



Enable Networks Limited

Commercial Services Agreement

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PART A – COMMERCIAL TERMS

Between: **ENABLE NETWORKS LIMITED**, a New Zealand registered company (number 3406812) ("**Supplier**"):

	Postal Address:	Level 3, 93 Cambridge Terrace, Christchurch Central, Christchurch, 8013
	Address for Service:	Level 3, 93 Cambridge Terrace, Christchurch Central, Christchurch, 8013
	Email Address:	[insert]
	Telephone Number:	
	Account Manager:	[insert name]
		[insert phone numbers]
		[insert email address]

And: [INSERT LEGAL NAME OF CUSTOMER], [a New Zealand registered company (number [INSERT COMPANY NUMBER])]
(the "**Customer**"):

	Postal Address:	[insert]
	Address for Service:	[insert]
	Email Address:	[insert]
	Telephone Number:	
	Account Manager:	[insert name]
		[insert phone numbers]
		[insert email address]
This Commercial Services Agreement governs the supply of certain commercial services by Supplier to the Customer.		

Agreed Commercials	
Effective Date	[Insert Effective Date]
Services	Initial Services: [Insert Initial Services] Additional Services: The parties may agree in writing to add further Services to this Agreement from time to time by signing further Quotes that reference this Agreement.
Term (clause 2, General Terms)	Minimum Term for Initial Services: [Insert Service name]: [Insert Minimum Term] years [Insert Service name]: [Insert Minimum Term] years

Charges (clause 9, General Terms)	The Charges for the Services will be set out in the relevant Quote(s) and may be amended from time to time in accordance with clause 9.2 of the General Terms.
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Signatures	
SIGNED for and on behalf of ENABLE NETWORKS LIMITED by:	SIGNED for and on behalf of [NAME OF CUSTOMER] by:
Signature of authorised person:	Signature of authorised person:
Name of authorised person:	Name of authorised person:
Position:	Position:
Date:	Date:

PART B – GENERAL TERMS

1. CONSTRUCTION

- 1.1 This agreement comprises the Commercial Terms, these General Terms, the Specifications, the Quote(s) and the Operational Terms (the “Agreement”).
- 1.2 If there is any conflict or inconsistency between any of the documents forming part of this Agreement, the order of precedence is:
- (a) the Quote(s);
 - (b) the Commercial Terms as set out in Part A of this Agreement;
 - (c) the Specification;
 - (d) the Operational Terms as set out in Part C of this Agreement; and
 - (e) these General Terms as set out in Part B of this Agreement.
- 1.3 This Agreement applies to all of the Services provided to the Customer by Supplier during the Term of this Agreement. The parties may agree in writing to add further Services to this Agreement from time to time by signing further Quotes that reference this Agreement.
- 1.4 In this Agreement, unless the context requires otherwise:

Access Rights Costs means all costs, expenses, fees and charges properly incurred either by the Customer or Supplier (as appropriate) or their respective agents or representatives to acquire any Access Rights;

Access Rights means all necessary consents, permissions (including local authority consents, resource consents), notices, licences, easements, rights of way or any other rights required to install, use, inspect, maintain, alter, adjust, repair, replace, remove Supplier Equipment, the Customer Equipment and any ducts, conduits or other facilities required to install or convey Supplier Equipment, or the Customer Equipment in, on, under, above or over any relevant parcel of land;

Additional Charges means the fees to be charged by Supplier to the Customer as set out in clause 9.6;

Agreement has the meaning given in clause 1.1;

Business Day means any day except a Saturday, Sunday, national public holiday or any other day when registered banks are customarily closed for business in Christchurch, New Zealand;

Central Office means the building which terminates local access fibres and may house both the Supplier Equipment and Customer Equipment required for providing services over the access fibre network;

Charges means the Connection Charges, the Service Charges and where applicable, the Additional Charges set out in clause 9.6;

Commercial Terms means the terms set out in Part A – Commercial Terms;

Connection Charges means a one-off connection charge to establish and connect the Services payable by the Customer in accordance with a Quote;

Customer Equipment means the Customer equipment and infrastructure installed at a Service Delivery Point and used for the purpose of receiving the Services;

Customer Premises means a premises which the Customer owns, occupies or has control over and where Supplier Equipment is (or is to be) installed;

Dark Fibre means a single fibre optic cable that is made available by Supplier under this Agreement as set out in a Quote, where applicable, but does not include any information signal processing, termination equipment, protocol definitions, operational management, fault detection or network services;

Effective Date means the date that is set out in Part A of this Agreement;

Emergency means an event or circumstance requiring Supplier to take immediate action that may require the Services to be disconnected to:

- (a) protect the Services including any Dark Fibre where applicable, Supplier Network or the network of any customer of Supplier; or
- (b) respond to an actual or suspected Network Threat; or
- (c) comply with an order or instruction of a competent authority or government agency in connection with a Network Threat which Supplier is required to comply with; or
- (d) provide or safeguard network access and capacity for essential services; or
- (e) mitigate or eliminate a threat to the safety or health of any person or property;

End User means the recipient of a service which incorporates a Service, other than a Reseller or the Customer;

Force Majeure means an event or circumstance beyond the reasonable control of either party that makes it impossible or illegal to perform, or prevents or restricts to a material extent, compliance with or the performance of, a party's obligations under this Agreement, including:

- (a) fire, flood, storm, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination;
- (d) any act of a third party (not being an employee, agent or contractor of that party) engaged in subversive or terrorist activity or sabotage; and
- (e) the inability of Supplier to access the Customer Premises or the Service Delivery Point,

but does not include an event to the extent that:

- (f) the effect of that event could have been substantially prevented, avoided or mitigated by:
 - (i) implementing any contracted business continuity or disaster recovery service or any contingency plan agreed between the parties or that a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or information that is available in the public domain; or
- (g) it is an event that the party affected is or was directly responsible for; or
- (h) that event is constituted or caused by any failure of a contractor or supplier of the party seeking to rely on clause 12 unless and to the extent that the contractor or supplier was itself affected by an event that, if it occurred in relation to either party, would have been a Force Majeure event; or
- (i) the event is constituted or caused by the insolvency of either party or a contractor or supplier of the party seeking to rely on clause 12, or lack of funds for any reason;

General Terms means the terms set out in Part B – General Terms;

GST or Goods and Services Tax means goods and services tax payable in accordance with the Goods and Services Tax Act 1985 or any tax imposed on the supply of goods or services in substitution for the aforementioned goods and services tax;

Initial Services means the initial services listed in Part A of this Agreement and as further described in the Quote;

