

WHOLESALE



STANDARD SERVICE AGREEMENT – Version 1.7a

This Wholesale Standard Service Agreement, the Wholesale Service Schedule(s), any Order(s) for Service and any other document(s) attached to, or subsequently incorporated into, any of those documents, will together form the Agreement between MICRON21 and You.

This Wholesale Standard Service Agreement replaces and supersedes any existing service agreement between MICRON21 and You and applies to all present and future Services. Services can be ordered in accordance with clause 5.1 of this Wholesale Standard Service Agreement or by signing an Order for Service and Wholesale Service Schedule in respect of a Service.

By signing below You agree to be bound by this Wholesale Standard Service Agreement (as amended from time to time).

MICRON21 DETAILS

Name:	Micron21 Telecommunications Pty Ltd	ACN:	148 180 661
Address:	Unit 3 number 6-8 Eastspur Court Kilsyth South 3137		

MICRON21 CONTACT REPRESENTATIVE

Name:	
Phone:	
Email:	

YOUR DETAILS

Name:		ACN:	
Address:			

YOUR CONTACT REPRESENTATIVE

Name:	
Phone:	
Fax:	
Email:	

Signed for You by an authorised signatory	Signed for MICRON21 Pty Ltd by an authorised signatory
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NAME:

NAME:

POSITION:

POSITION:

DATE OF AGREEMENT:

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1. Definitions

1.1 Definitions

In this Agreement the following definitions apply unless the context requires otherwise:

MICRON21 or We means Micron21 Telecommunications Pty Ltd (ACN 148 180 661).

MICRON21 Equipment means any equipment owned by MICRON21 and/or provided by MICRON21 to You for use in connection with the Services, other than equipment supplied by MICRON21 to You by outright sale.

MICRON21 Network means the telecommunications network used by MICRON21 and our Related Bodies Corporate to provide the Services.

Agreement means this Wholesale Standard Service Agreement, any Wholesale Service Schedule(s), any Order(s) for Service and any other document(s) attached to, or subsequently incorporated into, any of those documents.

Billing Dispute means a dispute relating to a Charge and/or an invoice issued by MICRON21.

Billing Dispute Notice means the form of billing dispute notice You are required to use to notify MICRON21 of any Billing Disputes and which may be obtained from Your account manager.

Billing Dispute Procedure means the procedure that MICRON21 uses to resolve Billing Disputes and that You are required to use when lodging a Billing Dispute Notice (this Billing Dispute Procedure is amended from time to time and is available from MICRON21 upon request by You).

Business Day means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in Victoria, excluding Saturdays and Sundays.

Change in Control means that without the prior written consent of MICRON21, which consent shall not be unreasonably withheld having regard to the creditworthiness and reputation of any acquirer of securities:

- (a) a relevant interest, as defined in the *Corporations Act 2001* (Cth), in more than 20% of Your voting securities passes to a person or persons who did not have such relevant interest at the Commencement Date; or
- (b) the ability to control, or the actual control, of Your management and policies passes to a person or

persons who did not have such ability or actual control at the Commencement Date.

Charges means the charge(s) in respect of a Service, as set out or provided for in Part 2 of the applicable Wholesale Service Schedule or stated in an Order for Service, as varied from time to time in accordance with this Agreement.

Commencement Date means the date of this Agreement.

Confidential Information of a party includes all information of a party marked as confidential or which the other party knows or ought reasonably to be aware is confidential (regardless of its form and whether the other party becomes aware of it before, on or after the date of this Agreement) but excludes information that is publicly known other than as a result of a breach of the obligations of confidentiality under this Agreement.

End User means any person who acquires the Services (or part thereof) from You and uses those Services (with or without Your authorisation).

Event of Default occurs where:

- (a) You fail to pay any sum payable under this Agreement by the due date for payment;
- (b) You breach any provision of this Agreement and the breach is not capable of remedy;
- (c) You breach any provision of this Agreement which is capable of remedy and fail to remedy the breach within 7 days of the date of a notice from MICRON21 demanding that the breach be remedied;
- (d) any step is taken (including without limitation, an application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for:
 - (i) Your winding up, dissolution, or administration; or
 - (ii) Your entering into any arrangement, compromise or composition with or assignment for the benefit of Your creditors or any class of them,

except for the purposes of a solvent reconstruction or amalgamation;

- (e) a receiver, receiver and manager, or other controller, administrator or similar officer is

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appointed with respect to, or takes control of, You or any of Your assets and undertakings;

- (f) in MICRON21's reasonable opinion there has been a material adverse change in Your financial position since the Commencement Date including, without limitation, as a result of a change in the value, nature or saleability of Your assets; or
- (g) You have a Change in Control.

