consequences of cancellation by you or us

- (a) Unless stated otherwise in your Partnership Agreement, if you cancel a Service under **clause 12.1** or we cancel a Service under **clause 12.2**:
 - (i) you must pay to us all charges for the Service that are outstanding up to and including the date of cancellation, such charges being immediately due and payable;
 - (ii) if we have charged in advance for the Service, your account will be credited with any charges for Services that would have been provided on and from the day immediately following the date of cancellation;
 - (iii) if we have procured from a third party customised services for you as part of the Service, you must reimburse to us the amount of any associated

charges that we pay to that third party, even if they are ongoing, for such time as we are required to pay those associated charges to that third party;

- (iv) if you have purchased any equipment from us that you have not paid for in full, you must pay to us the purchase price for the equipment, such amount being immediately due and payable;
 - (v) in the case of termination of the Service by us under **clause 12.2(b)**, you must pay to us an Early Termination Fee for the Service, such amount being immediately due and payable, and you acknowledge and agree that the Early Termination Fee is a reasonable and genuine pre-estimate of the Loss we will incur or suffer by reason of you or us cancelling the Service in those cases;
 - (vi) you must promptly disconnect from Our Network and remove any of your equipment;
 - (vii) you must, at your cost, immediately return to us or permit us to remove any equipment owned by us, equipment you have purchased but not fully paid for, or other material of ours on the Premises or in your possession or control; and
 - (viii) unless otherwise expressly agreed, each person's accrued rights and obligations are not affected.
- (b) Upon any cancellation of a Service, you must continue to pay all charges relating to the Service if:
- (i) we continue to supply the Service or the Service remains activated; or
 - (ii) you continue to use the Service; or
 - (iii) both **clauses 12.4(b)(i)** and **12.4(b)(ii)** apply.
- (c) Upon any cancellation of a Service, we may invoice you for all charges for the Service that have not been previously invoiced and you must pay to us all amounts specified in that invoice, and all other unpaid amounts relating to that Service, within ten (10) Business Days of the date of that invoice.
- (d) Upon cancellation of a Service by us in any of the circumstances referred to in **clauses 12.2(b)(ii), 12.2(b)(viii), 12.2(b)(x), 12.2(b)(xi)** Error! Reference source not found., **12.2(b)(xii), 12.2(b)(xiii)** or **12.2(b)(xv)**, we may notify your customers of such cancellation and provide them with details of alternative suppliers to ensure that they have continuity of any services they acquired from you that are affected by the cancellation of the relevant Service by us.
- (e) Upon cancellation of the Contract, you must either return everything related to our Intellectual Property Rights to us or destroy all material provided to you under this Contract and cease to use anything which is covered by our Intellectual Property Rights.

12.5 Existing data upon cancellation or suspension

If your Service is cancelled or suspended in accordance with this **clause 12**, we may at our own discretion or upon request from you we will endeavour to (but cannot guarantee that we will be able to):

- (a) return any of your or your customers' data that is stored by us on Our Network;

- (b) differentiate and separate your or your customers' data from the other data stored on Our Network; and
- (c) remove your or your customers' data from Our Network.

12.6 **Suspension includes restriction and modification**

Whenever we are entitled to suspend a Service, we may instead of, prior to or after suspension, restrict or modify that Service (for example, instead of disconnecting a phone line, allowing only incoming but no outgoing calls) and references to 'suspend' and 'suspension' in this document must be read accordingly.

12.7 **Reconnection following suspension or cancellation**

- (a) If we have suspended a Service, prior to us reactivating that Service, you must pay us a reconnection fee of:
 - (i) \$10 plus GST in respect of each affected end point where the Service was suspended but not disconnected; and
 - (ii) \$25 plus GST in respect of each affected end point where the Service was disconnected.
- (b) If a Service is cancelled under this **clause 12**, we may charge you a reconnection fee as set out in any further application for the Service (providing we decide to accept your further application for that Service). No reconnection fee will be charged if you reconnect a Service that was cancelled under this **clause 12.1(a)**.
- (c) We do not guarantee that, where a Service has been disconnected due to a suspension or cancellation of the Service, the same Public Addressing Identifier will be issued or is available to be issued to a reinstated Service and you agree that we have no liability if you or your customers are issued a different Public Addressing Identifier for the reinstated Service.
- (d) If a Service is reconnected under 12.7, it is your responsibility to confirm the configuration and the Service is in working order.