Intellectual Property means all industrial and intellectual property of any kind including copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, confidential information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) whether created before or after the commencement of this Agreement and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

Minimum Term means the minimum term for each Service, as set out in the Quote(s) or if no minimum term is set out in the Quote(s), 12 months from the date the Quote is signed by both parties;

NBAP (or Non-Building Access Point) means a location, other than the Customer Premises, which may not have a formal street address, at which Supplier Equipment and/or Supplier Network is (or is to be) installed, located or accessed for the purposes of enabling, interconnecting or delivering the Services;

Network Threat means any external event (being an event caused by an act or omission of, or by any equipment of, any person other than Supplier and its contractors and agents) that is likely to result in harm, degradation or loss of service to the Dark Fibre, Supplier Equipment or Supplier Network or other customers of Supplier or a threat to national security if allowed to spread or continue;

Operational Terms means the terms set out in Part C – Operational Terms;

Public Land means land in respect of which Supplier is able to exercise a statutory right to install and convey Supplier Equipment including but not limited to land owned by any territorial authority or other public body;

Quote means a quote produced by Supplier's sales management system and signed by both Supplier and the Customer, which contains the following information: (a) a reference to this Agreement; (b) the relevant Services to be provided by Supplier to the Customer; (c) the Charges; (d) the Service Delivery Points and, as applicable, details of testing, commissioning and service cut-over relevant to the particular Services; (e) the Minimum Term for each Service; and (f) any special terms;

Reseller means any person who is a customer receiving Services directly or indirectly from Supplier for the purposes of resale; To avoid doubt, a Reseller that receives a Service from Supplier for Reseller's own internal purposes (i.e. self-consumption) will be an End User under this Agreement;

Services means any service that Supplier agrees to supply under this Agreement from time to time as per the relevant Specification and which is detailed in a Quote, including the Dark Fibre;

Service Charges means the monthly recurring service charges payable by the Customer for the Services in accordance with a Quote, as adjusted from time to time in accordance with clause 9 of the General Terms;

Service Delivery Points means any point at which Supplier's Equipment is connected, or able to be connected, to the Customer Equipment as specified in a Quote and as may be amended from time to time, if required, in accordance with the terms of this Agreement;

Service Impairment has the meaning given in clause 2.4 of Part C;

Service Levels means the service levels applicable for a Service as set out in the Specification for that Service;

Service Level Default means a failure by Supplier to meet a Service Level;

Service Rebate means the payment to be made by Supplier to the Customer (if any) for a Service Level Default as may be specified in the Specification for that Service;

Specification(s) means the service descriptions for the Services available on Supplier's website;

Standard Industry Practice means the use of standards, practices and methods and the exercise of skill, care, diligence, prudence, foresight and judgement which would be expected from a skilled, qualified and experienced person engaged in similar undertakings under similar circumstances in New Zealand;

Supplier Equipment means any equipment (including software), owned, operated or controlled by Supplier or Supplier's suppliers that Supplier provides to the Customer or which Supplier uses in connection with the provision of the Services;

Supplier Network means the telecommunications network infrastructure and facilities that Supplier uses to provide Services to the Customer including the Dark Fibre, Supplier's Central Offices and Supplier Equipment in each case, as applicable and including any third party networks used by Supplier, but excluding the Customer Equipment;

Term means the duration of this Agreement, as set out in clause 2.1 commencing on the Effective Date; and

Third Party Premises means any privately owned land or buildings adjacent to the Customer Premises, or a NBAP (as applicable) which is used (or is to be used) to connect Supplier Equipment to the rest of the Supplier Network in circumstances where, at the time of installation of the relevant Supplier Equipment, the owner, occupier or controller of that adjacent land or building will not benefit from that connection;

1.5 For the purposes of interpretation and construction of this Agreement, and unless the context otherwise requires:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) a reference to a section, clause, paragraph, part or schedule is a reference to a section, clause, paragraph, part or schedule to this Agreement and a reference to this Agreement includes the Schedule;
- (d) a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form including any electronic form of sending or storing words capable of being readily reproduced in a tangible and permanently visible form;
- (e) a reference to a person includes natural persons, partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (f) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (g) a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;
- (h) any reference to, or obligation in this Agreement which requires payment of money will be a reference to, or deemed to be an obligation requiring payment of money in, immediately available cleared funds;
- (i) the words "includes" and "including" are to be read without limiting any other matter or thing; and
- (j) a reference to this Agreement or any other document, legislation, regulations or enactment includes the document or legislation, regulation or enactment as varied or replaced from time to time.

2. TERM

- 2.1 This Agreement will come into effect on the Effective Date and will continue until terminated in accordance with the provisions of this Agreement.
- 2.2 Without limiting the termination rights set out in clauses, 11.2, 12.5, 15.1, 15.2(a) 15.2(b) and 15.4, Supplier may terminate this Agreement for convenience at any time by giving the Customer not less than ninety (90) days' notice in writing. If Supplier exercises this right during the Minimum Term for any Services, the Customer will not be liable for any Charges provided under clause 15.3 for those particular Services.
- 2.3 Without limiting the termination rights set out in clauses 12.5, 15.1, 15.2(b) and 15.4, the Customer may terminate this Agreement for convenience at any time by giving Supplier not less than ninety (90) days' notice in writing. If the Customer exercises this right during the Minimum Term for any Services, the Customer will be liable for any Charges in accordance with clause 15.3 for those particular Services.
- 2.4 If Supplier continues to provide Services after the end of any applicable Minimum Term, those Services are deemed to be provided under the terms of this Agreement, except that either party may terminate the Services on 30 days' prior written notice to the other party.

3. RIGHT OF USE

- 3.1 Where Supplier is providing Dark Fibre to the Customer under this Agreement, Supplier grants, and the Customer accepts, the exclusive right to use the Dark Fibre for the Customer's operational purposes for its Minimum Term (and for any additional period as set out under clause 2.4 above), including the right to use the Dark Fibre to resell dark fibre services to retail service providers and their end users. This includes the right to connect the Customer Equipment to the Dark Fibre at the Service Delivery Points.
- 3.2 The Customer acknowledges and agrees that this Agreement does not grant, nor should any clause be inferred to grant, any right to the Customer to own, control, maintain or modify any part or all of the Dark Fibre, Supplier Equipment or Supplier Network or the right of physical access to, the right to encumber in any manner, or otherwise use the Dark Fibre, Supplier Equipment or Supplier Network, except as expressly set out in this Agreement.
- 3.3 Despite any other provision of this Agreement, Supplier owns and will maintain ownership of the Dark Fibre, Supplier Equipment and Supplier Network at all times, including any modification to it, and the Customer is granted only the rights set out in clause 3.1 or the rights reasonably required to benefit from any Services set out under a Quote.
- 3.4 The Customer acknowledges that all rights to Intellectual Property contained in or relating to the Services and/or Supplier Network (including any improvement to the Services and/or Supplier Network) belongs to Supplier or its licensors. Unless otherwise agreed in a Quote, any Intellectual Property rights created or developed in connection with this Agreement or the Services belong to Supplier, even if commissioned by the Customer.