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

GST means the Goods and Services Tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Individual Service means a particular service ordered and supplied under an Order for Service.

Initial Period means, in respect of an Individual Service:

- (a) where the Order for Service for that Individual Service specifies an "Initial Period" or "Minimum Period", the duration of such specified period (which shall be deemed to commence on the date that MICRON21 commences provision of that Individual Service); or
- (b) where the Order for Service for that Individual Service does not specify an "Initial Period" or "Minimum Period" as otherwise set out in the relevant Wholesale Service Schedule (which shall be deemed to commence on the date that MICRON21 commences provision of that Individual Service).

Intellectual Property Rights means all forms of intellectual property rights which may subsist anywhere in the world, whether protected at common law or under statute, including, without limitation, patents, petty patents and utility marks, rights in designs, trade marks, signs and service marks, trade and business names, copyrights (including rights in computer software), database rights, semiconductor topography rights and rights in circuit layout designs, whether or not registered and including applications for registration of any such thing.

Interest Rate means, at a particular date, 3% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month in which that particular date falls.

Order for Service means an order for any Service or Individual Service that You have submitted to MICRON21:

- (a) in writing on an MICRON21 prescribed order form signed by You which may be sent via email or via facsimile to such email address or facsimile number (as appropriate) as may be notified by MICRON21 to You from time to time; or
- (b) electronically via MICRON21's electronic order entry system in accordance with the procedure specified by MICRON21 from time to time,

and which has been or may be (as applicable) accepted by MICRON21, as such Order for Service is amended from time to time in accordance with this Agreement.

Privacy Act means the *Privacy Act 1988* (Cth).

Related Body Corporate has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

Service or Services means a service and/or product made available to You by MICRON21, as described in the corresponding Wholesale Service Schedule.

Term means the term of this Agreement as determined in accordance with clause 11.2.

Third Party Service Provider means a carrier (as defined in the Act), carriage service provider (as defined in the Act) or an equipment supplier, other than MICRON21.

Wholesale Standard Service Agreement means this document titled the "Micron21 Telecommunications Wholesale Standard Service Agreement", as amended from time to time in accordance with this Agreement.

Wholesale Service Schedule means a schedule relating to the provision of Services under this Agreement, as amended by MICRON21 from time to time in accordance with clause 3.2.

You or Your means the customer named on the Order For Service.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) The word "includes" is not a word of limitation.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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- (d) A reference to a clause or Annexure is a reference to a clause of or an annexure to this Wholesale Standard Service Agreement.
- (e) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to any party to this Agreement includes its successors or permitted assigns.
- (h) A reference to dollars or \$ is to Australian currency.
- (i) A reference to a "day" or a "month" is a reference to a calendar day or to a calendar month, as applicable.
- (j) All representations, warranties and indemnities are continuing and survive termination or expiry of this Agreement.
- (k) In the event of any inconsistency between the terms of this Agreement, the order of priority will be firstly an Order for Service, then the relevant Wholesale Services Schedule, then this Wholesale Standard Service Agreement and then any other document attached to, or subsequently incorporated into, this Agreement.
- (l) In the event, and to the extent, of any inconsistency or where intended to be a replacement rather than an addition, the most recent Order for Service will prevail over any earlier Order(s) for Service.

2. Security

- (a) From time to time and for any reason, MICRON21 may request that You provide security (**Cash Deposit**).
- (b) If You do not provide the Cash Deposit within 5 Business Days of the request then, notwithstanding anything in this Agreement and without liability, MICRON21 can cease, refrain and/or refuse to supply some or all of the Services to You in which case MICRON21's obligations under this Agreement

will become conditional upon receiving that Cash Deposit within 5 Business Days of the request.

- (c) For the avoidance of doubt the request outlined in clause 2(a) may be made by MICRON21 prior to supply of any Services to You.
- (d) Any Cash Deposit provided under paragraph (a) will be held by MICRON21 on account of Charges payable by You pending supply of Services by MICRON21 and any other amounts that may become payable by You under this Agreement.
- (e) MICRON21 may deduct the Charges and other amounts payable by You from the Cash Deposit in the event that You fail to pay such amounts by the due date for payment or this Agreement is terminated.
- (f) You will ensure that the original Cash Deposit amount is restored within 2 Business Days of any deduction by MICRON21 pursuant to the previous paragraph.

3. The Services

3.1 The Supply of Services

- (a) MICRON21 will provide the Services to You using the MICRON21 Network on the terms of this Agreement.
- (b) You will use the Services (and will ensure that Your End Users use the Services) in accordance with this Agreement and all applicable laws.

