



# Wholesale Services Agreement

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Redtrain Networks Pty Ltd



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**Part A – Details**

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- 1 Effective Date
- 2 Redtrain Redtrain Networks Pty Ltd ACN 153 859 244
- 3 Customer ..... ABN .....



**Part B – Execution as an agreement**

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Executed by ..... **Pty Ltd** ABN ..... in accordance with section 127 of the Corporations Act

\_\_\_\_\_  
Director

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Name (PLEASE PRINT)

\_\_\_\_\_  
Name (PLEASE PRINT)

Executed by **Redtrain** in accordance with section 127 of the Corporations Act

\_\_\_\_\_  
Sole director and sole secretary

\_\_\_\_\_

## Part C – Date, Parties and background

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**1. Date**

This Agreement is made on the Effective Date in item 1 of the Details.

**2. Parties**

The Parties are:

- (a) Redtrain; and
- (b) Customer.

**3. Background**

- (a) Redtrain supplies wholesale communications Services using Redtrain Facilities and/or Third Party Facilities.
- (b) This Agreement sets out the terms on which Redtrain will supply Services to Customer.

## Part D – Outline

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**4. This Agreement consists of the following Parts:**

- (a) Part A sets out the details of the Parties and other matters.
- (b) Part B is where the Parties execute this Agreement.
- (c) Part C explains the background to this Agreement.
- (d) Part C details the parties and background to this Agreement.
- (e) Part D is a brief outline of this Agreement.
- (f) Part E explains when this Agreement starts and ends.
- (g) Part F explains the qualifications that Customer must satisfy.
- (h) Part G explains Services and how they can be ordered.
- (i) Part H regulates how services will be supplied.
- (j) Part I explains charges, billing, payment and other financial matters.
- (k) Part J details how operational issues will be managed.
- (l) Part K regulates confidential information.
- (m) Part L regulates security and privacy issues.
- (n) Part M regulates intellectual property rights.
- (o) Part N, Part O and Part P regulate liability.
- (p) Part Q explains how Customer's downstream customers are treated.
- (q) Part R requires Customer to maintain certain insurances.
- (r) Part S regulates the consequences of force majeure.
- (s) Part T provides for management of the Redtrain & Customer relationship.

- (t) Part U explains how this Agreement or services can be suspended or terminated.
- (u) Part V regulates the giving of notices.
- (v) Part W provides for Redtrain's credit management policies.
- (w) Part X sets out some general terms.
- (x) Part Y is the dictionary for this Agreement.

## Part E – Term

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### 5. Start

This Agreement starts on the Effective Date.

### 6. End

This Agreement ends:

- (a) if it is terminated under Part U, or any other provision that expressly provides for termination (in which case all Service Contracts also terminate); or
- (b) six months after the Effective Date (provided that if at that time any current Service Contracts are in force, this Agreement remains in force with respect to those Service Contracts until the earlier of:
  - (i) Customer giving 7 days' notice of their termination; and
  - (ii) the date they would have terminated but for the expiry of this Agreement.)

### 7. Term

Between the start and the end of this Agreement is the 'Term'.

## Part F – Customer Qualifications

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### 8. About Customer Qualifications

- (a) Redtrain may refuse, suspend or terminate Service at any time when Customer does not satisfy the requirements of this Part (**Customer Qualifications**).
- (b) Clause 8(a) does not prevent Redtrain from refusing, suspending or terminating a Service under any other Part of this Agreement that permits it to do so.

### 9. Customer warranty

Customer warrants that:

- (a) when it enters this Agreement; and
- (b) whenever it places a Service Order; and
- (c) at all times while it receives Service from Redtrain – Customer is, and will be:

- (d) a Carrier; or
- (e) a Service Provider; or
- (f) an Exempt End User.

**10. Exempt End Users**

If Customer is an Exempt End User:

- (a) it may acquire under this Agreement:
  - (i) a Carriage Service; or
  - (ii) another Service that facilitates the supply of that Carriage Service;
- (b) it may only use that Carriage Service or that other Service for a purpose permitted under section 145, 146, 147, 148, 149, 150 or 151 of the Telco Act (as applicable to it);
- (c) it must not re-supply that Carriage Service or that other Service; and
- (d) except as permitted above, it must not order, acquire or use any Service under this Agreement.

**11. Credit Policy Compliance**

- (a) At all times, Customer must comply with Redtrain's Credit Policy.
- (b) Customer is deemed to comply with Redtrain's Credit Policy if:
  - (i) it has more than 50,000 retail customers acquiring carriage services (within the meaning of the *Telecommunications Act*); and
  - (ii) it is not subject to an Insolvency Event; and
  - (iii) it has not defaulted in payment of any monies due under this Agreement, disregarding:
    - (A) non-payment of disputed amounts in accordance with this Agreement;
    - (B) non-payment of an amount (or amounts aggregating) less than \$5,000; and
    - (C) defaults that occurred more than six months earlier.