4. SPECIFICATIONS, PROVISION OF EQUIPMENT AND RIGHT OF ACCESS

- 4.1 The Customer will:
- (a) be responsible for making the Customer Equipment available at the Service Delivery Point(s) and will be solely and exclusively responsible for connecting the Dark Fibre or the relevant parts of the Supplier Network to the Customer Equipment at each Service Delivery Point; and
 - (b) maintain, at its own cost, all consents, easements, licences or other grants of rights required to connect and operate the Customer Equipment to the Dark Fibre or the relevant parts of the Supplier Network, as applicable.
- 4.2 Supplier will provide the Customer, at the Customer's cost and following a reasonable request for the same, with any assistance reasonably required by the Customer for the purpose set out in this clause.
- 4.3 The Customer may upgrade, replace or otherwise change the configuration of the Customer Equipment provided that such upgrade, replacement or change does not in any way materially adversely impair any Supplier Equipment or Supplier Network or business operations.
- 4.4 Each of the parties will be responsible for Access Rights Costs in relation to obtaining and maintaining the Access Rights for which that party is responsible.
- 4.5 Despite clause 4.4, Supplier will not be responsible for obtaining any consents, permissions or licences (if any) required under the Telecommunications Act 2001 which are required by the Customer to provide its telecommunications services over the Supplier Network.
- 4.6 The Services are described in the Specifications. Supplier will determine the manner in which, and the technologies by which, it provides a Service. Supplier may change such manner and technologies from time to time.

5. OPERATION, PERFORMANCE AND MAINTENANCE OF EQUIPMENT

- 5.1 Unless otherwise expressly agreed in writing, Supplier is responsible for the operation, performance and maintenance of the Supplier Network, unless the Supplier Network is damaged by the Customer, its agents, employees or invitees.
- 5.2 Supplier may at any time without liability to the Customer, conduct such maintenance and repairs as Supplier reasonably believes are required even where such repairs necessitate the disconnection of the Dark Fibre or Supplier Equipment provided that in the case of Service-impacting maintenance and repairs Supplier will give as much notice of such disconnection as is reasonably practicable (and in any event, no less than five (5) Business Days prior written notice), and will ensure that such disconnections are each for as short a period as is reasonably practicable and, where practical, are carried out between the hours of 11pm and 6am. For the avoidance of doubt, no prior notice is required for non-service-impacting maintenance and repairs.
- 5.3 Nothing in this clause will restrict Supplier from carrying out any maintenance or repairs at any time in the case of an Emergency. The Customer acknowledges that it can do so without notice.

6. CARE OF EQUIPMENT AND NON-INTERFERENCE

- 6.1 Except as is expressly permitted under this Agreement:
- (a) neither party will, in any way, cause any damage or impairment to the Supplier Network (in the Customer's case) and the Customer Equipment (in Supplier's case) and each will operate and maintain its facilities in accordance with accepted industry practices;
 - (b) neither party will, either directly or indirectly, connect any device to the Supplier Network (in the Customer's case) or the Customer Equipment (in Supplier's case) or any other party's equipment or facilities which will have, or be likely to have, any adverse effect on the Supplier Network or the Customer Equipment (as applicable);
 - (c) the Customer will not allow the Supplier Network to be repaired, modified, replaced, serviced, moved or disconnected by anyone except Supplier or its authorised agents;
 - (d) Supplier will not enable or facilitate the Customer Equipment to be repaired, modified, replaced, serviced, moved or disconnected by anyone except the Customer or its authorised agents;
 - (e) neither party will remove or obscure any identification marks on the other party's equipment or facilities or do anything that may detrimentally affect the ownership or operation of the other party's equipment or facilities;

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- (f) neither party will act or omit to act in the exercise of its rights under this Agreement in a manner that impacts adversely or is likely to impact adversely on the other party or any customer of the other party in respect to Supplier Network or the Customer Equipment (as applicable); and
- (g) the Customer will not do anything inconsistent with Supplier's rights as owner of the Supplier Network, including selling, pledging, mortgaging or otherwise dealing with or disposing of the Supplier Network.
- 6.2 Supplier will, subject to clauses 5 and 12:
- (a) maintain (at its own cost) the Supplier Network that is connected to, or is necessary to ensure the functioning of, the respective Services in accordance with the Specifications; and
- (b) when entering any premises owned, leased or licensed by the Customer, comply, and ensure that its agents, employees and contractors comply, with all of the Customer's or the relevant company's reasonable and specified requirements relating to the use of those premises including as to hours of use, security and occupational health and safety.
- 6.3 The Customer will, when entering any premises owned, leased or licensed by Supplier, including Supplier's Central Offices, comply, and ensure that its agents, employees and contractors comply, with all of Supplier's or the relevant company's reasonable and specified requirements relating to the use of those premises including as to hours of use, security and occupational health and safety.
- 7. WARRANTIES AND LIMITATION OF LIABILITY**
- 7.1 The Customer warrants that:
- (a) it is duly authorised and entitled to enter into and perform this Agreement in accordance with its terms;
- (b) it has and will maintain for the duration of this Agreement all Access Rights necessary for it to connect the Customer Equipment to the Supplier Network, and, where relevant, for Supplier to install and convey the Supplier Network over any private land from the boundary of the Public Land to the Service Delivery Point;
- (c) it has and will maintain for the duration of this Agreement all regulatory and statutory approvals required to enable it to use and benefit from the Services in accordance with this Agreement; and
- (d) the Customer Equipment is and will be for the duration of this Agreement (where required), approved for use in New Zealand by the relevant authorities.
- 7.2 Supplier warrants that:
- (a) it is duly authorised to enter into and perform this Agreement in accordance with its terms;
- (b) it has and will maintain for the duration of this Agreement all Access Rights necessary for it to install and convey the Supplier Network in, on, under, above or over any relevant parcel of Public Land. For clarity, Supplier does not warrant that it will obtain and maintain Access Rights in respect of any private land between the boundary of Public Land and the Service Delivery Points (and the Customer acknowledges that Supplier is not responsible for such Access Rights);
- (c) it has and will maintain for the duration of this Agreement all regulatory and statutory approvals required to enable it to provide the Services in accordance with this Agreement;
- (d) the Supplier Network is, where required, approved for use in New Zealand by the relevant authorities;
- (e) the Services supplied in connection with this Agreement will meet the Specifications; and
- (f) it will perform the Services in accordance with Standard Industry Practice and in order to meet the Service Levels (where applicable).
- 7.3 Each party warrants to the other that any materials proprietary to a party and provided to the other party for the purposes of this Agreement (including any materials proprietary to Supplier that are provided as part of the Services), will not infringe the Intellectual Property rights of any third party, provided that the other party:
- (a) use such materials (and any relevant Services) in accordance with the terms of this Agreement and any terms notified in writing by the disclosing party; and
- (b) does not in any way modify or alter the materials, other than as permitted under this Agreement.
- 7.4 Except as expressly provided in this Agreement, all representations and warranties that might otherwise be implied by law into this Agreement or which are based on any oral or written representations (but not included in this Agreement), are excluded to the maximum extent permitted by law.
- 7.5 Neither party will be liable to the other party for any loss of anticipated profit or savings, economic loss, loss of data, loss of revenue, loss of contract, or for any consequential, indirect or special loss or damage, however caused, which may be suffered by that party arising out of or in connection with this Agreement whether such claim arises in contract, tort (including negligence), equity, under statute or otherwise.
- 7.6 Each party's liability to the other party for any costs, losses, damages and expenses suffered, that arise out of or in connection with this Agreement, will be limited in any twelve (12) month period to a maximum of \$500,000.
- 7.7 Nothing in clause 7 will limit or exclude the liability of:
- (a) a party for fraud or wilful misconduct;