3.2 Amendment of this Agreement

- (a) MICRON21 may amend any part of this Agreement at any time without Your consent where the amendment:
 - (i) does not have a material adverse impact upon Your rights under this Agreement (in MICRON21's reasonable opinion); or
 - (ii) relates to a change to a Service required by MICRON21.

4. End Users

- (a) You must enter into all contracts with End Users (**End User Contracts**) on Your own account and You will be responsible for all billing, collection and

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first-line customer support under those End User Contracts.

- (b) You must ensure that End User Contracts make no reference to MICRON21 nor shall MICRON21 bear any liability to an End User under any End User Contract.

5. Ordering & Acceptance Procedures

5.1 Orders

- (a) During the Term, You may order Services or additional Service quantities at any time from MICRON21 by submitting an Order for Service to MICRON21.
- (b) An Order for Service constitutes a binding offer from You capable of acceptance by MICRON21. If for any reason MICRON21 cannot provide the Service or the additional Service quantity in accordance with the Order for Service, MICRON21 will notify You in writing. If MICRON21 does accept the Order for Service, MICRON21 shall provide the relevant Service to You on the terms of the Order for Service, the relevant Wholesale Service Schedule and this Wholesale Standard Service Agreement.

6. MICRON21 Equipment

Where MICRON21 provides You with MICRON21 Equipment, the provisions of this clause 6 apply.

6.1 Use of MICRON21 Equipment

- (a) You must use MICRON21 Equipment in accordance with any directions of MICRON21 notified to You from time to time.
- (b) You will ensure that the MICRON21 Equipment is not damaged and remains in good condition.
- (c) You must notify MICRON21 promptly on becoming aware of any damage to or malfunction of the MICRON21 Equipment or that any MICRON21 Equipment requires maintenance of any kind.
- (d) MICRON21 may, subject to giving reasonable notice and at MICRON21's cost, change, modify, replace or remove the MICRON21 Equipment in our absolute discretion.

6.2 Title to MICRON21 Equipment

If MICRON21 has provided any MICRON21 Equipment to You then:

- (a) the MICRON21 Equipment always remains the property of MICRON21 or the supplier (as the case may be);
- (b) You will not enter into any agreement for the transfer, sale, mortgage, granting of any security interest or other dealing in connection with the MICRON21 Equipment;
- (c) You will not do anything or authorise anything to be done which might affect MICRON21's ownership of the MICRON21 Equipment;
- (d) You will not, without MICRON21's prior written consent, remove or obscure any identification marks on the MICRON21 Equipment;
- (e) You will comply with all reasonable instructions MICRON21 gives You to protect MICRON21's ownership of the MICRON21 Equipment;
- (f) You will only use MICRON21 Equipment at the location stipulated by MICRON21 and will not part with possession of the MICRON21 Equipment except to provide it to MICRON21;
- (g) You will allow MICRON21 to and, where applicable, will ensure that Your landlord or any other relevant third party allows MICRON21 to, enter and remove the MICRON21 Equipment from Your premises upon expiry or termination of this Agreement; and
- (h) subject to clause 6.2(g), You will return the MICRON21 Equipment to MICRON21's possession as soon as practicable in accordance with any MICRON21 request to do so where the MICRON21 Equipment is no longer used by You or this Agreement has expired or is terminated.

6.3 Your Responsibilities for MICRON21 Equipment

- (a) You bear the risk of loss or damage to the MICRON21 Equipment from the date of delivery of such equipment to Your premises or when You pick it up and You indemnify MICRON21 in respect of any such loss or damage.
- (b) MICRON21 may charge You, in accordance with our standard time and material rates and terms, for

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- any repair, maintenance or replacement of MICRON21 Equipment which is required due to events other than normal wear and tear.
- (c) You will ensure that the MICRON21 Equipment, and any other equipment, facilities and connections which You use in connection with receiving the Service(s), is not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by MICRON21 or our authorised contractors unless We otherwise permit in writing.
 - (d) You will make available an adequate power supply and environment (including air conditioning) for the operation of any MICRON21 Equipment.
 - (e) You are liable to pay MICRON21 on demand any cost and/or expenses incurred in repairing or replacing the MICRON21 Equipment, or other property owned by MICRON21 or for which MICRON21 is liable, which is damaged or destroyed as a result of connection to Your network.
- 6.4 Charges in respect of MICRON21 Equipment**
- If any charge is payable for Your purchase or use of the MICRON21 Equipment, You will pay that charge in accordance with clause 10 of this Agreement.
- 7. Your Duties**
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7.1 General obligations

During the Term You will:

- (a) adhere to MICRON21's operational procedures and technical specifications and any other reasonable directions given by MICRON21 in relation to Your obligations under this Agreement from time to time;
- (b) not publish any material comparing the Services provided by MICRON21 with any other wholesale services offered by any other carrier or carriage service provider;
- (c) not do, or permit to be done, any act which damages the reputation of MICRON21;