13. **INTERCEPTION**

You acknowledge that we (or our Suppliers or any other carrier or another Carriage Service provider who may indirectly provide you with the Services) may be required by law to retain metadata, information and content in relation to your and your customers' use of the Services, intercept and record your and your customers' communications, pass on details of your or your customers' use of the Services, including any retained metadata, information and content in our possession or effective control and we may monitor your or your customers' usage of the Services, including where we are requested or directed to do so by a Regulatory Authority, a law enforcement authority or other authority.

14. **CONFIDENTIAL INFORMATION**

- (a) We and you each agree to keep confidential the other's Confidential Information.
- (b) Subject to **clause 14(c)** and **clause 14(d)**, we and you will not use or disclose the other's Confidential Information for any purpose other than to the extent necessary to perform obligations or exercise rights under your Contract or as consented to by the other party.

- (c) We may:
 - (i) disclose your Confidential Information to any Supplier where it is necessary to enable the Supplier to provide any service (for example, a messaging service) to us in connection with a Services that we supply to you;
 - (ii) use or disclose your Confidential Information where expressly permitted under any other provision of these General Trading Terms or your Contract;
 - (iii) use or disclose your Confidential Information to make contact with, or to deal directly with, your end users or other Personnel in connection with the Services and the billing of those Services;
 - (iv) refer to you as a customer of ours in our press releases, our marketing, sales or financial material or our reports;
 - (v) disclose your Confidential Information to our Related Corporations or related entities;
 - (vi) disclose your Confidential Information to any subcontractor or agent of ours in relation to the Services we provide to you (for example, a billing agent), provided that they are subject to obligations of confidence substantially equivalent to those provided under these General Trading Terms; and
 - (vii) transmit information about your location in emergency situations.
- (d) The obligations of confidentiality in this **clause 14** do not apply to the extent disclosure is required by law or the listing rules of a stock exchange, a direction by Regulatory Authority, or disclosure to professional advisors.

15. INTELLECTUAL PROPERTY RIGHTS

- (a) Any Intellectual Property Rights owned by either party prior to entry into your Contract, or developed independently of your Contract by either party, will continue to be owned by that party.
- (b) None of our Intellectual Property Rights are transferred to you and, unless specifically authorised by your Contract, you cannot and will not use, disclose or reproduce such Intellectual Property Rights for any purpose unconnected with your Contract.
- (c) Without limiting paragraph (b), and except to the extent permitted by law or expressly authorised by us, it is a material term of your Contract that, to the extent that you or your customers are provided proprietary software relating to methods or processes embodied in that software or are provided with any documents or materials containing Intellectual Property Rights, including but not limited to marketing, legal, billing, financial, training, public relations or any other documents or materials containing Intellectual Property Rights, you must not, and must not permit your Personnel, your end users, your customers, your customers' end users or any third party, to:
 - (i) copy, modify, recreate, reproduce or distribute the software, documents or materials except to the extent permitted or authorised by your Contract or at law generally;

- (ii) disassemble, decompile, reverse assemble, reverse compile or otherwise reverse engineer the whole or any part of the software, documents or materials;
 - (iii) attempt to do any of the above acts in paragraphs (i) and (ii); or
 - (iv) cause, permit or assist any other person directly or indirectly to do any of the above acts in paragraphs (i), (ii) and (iii),
- (together the **Prohibited Use**).
- (d) You must not use, communicate or distribute any content or collateral not expressly authorised by us to you.
 - (e) You must notify us within 24 hours of becoming aware of any actual or suspected Prohibited Use and provide us with any details we request.
 - (f) Notwithstanding any other remedies available to us under your Contract or at law, you acknowledge that in the event of any actual or anticipated breach by you of this **clause 15**:
 - (i) damages alone are an inadequate remedy; and
 - (ii) we shall be entitled to an interim, interlocutory or permanent injunction or such other equitable remedy restraining you or your customers without showing or proving any actual damages sustained by us.
 - (g) Any breach of this clause will constitute a material breach of your contract.