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- (b) a party for any loss of, or damage to tangible property, but only to the extent of the loss suffered by the party claiming under this clause 7.7(b), including arising from any third party claims and, which in all cases is subject to a maximum liability cap of \$20,000,000 throughout the Term;
- (c) the Customer's obligations to pay the Charges; and
- (d) the Customer under the indemnities in clauses 7.10, 7.13 and 9.4.
- 7.8 The Customer:
- (a) acknowledges that it is entering into this Agreement to receive Services provided by Supplier for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply; and
- (b) will, to the maximum extent permitted by law, exclude the application of the Consumer Guarantees Act 1993 and Fair Trading Act 1986 from all agreements between the Customer and its Resellers and End Users that in any way relate to the Services.
- 7.9 The Customer acknowledges that:
- (a) neither Supplier nor any third party engaged by Supplier (including their officers, employees, contractors and agents) (each an "**Interested Party**") confers any benefit, right or privilege on any person other than the Customer under this Agreement; and
- (b) no Interested Party (other than Supplier), will be liable to the Customer for loss or damage of any kind solely by virtue of the supply of the Services by Supplier to the Customer under this Agreement; and
- (c) for the purposes of Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, clauses 7.9(a) and (b) confer a benefit upon each Interested Party.
- 7.10 The Customer will indemnify Supplier from any costs, losses, damages or expenses suffered by or arising out of or in relation to any claim made by any of Customer's customers (including Resellers and End Users) against Supplier whether in tort or otherwise in relation to the provision of the Services.
- 7.11 The Customer's obligation to indemnify Supplier under this Agreement is subject to Supplier:
- (a) notifying the Customer in writing as soon as practicable on becoming aware of any claim or potential claim under the indemnity;
- (b) allowing the Customer to have sole conduct of the defence or settlement of any claim the subject of the indemnity at the Customer's expense; and
- (c) in respect of any defence or settlement of any claim the subject of the indemnity, providing the Customer with reasonable assistance in conducting the defence or settlement (provided that the Customer must promptly reimburse Supplier for its reasonable and substantiated costs in providing the assistance).
- 7.12 Supplier will be entitled to be represented at and consulted on all related negotiations and litigation, and unless Supplier agrees otherwise, the Customer will have no authority to make any admission in the name of Supplier or settle on terms other than a full and unconditional release for Supplier.
- 7.13 The Customer acknowledges that Supplier is not responsible for the use of the Services by the Customer, Customer's customers, Resellers, End Users or any other third parties (whether authorised by the Customer or not), including the content of any data or information that they may send or receive using the Services. To the extent that Supplier suffers any costs, losses, damages or expenses arising out of or in connection with a claim by a third party against Supplier relating to the use of the Services by the Customer, the Customer's customers, Resellers, End Users or any other third parties (whether authorised by the Customer or not), the Customer will indemnify Supplier against all such costs, losses, damages and expenses.
- 8. INSURANCE**
- 8.1 Supplier and the Customer will each maintain insurance policies with a reputable insurance company (or insurance companies) such that the minimum amount of cover under the policy is greater than or equal to an amount sufficient to meet the insured party's maximum liability for contractual damages arising from a breach of this Agreement.
- 9. CHARGES AND PAYMENT**
- 9.1 In consideration of provision of the Services by Supplier, the Customer will pay Supplier the Charges, which to the extent relevant will include the Connection Charge and Service Charges. The Customer will pay the Connection Charge on or before the date specified in the Quote(s). The Service Charges will be payable monthly in advance by the Customer on or before the 20th of the calendar month in which the relevant invoice is issued subject to Supplier providing the Customer with a GST tax invoice. Where the Services start part way through a month, the first invoice provided by Supplier will include both the part month and the first full month of Charges.
- 9.2 The Service Charges may be amended by Supplier by giving the Customer at least 60 Business Days' prior written notice of the change. Supplier will not increase the Service Charges more than once in any 12-month period, except in the following circumstances:
- (a) a third-party supplier of Supplier increases the price of a direct input required for the Services; or
- (b) there is a legislative or regulatory change (including any determination, direction or decision by a regulatory authority, or the introduction of or change to any regulations) which either materially alters the burden (financial or otherwise) of Supplier providing the Services under this Agreement, or causes Supplier (voluntarily or otherwise) to alter its operations or structure.
- 9.3 All amounts stated in this Agreement are exclusive of GST and GST will be due and payable together with the relevant payment.