- (d) not make any representation or give any warranty in relation to the Services that is inconsistent with written materials supplied by MICRON21;
- (e) provide MICRON21 with all information, assistance and co-operation reasonably requested by MICRON21;
- (f) ensure that all equipment that You or Your End Users connect to the MICRON21 Network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications Authority;
- (g) not represent expressly or by omission or implication that You are approved by, an agent of, or affiliated with MICRON21;
- (h) not offer or supply, or purport to offer or supply, any other services of MICRON21 that are not included in the Services;
- (i) when dealing with End Users, not attribute blame for fault or other problems with the Services to MICRON21 unless not doing so would require You to engage in unethical, misleading or deceptive conduct; and
- (j) provide, and ensure End Users or any other relevant persons provide, MICRON21 and/or our suppliers with full, free and safe access to the relevant premises if required for MICRON21 and/or our suppliers to repair or restore the Services or the MICRON21 Network or in order for MICRON21 exercise our rights under this Agreement.

7.2 Responsibility for Your Security

You acknowledge and agree that You are responsible for implementing and maintaining the security of Your network and equipment. You are liable to pay all Charges in connection with use of a Service resulting from a breach of Your security.

7.3 Obligation to keep MICRON21 informed

You will inform MICRON21 as soon as practicable in the event that:

- (a) there is a material adverse change in the aggregate market value of Your net assets;
- (b) You are in negotiations to, or have agreed or undertaken to, sell, convey, assign, transfer or

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- otherwise dispose of any material assets used in Your business; or
- (c) You are in negotiations to, or have resolved, agreed or undertaken to, change the general character of Your business or discontinue Your business.

8. Fault Reporting

8.1 Procedures

- (a) During the Term You must report any faults in accordance with the procedures advised to You by MICRON21 for fault reporting. You acknowledge and agree that MICRON21 will only respond to faults reported in accordance with these procedures.
- (b) MICRON21 reserves the right to charge You at our then commercial rates for fault restoration services if MICRON21 responds to a request from You and MICRON21 is able to demonstrate that:
- (i) the failure to provide the Service to You or in respect of any End User was not due to a matter for which MICRON21 is responsible; and
 - (ii) the fact that MICRON21 is not responsible for that matter would have been disclosed upon reasonable investigation by You.

8.2 Fault Restoration Exclusions

MICRON21's fault restoration obligations do not extend to faults caused as a result of:

- (a) any fault in equipment, software or any network unit which does not form part of the network owned by MICRON21 or any of our Related Bodies Corporate;
- (b) damage due to causes external to the facilities used by MICRON21 to provide the Service;
- (c) interference;
- (d) Force Majeure; or
- (e) planned outages.

9. Compliance

9.1 Privacy Obligations

- (a) You must comply with Your obligations under the Privacy Act.
- (b) Without limitation, You must ensure that all personal information of End Users is handled in accordance with the Privacy Act.
- (c) You will comply with any reasonable direction of MICRON21 with respect to the collection, use, disclosure, storage and disposal of personal information.

9.2 Compliance

- (a) Each party shall comply with all relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.
- (b) Each party must provide the assistance the other party reasonably requires to comply with relevant local, State and Commonwealth laws and regulations and any registered industry based codes of practice.

10. MICRON21 Charges

10.1 Charges for the Services

- (a) The Charges payable by You for the Services are payable in accordance with this clause 10 and as set out as in the relevant Wholesale Service Schedule(s) or as otherwise agreed in writing between the parties from time to time.
- (b) You agree and acknowledge that MICRON21 may pass on any increases or special/once-off Third Party Service Provider charges incurred by MICRON21 (or any of our Related Bodies Corporate) without notice where such charges impact the cost of supply of the Services to You.
- (c) For the avoidance of doubt and notwithstanding any other clause of this Agreement, Charges are subject to change on prior notice from MICRON21 to You. Other than amendments to Charges permitted by this Agreement (including the relevant Wholesale Service Schedule) and subject to clause 10.1(b), Charges for Services the subject of a previously agreed Order for Service will be fixed

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for the Initial Period of the Order for Service and will not retrospectively be changed. At any time after expiry of the Initial Period of a Service, MICRON21 may vary the Charges for that Service upon 30 days prior written notice.

- (d) You will be liable for all Charges, whether or not You authorised the particular use of the Services by another person, including Charges resulting from a hacking incident (including a SIM, PABX, IP PBX or SIP gateway device hack) or other breach of security, viral infection of any computer or related equipment, attacks from the Internet, denial of service attacks, account/password misuse, SPAM and misuse of the Service by third parties including Your employees and contractors.