16. PERSONAL INFORMATION

- (a) Our collection, use, disclosure and storage of any of your or your customers' Personal Information is governed by our Privacy Policy and the Privacy Act. Our Privacy Policy can be found on our website at www.access4.com.au.
- (b) You must comply with all your obligations under the Privacy Act. If you are a small business operator under the Privacy Act, you must choose to be treated as an organisation under section 6EA of the Privacy Act during the term of your Contract and otherwise comply with the obligations under the Privacy Act as if you were an organisation under the Privacy Act.
- (c) We are required by law to provide your customer's name, address, service numbers and other public number details to a database known as the Integrated Public Number database (IPND). This obligation applies to all customers, including those customers who request an unlisted number. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have any of the information we supply to the IPND altered in any way.
- (d) We may be required by our Suppliers to provide your or your customer's details to them in order to supply Services to you or your customers. In these situations, the Supplier will treat your or your customer's information in accordance with the Privacy Act. Without limitation to **clause 16(b)**, you represent and warrant to us that you have obtained all necessary consents from your customers to give effect to this **clause 16(d)**.

17. YOUR ENTITLEMENT TO PUBLIC ADDRESSING IDENTIFIERS AND NUMBER PORTING

- (a) The *Telecommunications Number Plan 1997* (Cth) sets out rules for issuing, transferring and changing telephone numbers. We may supply you with telephone numbers for the resupply of such numbers to your customers. You and we must comply with the Telecommunications Number Plan.
- (b) The Services may use identifiers such as a telephone number, an IP address or domain name (**Public Addressing Identifiers**). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- (c) You acknowledge and agree that:
 - (i) you and your customers do not own or have any legal interest or goodwill in any Public Addressing Identifier issued to you;
 - (ii) you and your customers must not sell, transfer, lease, license or otherwise deal with any Public Addressing Identifier in any way inconsistent with this **clause 17**;
 - (iii) we do not control the allocation of Public Addressing Identifiers;
 - (iv) we are not liable to you or your customers if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority, one of our Suppliers or any other body which administers Public Addressing Identifiers; and
 - (v) on cancellation of the Service, your or your customers' right to use a Public Addressing Identifier may cease and the Telecommunications Number Plan may allow us to recover the number from you or your customers.
- (d) We may select and assign a phone number for a Service unless your customers port their phone number from their previous supplier service.
- (e) If your customer is connected to another supplier's service, they may be able to port their existing phone number, subject always to availability and technical and commercial considerations. The porting of your customers' phone number will be conducted in accordance with all regulatory requirements and applicable industry codes. You represent and warrant that your customer has provided authorisation (in such form as provided by us) to port their phone number. You will be liable for any charges for porting or any other charges or costs incurred by us and you must reimburse us and indemnify us for any Loss we may suffer or incur by reason of the porting of your customers' phone number (including, without limitation, if we are unable to successfully port such phone number from a previous supplier's service). We do not guarantee that we will be able to port such phone number from a previous supplier's service, and we will not be in breach of your Contract if we are unable to port such phone number.
- (f) You acknowledge and agree that, if we issue more than one phone number and you tell us prior to the provision of a phone number that your customer would port the phone numbers to a new supplier's service once we cease to provide a Service to you, we may issue to you a batch of 10 or 100 phone numbers and you will be required to pay the appropriate charge for that batch of phone numbers. You must at all times ensure that the telephone numbers issued to you in any single batch are resupplied to a single customer only and not split between multiple customers.

You must at all times ensure that any customer wanting to port out, will submit a request to port the entire range allocated to them in the Software Application.

- (g) You accept that any temporary numbers utilised in the porting process as alternative numbers or for any other reason will incur additional charges for the period they are utilised at the price set out in the Software Application.