- 9.4 The Customer will pay Supplier interest at the rate of the commercial overdraft rate charged by Supplier's bankers for unsecured loans of similar amount for any overdue and undisputed amounts from the day which is five (5) Business Days after the due date for payment down to and including actual date of payment whether before or after judgement on any amounts due and not paid by the Customer under this Agreement. In addition, the Customer will indemnify Supplier from and against all costs and disbursements incurred by Supplier in pursuing any outstanding and undisputed debt including legal costs on a solicitor and own client basis and Supplier's collection agency costs.
- 9.5 The Customer will be entitled to withhold payment for any disputed amounts it has a bona fide reason to dispute but will pay the undisputed part of any invoice. In all other respects, the Customer will pay all amounts due to Supplier under this Agreement without any set-off or deduction of any kind. Any amounts disputed under this clause 9 will be resolved by the parties in accordance with clause 13.

Additional Charges

- 9.6 Additional Charges may be charged by Supplier on a time and materials basis to recover any costs or expenses that it incurs (acting reasonably) in the following circumstances:
- (a) as a result of any rework required to implement a variation to a Quote at the request of the Customer, where Supplier has commenced fulfilment of a Service before the variation is agreed;
 - (b) in the identification, diagnosis and resolution of any fault, and restoration of a Service, if the fault is caused by an act or omission of the Customer, or by any Customer Equipment;
 - (c) as a result of any failure by the Customer to give to, or procure for, Supplier and its representatives such access to (as applicable):
 - (i) the Customer Premises,
 - (ii) NBAPs where Supplier Equipment is installed or
 - (iii) Third Party Premises adjacent to the Customer Premises or a NBAP where Supplier Equipment is installed,required to resolve and diagnose a fault;
 - (d) as set out under clause 1.8 of Part C; and
 - (e) as a direct result of any material act, omission, breach, default, or failure by the Customer to comply with its obligations under this Agreement (including failure to provide accurate information or timely instructions).
- 9.7 Additional Charges will be due and payable no later than the 20th of the month following the date of Supplier's invoice, provided that the due date for payment in respect of any part of any invoice for Additional Charges which is disputed in good faith by the Customer will be deferred until such dispute has been resolved in accordance with clause 13, but only if:
- (a) the Customer notifies Supplier in writing of the disputed amount and the reasons why the amount is disputed within 10 Business Days of receiving the relevant invoices; and
 - (b) the Customer has paid the undisputed amount of the invoice on the due date for payment.

10. CONFIDENTIALITY

- 10.1 All information acquired or received by any one party (the "**Receiving Party**") to this Agreement from the other (the "**Disclosing Party**") and the fact of the existence of this information will be held and kept confidential by the Receiving Party, will be used by the Receiving Party only for the purposes of implementing this Agreement, and will not be disclosed by the Receiving Party to any third party except with the prior consent of the Disclosing Party and upon such terms as may be stipulated by the Disclosing Party, provided that the Receiving Party may, without such consent, disclose such matters or information:
- (a) to a bona fide intending assignee of the Receiving Party upon obtaining a similar undertaking of confidentiality from such assignee;
 - (b) to any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;
 - (c) to any bank or financial institution from whom the Receiving Party is seeking to obtain finance, upon obtaining a similar undertaking of confidentiality from such bank or institution;
 - (d) to the extent that the same has become generally available to the public other than as a result of an unauthorised disclosure by either party;
 - (e) in any mediation, adjudication, arbitration, litigation or legal proceeding of any kind arising out of or in connection with this Agreement or otherwise in compliance with the order of any court of competent jurisdiction; and
 - (f) to the extent that the Receiving Party's legal advisers advise (acting bona fide) that disclosure is required either by any relevant statute or the listing requirements of any stock exchange,
- provided that to the extent legally permissible, the Disclosing Party advises the other party at the time of the disclosure the fact of the disclosure, together with details of the material disclosed, to whom it is disclosed and the reason for the disclosure.
- 10.2 In the event of an actual or threatened disclosure of information, other than as permitted by this Agreement, by either party, its agents, employees or contractors, it is agreed by the parties that monetary remedies available at law may be inadequate and, therefore, the aggrieved or threatened party will be entitled to receive injunctive relief as an equitable remedy.
- 10.3 Each of the Customer and Supplier will be deemed to be a Receiving Party and a Disclosing Party in respect of the terms of this Agreement including all amounts payable under and in respect of this Agreement.

11. DAMAGE TO OR DESTRUCTION OF SUPPLIER EQUIPMENT OR DARK FIBRE

- 11.1 Without limiting other terms of this Agreement dealing with events outside of Supplier's control (including clause 12), if any part of Supplier's Network used to provide any Services (including Dark Fibre), is at any time destroyed, or damaged in a manner that impairs the ability to use the Services by the Customer in accordance with this Agreement, Supplier will (provided such destruction or damage did not occur through the act or omission of the Customer or its employees or agents), at no additional cost to the Customer, as soon as reasonably practicable repair and reinstate that part of the Supplier Network so that the Supplier Network (to the extent relevant for the Services) is available for use by the Customer in accordance with the Specification. Where the Service is Dark Fibre, Supplier may in its sole discretion replace the Dark Fibre with any other equivalent fibre in the cables that is in good working order, meets the Specification, and is available for use by the Customer.
- 11.2 Despite clause 11.1, if the damage to the Supplier Network arises in the context of an event outside of the reasonable control of Supplier which damages or destroys a significant portion of Supplier's Network (in Supplier's sole opinion), then Supplier's obligation to repair or replace the relevant Supplier Network will occur in the context of an overall repair or replacement of the part of the Supplier's Network that was destroyed or damaged and the Customer will not have any right to priority in the repair or replacement process. Supplier may, in its sole discretion, elect not to repair or replace Supplier Network and those relevant Services will be terminated with immediate effect from the date that the damage occurred. The Customer will have no rights against Supplier arising from such termination. The Supplier will refund the unused portion of the monthly Service Charges, if applicable, in the case of termination under this clause.

12. FORCE MAJEURE

- 12.1 If either party fails to comply with or observe any provision of this Agreement because of Force Majeure, that failure will not constitute a breach of this Agreement nor will it give rise to any cause of action or liability based on breach of the provision.
- 12.2 If a party becomes aware of a serious prospect of a forthcoming Force Majeure, it will notify the other party as soon as reasonably practicable of the particulars of which it is aware. If Supplier invokes clause 12.1, it will notify the Customer as soon as practicable with the full particulars of the Force Majeure relied upon.
- 12.3 The Customer will not be required to pay any amount in respect of any Services that Supplier is unable to provide due to Force Majeure.
- 12.4 If either party invokes clause 12.1, it will:
- (a) use all reasonable endeavours to overcome or avoid the Force Majeure;
 - (b) use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure;
 - (c) consult with the other party on the performance of the obligations referred to in paragraphs (a) and (b) above; and
 - (d) complete its obligations under this Agreement to the greatest extent practicable, as quickly as is practicable, with regard to the nature and effect of the Force Majeure event acknowledging industry practices in relation to network restoration approaches.
- 12.5 The party not affected by Force Majeure may terminate the relevant Services where Force Majeure continues for a period of sixty (60) consecutive days.