10.2 Payment

- (a) You must pay all amounts owing by You under this Agreement by electronic transfer, cheque or other means specified on the invoice and without set-off, counterclaim or deduction. Payments by credit card may only be made with MICRON21's prior written approval and will incur an additional processing fee equal to any fee MICRON21 incurs for processing Your credit card payment.
- (b) MICRON21 is taken to have received a payment from You:
- (i) where it is made by electronic transfer or cash, on the date of deposit as shown in MICRON21's bank account statement; and
 - (ii) where it is made by cheque, on the date MICRON21 receives the cheque or, if the cheque is dishonoured, on the date cleared funds are received by MICRON21 as well as all dishonour fees and charges.

10.3 Time for Payment

- (a) You must pay all Charges (and any other amounts payable in accordance with this Agreement including any Wholesale Service Schedule) set out in MICRON21's invoice within 30 days of the date of the invoice. If You fail to pay MICRON21 the Charges (and any other payable amounts) within this period, You will pay interest on the outstanding amount at the Interest Rate, which shall accrue daily from the due date for payment until the date

payment in full is received by MICRON21. You will be liable to pay MICRON21 all expenses (including legal costs and expenses and the fees of MICRON21's debt recovery agents) incurred by MICRON21 in relation to recovering payments due under this Agreement.

- (b) MICRON21 will endeavour to invoice You monthly for Charges due under this Agreement but reserves the right to invoice You at any time. For the avoidance of doubt MICRON21 may:
- (i) select the billing date for the month and this is subject to change at any time in MICRON21's sole discretion;
 - (ii) invoice You in whatever medium it chooses (always acting reasonably); and
 - (iii) choose to provide invoices to You in e-mail form. In such circumstances You must provide MICRON21 on request with a current e-mail address for this purpose and keep MICRON21 informed of any changes to such e-mail address.

10.4 Disputed invoices

- (a) If You wish to raise a Billing Dispute in respect of an invoice or Charge contained in an invoice, a You must lodge that Billing Dispute in accordance with the Billing Dispute Procedure and within 60 days of the date of the invoice to which the dispute relates.
- (b) You must only initiate a Billing Dispute in good faith and must pay the invoice containing the Charge that is being disputed in full in accordance with this Agreement.
- (c) You acknowledge and agree that any Billing Dispute that does not comply with clauses 10.4(a) and (b) above:
- (i) shall be invalid; and
 - (ii) MICRON21 shall be under no obligation to consider such Billing Dispute; and
 - (iii) for the avoidance of doubt, cannot and shall not be considered as a general dispute under clause 21.
- (d) Nothing in this clause 10.4 limits MICRON21's rights to commence proceedings at any time to recover amounts owed by You to MICRON21 or its

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right to suspend or terminate Services in accordance with its rights under this Agreement.

11. Term and Termination

11.1 General

Upon termination of this Agreement for any reason, each party shall remain liable for those obligations that accrued prior to the date of termination.

11.2 Term of the Agreement

This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with clause 11.5 or clause 11.6, will terminate automatically on termination of all Individual Services.

11.3 Term of individual Wholesale Service Schedules

Any Wholesale Service Schedule will remain in effect for as long as an Individual Service is being supplied by MICRON21 and acquired by You in respect of such Wholesale Service Schedule.

11.4 Term of Individual Services

In respect of any Order for Service which specifies the relevant Initial Period, the Individual Service ordered under that Order for Service will remain in effect for the Initial Period and will be automatically renewed for successive periods of one month each unless and until terminated by either party:

- (a) by giving to the other party 30 days prior written notice; or
- (b) otherwise in accordance with this clause 11.

11.5 Termination by You

You may terminate all or any Individual Services by notice in writing to MICRON21 if MICRON21 materially breaches this Agreement in relation to that Individual Service and fails to remedy the breach within 14 days of receipt of written notice from You requiring the breach to be remedied.

11.6 Termination or suspension by MICRON21

- (a) If:
 - (i) You commit an Event of Default;

- (ii) You fail to provide to MICRON21 any Cash Deposit amount required under clause 2 within the period specified;
- (iii) MICRON21 believes it is necessary to do so to comply with any law or an order or request of any government or regulatory body, to protect any person, equipment or the MICRON21 Network and/or to attend to any emergency;
- (iv) MICRON21 is unable to supply, or continue to supply, You with the Services due to the cancellation, suspension or termination of any agreement with our suppliers, for whatever reason;
- (v) MICRON21 is unable to supply, or continue to supply, You with the Services for whatever reason (for example, due to geographical coverage, capacity or technical capability limitations); or
- (vi) a Force Majeure Event prevents either party from performing all or substantially all of its obligations under this Agreement (other than an obligation to pay money),

then MICRON21 may, in its absolute discretion, and without prejudice to its other rights and remedies:

- (vii) immediately cease, limit or suspend the supply of any Service temporarily or permanently without giving You prior notice; and/or
 - (viii) immediately terminate this Agreement (including all Wholesale Service Schedule(s), all Individual Services and all Order(s) for Service) by notice in writing to You.
- (b) MICRON21 may, but is not obliged to, arrange for the suspension of a Service without notice to You in circumstances where MICRON21 reasonably suspects that there has been unauthorised use of

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the Service (including but not limited to, as a result of a hacking incident or fraudulent or illegal use).