18. OTHER

- (a) We may subcontract any of our obligations under your Contract to any person.
- (b) To the extent they are assignable or able to be novated, we may at any time assign and/or novate some or all of our rights or obligations under your Contract to any person and you agree to do all things necessary to give effect to such assignment or novation. We may also novate some or all of our obligations under your Contract to any Related Corporation that is able to perform those obligations and, if that Related Corporation undertakes to perform those obligations, you agree to do all things necessary to give effect to such novation and that we will be released from any further performance with effect from the date of the novation. We will notify you of any assignment within a reasonable time of the effective date of such assignment.
- (c) You may not assign and/or novate your rights or obligations under your Contract without our prior written consent, such consent to be given at our absolute discretion.
- (d) If we have a right under your Contract and we do not exercise that right, we do not waive that right or any other right.
- (e) The parts of your Contract which are by their nature intended to survive cancellation of the Service or the termination or expiry of your Contract will do so. The parties expressly agree that the provisions of **clauses 1.1(e), 2.6(f), 3.5(b)(ii), 3.5(b)(iii), 3.6(c)(iv), 5.2(e), 7.4, 7.6, 8.1, 9.4, 11, 12.3, 12.4, 12.5, 14, 15(a), 15(b), 15(c), 17, 18(e), 18(h), 18(i)** and **20** survive termination.
- (f) your Contract contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties in relation to the subject matter of your Contract.
- (g) your Contract may not be varied otherwise than by a document in writing and executed by both parties.
- (h) You agree that you must:
 - (i) neither seek to entice any of our employees away from our employment nor cause nor encourage nor permit any other person or entity to do so;
 - (ii) immediately notify us if you become aware of any person or entity attempting to entice any of our employees away from our employment and provide us with reasonably specific details of the employee concerned;
 - (iii) pay us an amount equal to one quarter of the relevant employee's then current salary plus GST if you breach **clause 18(h)(i)** and you agree that:
 - (A) the method of calculation of that amount is reasonable;
 - (B) the calculation will produce a reasonable pre-estimate of the loss we will suffer in replacing that employee;

- (C) the calculated amount will be a sum for which you are solely liable and responsible and which we may recover from you as a liquidated debt; and
- (D) this **clause 18(h)** is a material term of your Contract.
- (i) your Contract is governed by the laws of Victoria, Australia. You and we agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and the courts of appeal from them.
- (j) You agree that any of your, or your customers', data that is transmitted, stored or collected on Our Network belongs to us and can be used by us as we deem, provided that we must not use such data in a way which contravenes the Privacy Act, our Privacy Policy or any relevant legislation

19. DISPUTE RESOLUTION

19.1 Dispute Notice

If a dispute arises in connection with your Contract or a breach of your Contract the aggrieved party must notify the other party of the dispute and provide adequate details of the dispute and what (if any) action, the party giving the notice considers, is required to remedy the breach or settle the dispute (“**Dispute Notice**”).

19.2 Steps required before commencing proceedings

The parties agree that, before commencing any litigation, any dispute is to be:

- (a) dealt with in accordance with this clause 19 by both parties acting in good faith;
- (b) referred to a manager of each party via issue of the Dispute Notice;
 - (i) the manager for Access4 will be the sales and marketing manager (at the time);
 - (ii) your manager will be the manager which we customarily deal with; and
- (c) if the managers do not settle the dispute within seven (7) Business Days after the Dispute Notice is served, the matter may be referred to a director of each party; and
 - (i) the director for Access4 will be the managing director (at the time);
 - (ii) your director will be the director you nominate and which has the power to settle the dispute; and
- (d) if the directors do not settle the dispute within a further seven (7) Business Days, the matter may be referred to mediation by a mediator agreed by the parties (if the parties fail to agree on a mediator, such mediator will be appointed by the President of the Law Institute of Victoria).

19.3 Costs

Each party agrees to share the costs associated with engaging mediators.

19.4 Urgent relief

Despite anything in this clause 19, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with your Contract where that party seeks urgent interlocutory relief.

20. DEFINED TERMS

Acceptable Use Policies means any policies governing your use of our Services that we may notify you of from time to time and copies of which are available to you on our website at www.access4.com.au, included in the relevant Service Schedules or through our Software Application we make available to you.

Accepted Order has the meaning given to that term in **clause 1.1(b)(iv)**.

Additional Charge means a charge on a time and materials basis, where all time is charged at our published rates as amended from time to time, and all materials on a pass-through cost basis plus handling and storage cost (if applicable).

Business Day means a day that is not a Saturday, Sunday or public holiday in the state in which the Service is located.

Business Hours means the hours between 9.00am to 5.00pm on a Business Day in the state in which the Service is located.

Carriage Service has the meaning given in the Telecommunications Act.