13. DISPUTE RESOLUTION

- 13.1 If any dispute arises out of this Agreement, neither party will commence proceedings relating to the dispute unless that party has first complied with this clause 13. The parties will continue to comply with their obligations under this Agreement during the dispute resolution process.
- 13.2 The party claiming a dispute has arisen will give notice to the other party setting out full particulars of the dispute. The parties will use all reasonable endeavours to resolve the dispute through good faith discussions, negotiation or other informal means as may be agreed between the parties including by escalation to the Chief Executive of each party if the dispute is not resolved within the period of ten (10) Business Days following the date of the notice of dispute.
- 13.3 If the parties do not resolve the dispute within twenty (20) Business Days of the date of the clause 13.2 notice (or any longer period agreed in writing) then either party may refer the dispute to arbitration, in accordance with the current protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ). The arbitration will be conducted by a single arbitrator appointed by the president of AMINZ, as soon as possible at Christchurch in accordance with the provisions of the Arbitration Act 1996. The award of the arbitrator will be an award with reasons and the reasons will form part of the award. The award of the arbitrator will be final and binding on the parties and, to the extent that it is lawful to do so, the parties waive any right of appeal or review.
- 13.4 Pending resolution of the dispute, this Agreement will remain in full effect, and the parties will continue to actively discharge their obligations hereunder, without prejudicing the parties' respective rights and remedies.
- 13.5 The parties will bear their own costs and an equal share of the expenses of the arbitration unless, in the context of an arbitration, the arbitrator determines that a party will bear some proportion or all of the costs of the other party.
- 13.6 Nothing in this clause 13 will prevent a party from commencing court proceedings in relation to any dispute, controversy or claim arising under or in connection with this Agreement at any time where that party seeks urgent interlocutory relief.

14. SUSPENSION

- 14.1 Supplier may, subject to clause 14.2, immediately and without liability suspend or restrict the supply of any or all of the Services, or the Customer's ability to order any new Services, at any time:
- (a) in response to an Emergency;
 - (b) if the Customer fails to make any payment within five Business Days of the due date for such payment in accordance with clause 9 and continues not to make any payment after being provided with a further five (5) Business Days' prior notice requiring such payment and affording the Customer a right to remedy in that timeframe;

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- (c) if the Customer has committed a material and irremediable breach of this Agreement, or a material remediable breach that is not remedied in accordance with clause 15.1;
- (d) if Supplier reasonably suspects fraud or any other illegal activity by the Customer (or its employees, agents or contractors) in connection with any Service;
- (e) if an insolvency event (defined in clause 15.2(b)) occurs in relation to the Customer; or
- (f) in response to a change in the Telecommunications Act 2001 or any applicable statute or regulation, where such change directly relates to the supply of Services by Supplier.
- 14.2 Supplier may only exercise its rights under clause 14.1 to suspend or restrict a Service to the extent and for the period of time, that such suspension or restriction is reasonably necessary.
- 14.3 Supplier will provide as much prior notice of the suspension as is possible in the circumstances or, if no prior notice is possible, will notify the Customer as soon as possible after the suspension commences.
- 14.4 Supplier will recommence providing a suspended Service as soon as reasonably possible in the circumstances after it decides, in its sole discretion (but acting reasonably), that the reason for the suspension has ceased or if suspension occurs under clause 14.1(b), if all outstanding payments, including any applicable interest and recovery costs, have been made in full.
- 14.5 Except for suspension under clause 14.1(b), if any Services are suspended or restricted in accordance with clause 14.1, the Customer will not pay the Charges for the Services that have been suspended and will continue to pay the Charges for the Services that have not been suspended.
- 15. TERMINATION**
- 15.1 Without prejudice to any other rights or remedies available to a party that terminates under this Agreement, at law, in equity or on any other basis, the terminating party may terminate this Agreement or any particular Services by notice in writing to the other party (which notice must identify whether this Agreement or particular Services are being terminated and, if the latter, the Services to be terminated) if the other party breaches any of its material obligations under this Agreement and such breach is:
- (a) not capable of being remedied; or
- (b) not remedied within twenty (20) Business Days of receipt of a written notice of the breach by the terminating party.
- For the purposes of this clause a failure to pay any undisputed Charges on the due date twice within a consecutive six (6) month period will be deemed to be material and repeated breaches of the same obligation or a series of minor breaches of different obligations which taken together have a material impact on a party may constitute a material breach of this Agreement.
- 15.2 Without prejudice to any other rights or remedies available to the terminating party under this Agreement, at law, in equity, or on any other basis, the terminating party may terminate this Agreement or any particular Services affected by the relevant circumstances set out in this clause, by notice in writing to the other party (which notice must identify whether this Agreement or particular Services are being terminated and, if the latter, the Services to be terminated) if:
- (a) Supplier reasonably takes the view that the continuation of this Agreement or the Services breaches, or is likely to breach:
- (i) any law or regulatory requirement;
- (ii) an order made by a court of law; or
- (iii) an order or direction made by any regulatory authority; and
- (b) an insolvency event occurs in relation to the other party, being:
- (i) the presentation of an application for its liquidation that is not discharged within thirty (30) days of filing or demonstrated to the terminating party to be frivolous or vexatious before the expiry of that thirty (30) day period; or
- (ii) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors; or
- (iii) the appointment of a liquidator, receiver, statutory manager, or similar official, to that party; or
- (iv) the suspension or threatened suspension of the payment of its debts; or
- (v) cessation of a whole or any relevant part of its business in New Zealand; or
- (vi) the enforcement of any security against the whole or a substantial part of its assets; or
- (vii) any analogous insolvency event or proceedings.
- 15.3 In the event of lawful termination of this Agreement during the Minimum Term of any Service, or lawful termination of any particular Service during its Minimum Term, other than under:
- (a) clause 2.2
- (b) clause 11.2;
- (c) clause 12.5;

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- (d) clause 15.1 where the terminating party is the Customer;
 - (e) clause 15.2(b) and Supplier is the party experiencing the insolvency event; or
 - (f) clause 15.4,

the Customer will, in addition to any other liability, be liable to pay Supplier: (i) in the case of termination of this Agreement, the Charges for the balance of the Minimum Term applicable to each then remaining Service; and (ii) in the case of termination of a particular Service, the Charges for the balance of the Minimum Term applicable to that Service.