- (c) For the avoidance of doubt, nothing in clause 11.6 limits Your obligations under clause 10.1(d).

12. Effect of Termination

- (a) On termination of this Agreement, all unpaid sums owing by each party will immediately become due and payable to the other party, and the party owing any money not paid within 2 Business Days of the date of termination will be liable to reimburse the other party for all reasonable legal costs and disbursements incurred by the other party in the recovery of such sums.
- (b) On termination of this Agreement each party must immediately discontinue any use of the other party's Confidential Information (and must return or destroy such Confidential Information if directed to do so by the other party).
- (c) On termination of this Agreement, You must not hold Yourself out, or permit or suffer Yourself to be held out, as having any continuing relationship with MICRON21 and You must immediately cease use of the MICRON21 1414 override code and any trademark or name used by MICRON21 or our Related Bodies Corporate.

13. Warranties

Each party represents and warrants to the other party that:

- (a) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted;
- (b) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of this Agreement; and
- (c) none of the following has occurred nor is subsisting or threatened:
- (i) the appointment of an administrator to the party;
 - (ii) any step taken for the winding up, dissolution, or administration of the party

or the party entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;

- (iii) the party being (or taken to be under applicable legislation) unable to pay its debts, other than as the result of a failure to pay or a debt or claim the subject of a good faith dispute;
- (iv) the party stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts; or
- (v) the appointment of a receiver, receiver and manager, administrator, receiver or similar officer to any of the assets and undertakings of the party.

14. Liability & Indemnity

- (a) You indemnify MICRON21 and our Related Bodies Corporate, and will keep MICRON21 and our Related Bodies Corporate fully indemnified, from and against any losses, damages, costs and/or expenses (including legal costs assessed on a solicitor client basis) which MICRON21 and/or our Related Bodies Corporate may suffer or incur arising out of or in connection with an action or claim brought by You or a third party against MICRON21 and/or our Related Bodies Corporate which relates to or arises out of Your (or any of Your End Users') use of the Services including, without limitation, as a result of:
- (i) the transmission of any illegal, fraudulent or offensive material by You (or any of Your End Users);
 - (ii) any breach of this Agreement by You; or
 - (iii) any wilful, unlawful or negligent act or omission by You (or by any of Your End Users).
- (b) MICRON21 does not warrant that the Services will be free of interruptions, delays, faults or errors. MICRON21 will not be responsible for any loss and/or damage to Your business and/or Your End Users' business that may result from any interruptions, delays, faults or errors in the supply of the Services.

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- (c) All terms, conditions and/or warranties that may be implied into this Agreement, statutory and otherwise, relating to the provision of the Services by MICRON21 are excluded to the fullest extent permitted by law.
 - (d) MICRON21's liability for breach of any term, condition or warranty, or under any remedy implied by law, which cannot be lawfully excluded, will be:
 - (i) limited (if permitted by law), at MICRON21's option, to the repair or re-supply of equipment or Services or the payment of the cost of having the equipment or Services re-supplied; and
 - (ii) reduced to the extent that such liability is caused by Your negligent acts and/or omissions and/or a breach by You of the terms of this Agreement.
 - (e) Without limiting clause 14(f), the aggregate liability of MICRON21 and our Related Bodies Corporate for all direct, indirect and consequential losses, damages, costs, expenses, actions and claims arising out of, or otherwise in connection with, this Agreement, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, is limited to the total fees paid by You for the affected Service(s) in the 12 months preceding the relevant cause of action accruing or, if there are more than one, the last cause of action accruing.
 - (f) MICRON21 and our Related Bodies Corporate have no liability to You, any of Your End Users or to any other person, for:
 - (i) the acts or omissions of any third party, including the suppliers which have been engaged by MICRON21 for the purpose of supplying or maintaining a Service supplied to You under this Agreement;
 - (ii) faults or defects in Services which are caused by Your own conduct or misuse or the conduct or misuse of Your End Users;
 - (iii) faults or defects that arise in telecommunication services provided to You other than under this Agreement (even if they are connected with MICRON21's consent to Services which MICRON21 has supplied under this Agreement);
 - (iv) any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss, whether in respect of breach of contract, equity, negligence, intended conduct, tort or otherwise, arising out of, or in connection with, the provision of the Services or this Agreement;
 - (v) faults or defects in the Services that arise due to equipment or cabling owned or leased by You or an End User or otherwise in Your control or Your End Users' control; or
 - (vi) faults or defects in the Services that arise due to failure by You or any third party (other than a contractor or agent engaged by MICRON21) to appropriately maintain any equipment or cabling relevant to the supply of the Services.
- 15. Confidential Information**
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- (a) Subject to clause 15(c), each party must keep the other party's Confidential Information (including the terms of this Agreement) confidential and will not allow any written or electronically recorded Confidential Information to be copied other than for the purposes of this Agreement.
 - (b) Neither party will use any Confidential Information it acquires from the other party for any purpose other than exercising its rights and performing its obligations under this Agreement.
 - (c) A party (***the Discloser***) may make a disclosure of the other party's Confidential Information (including the terms of this Agreement), if the Discloser reasonably believes it necessary, to:
 - (i) its suppliers of professional services (including, without limitation, legal and financial advisers, financiers and insurance carriers) if those persons undertake to keep such disclosed information confidential;
 - (ii) for credit purposes where the persons to whom such information is disclosed