Channel Partner has the meaning given to that term in **clause 3.5(a)**.

Change in Control means, in relation to a party, that an event occurs such that the ability to control the board or the management and policies of the party passes to a person or persons who did not have that ability immediately before that event.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time and includes regulations and statutory instruments made under that act from time to time.

Confidential Information of a person means all information of that person (**Owner**) of a confidential nature, which another person (**Recipient**) first becomes aware, whether before or after the date of the original Application, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner.

Notwithstanding the foregoing, Confidential Information does not include information:

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

Consequential Loss means:

- (a) any Loss that is suffered or incurred by a party as a result of a fact, matter or circumstance which does not arise naturally (that is, according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss;

- (b) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if any of that Loss arises naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss; and
- (c) any penalties imposed by a Regulatory Authority.

Consumer Contract has the meaning given to that term in the *Telecommunications Consumer Protection Code C628: 2007* as amended or replaced from time to time.

Contract has the meaning given to that term in **clause 1.1(b)**.

CPI means the *All Groups, Consumer Price Index* for Melbourne, Victoria published from time to time by the Australian Bureau of Statistics (**ABS**) for all groups (national) or, if the index is no longer published or if ABS ceases to exist, the published index which most closely resembles it.

CPI Increase means, as at an adjustment date, the percentage amount of the increase in CPI as at the adjustment date from the end of the same quarter in the previous calendar year or, if there has been no increase in CPI during that period, zero (0) percent.

Credit Information means:

- (a) personal identifying details, including your name and current and previous addresses, date of birth, employer, and driver's licence number;
- (b) the fact that we are a credit provider to you and any credit limit on your account;
- (c) information about any payments which are overdue for at least 60 days, when recovery steps have been taken by us;
- (d) where an overdue payment has been previously reported, advice that payment is no longer overdue;
- (e) information about any payments including cheques, credit cards and direct debits which have been dishonoured;
- (f) court judgments or bankruptcy orders made against you;
- (g) the fact that, in our opinion, you have committed a serious credit infringement; and
- (h) the fact that (and timing of) we have ceased providing a Service to you.

Credit Rating means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the Privacy Act.

Customer Service Guarantee means any performance standards issued under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Dispute Notice has the meaning given to that term in **clause 19.1**.

Early Termination Fee means, in respect of each Service that is cancelled, the aggregate total of the following amounts:

- (a) the unrecovered proportion of the costs we have incurred in provisioning or providing the Service, such costs to be amortised on a straight line basis over the Minimum Term for the Service;

- (b) any costs that we incur in connection with the cancellation of the Service to the extent that we are unable to avoid such costs after taking reasonable steps to do so;
- (c) an amount equal to the Minimum Spend in respect of the Service multiplied by the number of billing months (or part thereof) between the date of cancellation and the end of your Minimum Term; and
- (d) an amount representing the difference between our standard charges for the Service and any discount to those standard charges, or any rebate, credit, technology fund or similar amount that we gave you, based on you meeting a certain volume of usage of the Service if, when you cancel the Service, the volume of the Service used by you has not, at any time, met that volume of usage of the Service.

Event not the Fault of Us means:

- (a) a breach of any provision of your Contract by you;
- (b) a Force Majeure Event;
- (c) a negligent or fraudulent act or omission of you or your customers; or
- (d) a failure of any of your equipment not caused by us.

Force Majeure Event means any event outside a person's reasonable control, and includes, without limitation, any failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, any circumstances outlined in clause 3.6(c), Supplier failure or the change or introduction of any law or regulation (including the Telecommunications Legislation).

General Trading Terms has the meaning given to that term in **clause 1.1(b)(i)**.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Level 1 Support means all end user support, initial incident troubleshooting and completion of service requests, including but not limited to password resets, phone configurations (moves, adds and changes), network connectivity problems and triaging of any incident prior to escalation to us in accordance with our Support Process.

Insolvency Event means:

- (a) whenever a bankruptcy notice is issued in relation to you, bankruptcy proceedings are commenced against you, or you are declared bankrupt;
- (b) whenever any step is taken to enter into any scheme of arrangement between you and your creditors;
- (c) whenever any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of your assets or business;
- (d) whenever any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to you or to the whole or any part of your assets or business;

- (e) whenever you suspend payment of your debts generally; or
- (f) whenever you are or become unable to pay your debts when they are due or you are or are presumed to be insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

Intellectual Property Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including:

- (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition,

whether or not such rights are registered or capable of being registered.