- 15.4 If all Services under this Agreement have expired or been terminated, either party may terminate this Agreement immediately on providing written notice to the other party, provided that no Quote issued by Supplier remains pending acceptance or rejection by the Customer. For the avoidance of doubt, if a Quote has been issued but has not been accepted or rejected within twenty (20) Business Days of its date of issue, it shall be deemed to have lapsed and shall not prevent termination under this clause.

16. CONSEQUENCES OF TERMINATION OR EXPIRY

- 16.1 Upon termination or expiry of any Services or this Agreement (howsoever occurring), the Customer will:

- (a) immediately pay to Supplier any Charges owing up to that date, and, if relevant, charges owed under clause 15.3; and
- (b) in the case of termination of this Agreement, return to Supplier any confidential information belonging to Supplier on request by Supplier or confirm to Supplier in writing that all copies of such confidential information have been destroyed; and
- (c) cease using the Services (as the case may be).

- 16.2 Termination of this Agreement will not affect:

- (a) any rights of a party against the other party which accrued up to and including termination or expiry; or
- (b) the provisions of this Agreement which by their nature survive termination or expiry, including clauses 7 (WARRANTIES AND LIMITATION OF LIABILITY), 10 (CONFIDENTIALITY), 15 (TERMINATION) and 16 (CONSEQUENCES OF TERMINATION OR EXPIRY).

17. NOTICES

- 17.1 Any notice or other communication to be given under this Agreement may be given by one party to any other party to this Agreement by personally serving it on that party or by sending it by post to that party, or by transmitting it by e-mail to the address set out in Part A of this Agreement marked for the attention of the respective person (or to such other address as the party to be notified may advise for the purpose from time to time).

- 17.2 Unless there is evidence to the contrary, any notice or document so given will be deemed to be given at the time when it was actually delivered, came to the attention of the addressee, was sent by e-mail (and a notification of non-delivery is not received by the transmitting party), or within 48 hours after the time it was posted to the recipient party at the respective address set forth above provided that:

- (a) in the case of a notice personally served on a party or transmitted by e-mail, if the date of transmission is not a Business Day, or the service or transmission is made after 5:00pm on a Business Day then the notice will be deemed to have been received at 9:00am on the next Business Day; and
- (b) in the case of a notice mailed to the recipient, if the date on which it was mailed was not a Business Day, then the notice will be deemed to have been received three (3) Business Days after the date on which it was mailed.

18. MISCELLANEOUS

- 18.1 The parties agree to pay their own legal costs and other costs and expenses in connection with the preparation, negotiation, variation and execution of this Agreement.
- 18.2 The Customer may not assign or transfer, or declare itself a trustee of, any of its rights or obligations under this Agreement without the prior written consent of Supplier which must not be unreasonably withheld. Any direct or indirect change of beneficial or legal shareholding in or control of the Customer will be deemed an assignment under this clause.
- 18.3 Subject to the remainder of this clause, no term of this Agreement will be changed or modified, except by an agreement in writing signed by the Customer and Supplier. Despite the previous sentence, Supplier can, by notice in writing to the Customer, amend this Agreement (including a Service) at any time (both for existing and new Services unless expressly stated otherwise) to reflect any changes expressly permitted under this Agreement, including those contemplated by clauses 4.6 and 9.2.
- 18.4 During the Term of this Agreement, each party will comply with and observe all applicable statutes and regulations for the time being in force.
- 18.5 Failure or neglect by a party to enforce at any time any of the terms of this Agreement will not be construed to be a waiver of that party's rights, or to in any way affect the validity of the whole or any part of this Agreement, or to otherwise prejudice that party's rights to take subsequent action. Any waiver by a party in respect of any right provided for in this Agreement will not be construed to be a waiver of any further or future right arising under this Agreement.
- 18.6 Nothing in this Agreement or in the relationship between the parties will be construed in any sense as creating a partnership between the parties.
- 18.7 In the event of any part of this Agreement being or becoming void or unenforceable then that part will be severed from this Agreement to the intent that all parts that will not be or become void or unenforceable will remain in full force and effect and be unaffected by any severance.
- 18.8 This Agreement constitutes the entire agreement between the parties and supersedes all prior communications, representations, agreements or understandings, either verbal or written, between the parties with respect to the subject matter of this Agreement.

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- 18.9 This Agreement will be governed by the laws of New Zealand and subject to clause 13 each party submits to the exclusive jurisdiction of the New Zealand courts in respect of any dispute of whatsoever nature arising under this Agreement or its implementation or enforcement.
- 18.10 This Agreement may be executed in two or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. A party may enter into this Agreement by signing any counterpart. The counterparts of this Agreement may be executed and delivered by email or other electronic signature (including portable document format) by either of the parties and the party receiving this Agreement may rely on the receipt of such document so executed and delivered electronically or by email as if the original had been received.

PART C: OPERATIONAL TERMS

1. FAULTS

- 1.1 Supplier is responsible for monitoring, diagnosing, repairing and resolving any fault in the Services or Supplier Network. However, the parties acknowledge that particularly, in the case of any Dark Fibre, Supplier will be relying on the Customer to report any faults in the Dark Fibre to Supplier on the basis that Supplier does not have any visibility of the Dark Fibre and can only react to a fault from the Customer contacting Supplier or discovery of an incident by exception. In addition, Supplier is not responsible for any faults in the Customer Equipment.
- 1.2 Before reporting any fault to Supplier, the Customer will:
- (a) use its reasonable endeavours to confirm the presence of the fault;
 - (b) perform an initial diagnosis to identify where the fault has arisen;
 - (c) use its reasonable endeavours to investigate the fault and to find out all relevant information from Resellers and End Users (as applicable); and
 - (d) use its reasonable endeavours to confirm that it is a fault that Supplier is responsible for under clause 1.1 of this part.
- 1.3 When reporting a fault to Supplier, the Customer will provide to Supplier all relevant information and will use the Supplier's operational support systems (in particular, its webform or API or other method as stated by Supplier) for reporting all faults regarding the Services. If the Customer uses any other method to report a fault or provides insufficient information, the Service Levels will not apply to that fault. Where the Supplier's operational support system is unavailable, the Customer must submit fault reports to the Supplier using the Escalation Procedures set out in clause 4 of this part. The Supplier must use all reasonable endeavours to advise Customers immediately upon becoming aware that the operational support system is unavailable.
- 1.4 If Supplier discovers a fault that affects the Services provided to the Customer under this Agreement, it will promptly notify the Customer of that fault.
- 1.5 Supplier will use its reasonable endeavours to diagnose and resolve each fault promptly, and in any event will diagnose and resolve each fault in accordance with the applicable Service Levels set out the Specification for that Service and as set out in clause 2 of this part.
- 1.6 It will be the Customer's responsibility to provide Supplier access to the Service Delivery Points, if applicable, and time spent waiting for access to the Service Delivery Points will be considered a Service Impairment in accordance with clause 2.4 of this part.
- 1.7 Supplier will use all reasonable endeavours to keep the Customer informed of the status of the fault and progress being made towards rectification of the fault on a regular basis (considering that rectification is the priority and that Supplier may have reporting obligations to its other customers).
- 1.8 If the Customer reports a fault condition with any Services and after investigation Supplier concludes that no fault exists and the Services are within Specification, then Supplier may charge the Customer an Additional Charge for the non-fault Service callout on a time and materials basis. Supplier will provide sufficient information to demonstrate the Services are within Specification before assessing any such Additional Charge.