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- undertake to keep the disclosed information confidential;
- (iii) any of its employees to whom it is necessary to disclose such information if that employee undertakes to keep the disclosed information confidential; or
 - (iv) comply with any applicable law or requirement of any governmental agency.
- (d) To assess Your application for services and to establish, and provide ongoing credit management of Your account, You consent to MICRON21 disclosing to a credit reporting agency, personal information relating to You in our possession, including, but not limited to Confidential Information. Subject to MICRON21's obligations under the *Privacy Act 1988* (Cth) and the *Telecommunications Act 1997* (Cth), MICRON21 may also give this information to a credit reporting agency to obtain a credit report about You. We may disclose the following information relating to You in accordance with this clause 15(d) even where this information may fall within the definition of Confidential Information:
- (i) Your name, ABN/ACN (if applicable) and address;
 - (ii) details of Your application for services and/or other services supplied to You;
 - (iii) credit limits on Your accounts;
 - (iv) the amount of any payments which are due;
 - (v) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
 - (vi) cheques or credit card payments which have been dishonoured;
 - (vii) information that, in MICRON21's opinion, You have committed a serious credit infringement; and,
 - (viii) information that We have ceased to provide Services to You.

You agree that MICRON21 may obtain information about You from any business or credit reporting agency which provides information about the commercial creditworthiness of persons for the

purposes of assessing Your application for services and collecting any overdue amounts. In addition, You agree to provide MICRON21 or any independent person nominated by MICRON21 any information reasonably required by MICRON21 to confirm Your creditworthiness within 10 Business Days of MICRON21's request.

16. Intellectual Property Rights

- (a) Acquiring Services from MICRON21 does not give You any ownership or other property rights in the MICRON21 Network or MICRON21 Equipment.
- (b) Any Intellectual Property Rights owned by either party prior to the Commencement Date, or developed independently of this Agreement by either party, will continue to be owned by You or MICRON21, as the case may be.
- (c) MICRON21 either owns the Intellectual Property Rights in the Service(s) provided to You, or where MICRON21 uses any Intellectual Property Rights belonging to anyone else, We have a licence to do so.
- (d) You acknowledge that none of MICRON21's Intellectual Property Rights are transferred to You. You further acknowledge that unless specifically authorised by this Agreement, You cannot, and will not, use or reproduce such Intellectual Property Rights for any purpose outside this Agreement.
- (e) All Intellectual Property Rights in any improvements or changes to any Service devised or made by anyone during the time We are providing the Service to You, belong to MICRON21.

17. Related Bodies Corporate

17.1 MICRON21's Related Bodies Corporate

MICRON21 may provide the Services to You through the use of any of MICRON21's Related Bodies Corporate and/or invoice You via MICRON21's Related Bodies Corporate. You acknowledge that any debt You owe under this Agreement is a debt owed to MICRON21 and that MICRON21 may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of MICRON21 or that the invoice for that debt has

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been provided to You by a Related Body Corporate of MICRON21.

18. Force Majeure Event

- (a) Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement (other than an obligation to pay money) which is due to a Force Majeure Event.
- (b) The non-performing party will be excused from further performance or observance of the obligations affected by the Force Majeure Event (other than an obligation to pay money) for as long as the Force Majeure Event continues or prevails.