Loss means loss, damage, cost, expense or liability (including, without limitation to any third party) of any kind.

Minimum Spend means the minimum charges for a particular Service for each month during the term of your Contract, as set out in the Partnership Agreement or any Accepted Order. For the avoidance of doubt, if no minimum charges are specified as a minimum charge in the Partnership Agreement or any Accepted Order, no minimum charges apply.

Minimum Term means the minimum term for a particular Service, as stated and agreed to by you in the Partnership Agreement or any Accepted Order. For the avoidance of doubt, if no period is specified as a minimum term in the Partnership Agreement or any Accepted Order, no minimum term applies.

Network Boundary Point means the network boundary point as specified in the relevant Standard Service Terms or otherwise determined in accordance with the Telecommunications Act.

NFR Price means the price for products and services provided under NFR Terms.

NFR Terms means the terms for the provision of certain products and services provided for internal or demonstration purposes only and which under no circumstances may be re-sold or distributed.

Non-Excludable Conditions or Liabilities has the meaning given to that term in **clause 11.2(a)**.

Our Equipment includes equipment and cabling used in connection with the Service, and which we own or lease.

Our Network means any telecommunications network, equipment facilities or cabling controlled by us that we use to directly or indirectly supply the Services and includes any Supplier Network.

Partnership Agreement means the partnership agreement that you enter into with us.

Personal Information means information or opinion about you from which your identity is apparent or can reasonably be ascertained.

Personnel means, in respect of a party, the directors, officers, employees, agents and contractors of that party and, in the case of you, includes your end users.

Plan means a plan applicable to the Service provided under the Standard Service Terms for that Service.

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

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Premises means locations at which we supply the Service, and locations to which we need to have access to supply the Service.

Privacy Act means the *Privacy Act 1988* (Cth) and all regulations made under it.

Privacy Policy means the form of our privacy policy from time to time which can be viewed at www.access4.com.au.

Professional Services means the professional services provided to us pursuant to the relevant Standard Service Terms.

Public Addressing Identifier has the meaning given to that term in **clause 16(b)**.

Purchased Equipment has the meaning given to that term in **clause 5.2(g)**.

Regulatory Authority means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, Communications Alliance, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

Related Corporation means a body corporate that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

Secured Goods means all Purchased Equipment sold by us to you under your Contract and, for avoidance of doubt, includes any proceeds in, or arising from, such Purchased Equipment.

Security Interest means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation.

Service means the service(s) which you have subscribed to (as set out in any Accepted Order and as further described in the Standard Service Terms) and includes any goods or equipment provided in connection with that service.

Software Application means any web portal or software that we provide you access or license to you from time to time including but not limited to the unified communications management software, SASBOSS.

Solvency Letter has the meaning given to that term in **clause 2.6(a)**.

Standard Service Terms has the meaning given to that term in **clause 1.1(b)(iii)**.

Supplier means a third-party supplier that we use to directly or indirectly supply the Services to you and expressly includes, without limitation, any third party who provides Carriage Services for resale by us to you.

Supplier Network means any telecommunications network, equipment, facilities or cabling of a Supplier.

Support Process means our support process which is set out in the partner section of our website at www.access4.com.au.

TCP Code means the C628:2015 Telecommunications Consumer Protections Code as registered pursuant to section 117 of the Telecommunications Act, and as amended or replaced from time to time.

Telecommunications Act means the *Telecommunications Act 1997* (Cth), as amended or replaced and includes regulations and statutory instruments made under those acts from time to time.

Telecommunications Legislation means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), the *Telecommunications (Standard Form of Agreement Information) Determination 2003* and all telecommunications related provisions of the Competition and Consumer Act, each as amended or replaced from time to time and includes regulations and statutory instruments made under those acts.

Third Party Facilities has the meaning given to that term in **clause 3.6(b)**.

Variation means any agreed arrangement between us which varies any one or more of the Partnership Agreement, General Trading Terms and the Standard Service Terms.