2. SERVICE LEVELS

Service Level Reporting

- 2.1 The Service Levels relevant to a Service (if applicable) will be set out in the Specification for that Service.
- 2.2 Supplier will provide the Customer with a performance report each month reporting its performance against the Service Levels over the preceding month. The report will identify whether the Service Levels are being met. The report will be delivered or made available to the Customer within ten Business Days after the end of each relevant calendar month in electronic format.
- 2.3 If there has been a Service Level Default, Supplier may be liable for a Service Rebate if this is specified in the Specification for the relevant Service. Where Supplier makes a decision that a Service Level Default has not occurred because one or more of the extensions, limitations or exclusions apply, the details are to be recorded and reported in Supplier's monthly performance report provided in accordance with this clause.

Service Level Extensions

- 2.4 Subject to clause 2.5 of this part, the Service Levels set out in this clause shall be extended in the circumstances set out below. Where a Service Level is extended, the time for Supplier to meet the applicable fault restoration target shall be increased by the duration of the relevant Service Impairment (defined below), and Supplier shall not be liable for any rebate or other remedy under this clause in respect of any period during which such extension applies. The Service Levels shall be extended in the following circumstances:
- (a) satisfaction of the Service Level is prevented as a direct result of a serious health and safety issue outside of Supplier's control;
 - (b) satisfaction of the Service Level is prevented as a direct result of a delay in the provision of materials or information to be supplied by the Customer;
 - (c) acts or omissions of the Customer prevent Supplier from meeting a Service Level (unless the Customer has received Supplier's prior approval for such act or omission);
 - (d) acts or omissions of an End User prevent Supplier from meeting a Service Level (unless End User has received Supplier's prior approval for such act or omission);
 - (e) a period of extension has been agreed with the Customer; and

- (f) a Force Majeure event that prevents satisfaction of the Service Level has occurred, including, for the avoidance of doubt, a cable strike caused by a third party that cannot be repaired within 1 calendar day and any Force Majeure event affecting a contractor or supplier of Supplier which, if it occurred in relation to Supplier, would have been a Force Majeure event (as referenced in clause (h) of the definition of "Force Majeure" in this Agreement),

each a "Service Impairment".

2.5 Any Service Level extension under clause 2.4 of this part:

- (a) will be limited to the time that the Service Impairment continues to prevent or makes illegal Supplier's performance of the applicable Service Level;
- (b) is subject to Supplier promptly taking all reasonable steps, in accordance with Standard Industry Practice, to eliminate or avoid the Service Impairment and mitigate its effect; and
- (c) in relation to any Service Level extension under clause 2.4(a) to 2.4(e) of this part only, will not be given to the extent the Service Impairment is caused or contributed to by Supplier or its contractors' acts or omissions, the acts or omissions of any supplier of Supplier, or any person within the control or under the responsibility of Supplier.

Service Rebates

- 2.6 In the event of a Service Level Default and subject to clause 2.7 of this part, Supplier will credit an amount equal to the applicable Service Rebate against the next invoice payable in respect of that Service or, where no further invoice is payable in respect of that Service, will pay or otherwise refund such amount to the Customer.
- 2.7 Service Rebates are the Customer's sole and exclusive remedy in respect of the Service Level Defaults and the consequences of such defaults.
- 2.8 No Service Rebate will be payable for a failure to meet a Service Level if that failure was caused by the suspension, restriction or cessation of the applicable Service in accordance with clauses 2.2, 11.2, 12, 14 or 15 of the General Terms. Service Rebates are also not payable where the Service Level Default is attributable to Customer Equipment or an End User's equipment or where no fault is found in the Supplier Network.

3. MAINTENANCE

- 3.1 Supplier will provide routine and preventative network maintenance of the Supplier Equipment as part of its normal and routine maintenance of the cables and of its own network.
- 3.2 All maintenance will be carried out in such a way as to minimise any disruption of service to the Customer.
- 3.3 Despite clause 5.2 of the General Terms, Supplier may do any maintenance, repairs, or work on the cables or the Supplier Network in the case of an Emergency without giving any prior notice to the Customer but, where that maintenance, repair, or work requires or is likely to result in a shutdown of the Supplier Network or any sub-system or facility leading to a loss of Services to the Customer, Supplier will use its best endeavours to give the Customer prior notification and it will, in any event, keep the Customer informed of the progress and likely time required to complete the maintenance, repairs or work.
- 3.4 Any notice issued under clause 3.3 of this part will be sent to the Customer by e-mail and will contain details as to the Services that will be affected by the scheduled maintenance, time duration and scheduled maintenance and any other details that will assist the Customer in minimising the effects of that maintenance.

4. ESCALATION PROCEDURES

- 4.1 Any issues that arise in connection with Services will be dealt with in accordance with the fault escalation procedures set out below;

Network outage or fault notification and/or resolution after following clause 1.3 of this part and the Supplier's Network Operation Centre (NOC) Tier 1 and Tier 2 processes.

Description	Contact person(s)
1. Initial report or notification.	NOC Manager (Zuber Ahmed) Noc.escalations@enable.net.nz 0800 434 273 Option 9
2. Failure to resolve outage or fault in accordance with this Agreement.	Network Service Manager (Primary: Kirby Remoroza and Secondary: Kim Emphasis) nocteamleaders@enable.net.nz 0800 434 273 Option 9
3. Final escalation where issue not resolved under step 2.	Operations Manager

	Barry Elford nocteamleaders@enable.net.nz 0800 434 273 Option 9
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