19. Taxes

- (a) All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST.
- (b) If GST is applicable to any supply made by MICRON21 under this Agreement, MICRON21 is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- (c) You hereby agree to pay MICRON21 such GST charge in the same manner and at the same time as the payment for the relevant supply.
- (d) MICRON21 will issue tax invoices to You for the purposes of GST.
- (e) If required by applicable law, MICRON21 will give You an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date MICRON21 becomes aware of the adjustment event.

20. Notices

Any notice, consent, approval or other communication required or permitted under this Agreement (each a **Notice**) must:

- (a) be in writing;

- (b) absent proof of delivery to the contrary, be deemed to have been received at the following times:
 - (i) if served personally, on the date of service;
 - (ii) if sent by facsimile, upon production by the sender's machine of successful transmission;
 - (iii) if sent by pre-paid registered mail, 3 Business Days after the date of posting; or, if sent by standard post, 5 Business Days after the date of posting; and
 - (iv) if sent by email, on the first to occur of receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the relevant email address, and the time that the Notice is first opened or read by an employee or officer of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4pm (local time) it will be taken to have been duly given or made at 9am (local time) on the next Business Day in that place.

21. Disputes

- (a) If any dispute or difference other than a Billing Dispute arises between the parties out of, or in connection with:
 - (i) the Services; or
 - (ii) the performance of a party's obligations under this Agreement;

the disputing party must give the other party written notice of such dispute within 14 days. The parties agree that they will make every reasonable effort to resolve the difference in a commercially reasonable and amicable way within 30 days of receipt of the notice of dispute by the non-disputing party under this clause 21(a).

- (b) If resolution cannot be reached under clause 21(a), a meeting will be held within 15 days of the end of the period referred to in clause 21(a), between the relevant managers of the parties with the view of

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- agreeing a resolution to be implemented within an agreed timeframe (which is not to exceed 30 days).
- (c) If resolution cannot be reached under clause 21(b), a meeting will be held within 15 days of the end of the period referred to in clause 21(b) between the Chief Executive Officer (or their delegate) of each party with the view of agreeing a resolution to be implemented within an agreed timeframe (which is not to exceed 30 days).
- (d) If the parties cannot resolve the dispute in accordance with clause 21(c), either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (ACDC) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC.
- (e) Nothing in this clause 21 prevents a party from seeking interlocutory relief.
- 22. Miscellaneous**
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- (a) This Agreement does not constitute any party the agent of the other party or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of the other party. Neither party has authority to pledge the credit of the other party.
- (b) Any request in relation to the Service(s) or this Agreement originating from Your nominated representative or any of Your premises or domain name(s) is deemed to be authorised by You.
- (c) No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy under this Agreement preclude any other or further exercise of that or any other right, power or remedy.
- (d) MICRON21 may have subcontractors or other agents meet any of our obligations under this Agreement but We will remain liable to You for satisfying those obligations.
- (e) MICRON21 may assign any of our rights and obligations under this Agreement without Your consent.
- (f) You cannot assign any of Your rights and obligations under this Agreement without MICRON21's prior written consent.
- (g) You shall not exercise any of Your rights or perform any of Your obligations under this Agreement through any person other than You and Your employees without MICRON21's prior written consent. Irrespective of whether MICRON21 has provided its consent, You shall remain responsible for the exercise of Your rights and the performance of Your obligations under this Agreement.
- (h) Each party shall take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this Agreement.
- (i) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction. If any provision or part thereof of this Agreement is made ineffective in any jurisdiction in accordance with this clause, then that provision shall be replaced, to the extent legally possible, with a legal, enforceable, and valid provision that is similar in tenor to the ineffective provision.
- (j) Except as expressly provided for in this Agreement, this Agreement may be amended only by another agreement executed by all parties.
- (k) Any provisions of this Agreement which in order to give effect to their meaning, or to protect the legitimate interests of either party, need to survive its termination will survive termination of this Agreement.
- (l) This Agreement contains the entire agreement between the parties with respect to its subject matter. This Agreement sets out the only conduct, warranties and representations relied on by the parties and supersedes all earlier conduct, warranties and representations by the parties with respect to its subject matter.
- (m) MICRON21 may, without prior notice to You, set-off any amount owing by You (or any of Your Related Bodies Corporate) to MICRON21 under or in

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respect of this Agreement and/or on any other account against any liability of MICRON21 to You (or any of Your Related Bodies Corporate) whether under or in respect of this Agreement or on any other account. You are not, at any time, except as permitted by law, entitled to any right of set-off against MICRON21.

- (n) The parties must pay their own legal and related costs incurred in preparation of this Agreement.
- (o) This Agreement is governed by and takes effect and will be construed in accordance with the laws of Victoria s and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and courts entitled to hear appeals there from.