**12. Notification of non-compliance**

If Customer:

- (a) does not comply with any Customer Qualification; or
- (b) considers that it is likely to not comply with any Customer Qualification within the coming 90 days –

it must notify Redtrain immediately.

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**Part G – Services and Ordering**

**13. Service Book**

- (a) Redtrain will offer various standard Services from time to time.

- (b) Redtrain's current Service standard offerings are called its **Service Book**.
- (c) Redtrain may provide Customer (or another person) with a non-standard Service (not listed in the Service Book):
  - (i) in the case of a Declared Service – subject to the CCA; and
  - (ii) otherwise – as agreed between Customer and Redtrain.
- (d) Redtrain may withdraw a Service (other than a Mandated Service) from its Service Book, and cease to offer it:
  - (i) in the case of a Declared Service – subject to the CCA and clauses 15(f) and 16; and
  - (ii) where the Service is not a Declared Service and Customer is already acquiring it under a Service Contract – subject to clauses 15(f) and 16.
- (e) Redtrain:
  - (i) may, but is not obliged to, offer replacement or alternative Service where a Service is withdrawn under this clause; and
  - (ii) if it does so offer, will use its best endeavours to assist Customer in planning and implementing a migration to such replacement or alternative Service.

#### 14. Service Conditions

Redtrain may offer a Service subject to particular **Service Conditions** eg:

- (a) **Minimum Term**  
A condition that Customer acquires and pays for it for a minimum period (**Minimum Term**).
- (b) **Bundling**  
A condition that Customer may only acquire it together with one or more other Services (**Bundling Condition**).

#### 15. Ordering and contracting process

- (a) Redtrain will notify Customer of current Service Order processes from time to time (**Order Process**) but must not change those processes except:
  - (i) on reasonable notice to Customer (never being less than 30 days); or
  - (ii) by agreement with Customer.
- (b) Customer may place an Order for Service via the Order Process.
- (c) If Customer purports to place an Order by any other process, Redtrain may elect to:
  - (i) treat it as a valid Order; or
  - (ii) disregard it and notify Customer that it should be placed in accordance with the correct process.
- (d) By placing an Order, Customer makes an offer to acquire Service/s, as ordered, from Redtrain.

- (e) Redtrain may reject an Order:
  - (i) for a Declared Service – on a basis that is permitted under the CCA; and
  - (ii) otherwise – for reasonable commercial cause, which it shall notify to Customer.
- (f) If Redtrain accepts an Order, there is a contract (**Service Contract**) for supply of the Service, for the longer of:
  - (i) any applicable Minimum Term; and
  - (ii) the Term stated in the Order – (**Service Term**) on the terms of this Agreement, subject to any Service Conditions.

**16. Continued supply after Service Term**

After a Service Term expires, a Service Contract continues until a Party terminates it:

- (a) by notice in accordance with applicable Service Conditions; or
- (b) if Service Conditions do not provide for a notice period, on:
  - (i) 7 days' notice by Customer; or
  - (ii) 45 days' notice by Redtrain.

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**Part H – Supply of Service**

**17. Service Levels**

**17.1** Service Levels may apply

Redtrain may:

- (a) publish; or
- (b) agree to – minimum standards of service quality and availability for a Service (**Service Levels**) that provide for:
  - (c) credits in favour of Customer if those standards are not met (**Service Level Rebate**); and
  - (d) an option for Customer to terminate the Service Contract if those standards are consistently not met.

**17.2** Supply under Service Levels

Redtrain will:

- (a) supply each Service in accordance with any applicable Service Level; and
- (b) credit any applicable Service Level Rebate if a Service Level is not met.

**17.3** Service Level monitoring

- (a) Redtrain will monitor its compliance with Service Levels (using methodology and systems it deems appropriate) and keep records of the results (**Service Level Records**).

- (b) Redtrain will retain Service Level Records with respect to any Billing Period for at least four months after that Billing Period.
- (c) If Customer makes a Service Level Claim, Redtrain will make the relevant Service Level Records available to Customer.

**17.4** Service Level Claims

- (a) If Customer considers that Redtrain has not complied with any Service Level, Customer may lodge a Service Level Claim.
- (b) A Service Level Claim must:
  - (i) identify the Service and the Service Levels it relates to;
  - (ii) identify the Billing Period it relates to;
  - (iii) be lodged with Redtrain within 6 months after the end of that Billing Period;
  - (iv) detail, as far as Customer is able, the alleged non-compliance with Service Levels;
  - (v) be lodged in any form specified by Redtrain from time to time; and
  - (vi) include any other detail reasonably specified by Redtrain from time to time.
- (c) Within 14 days after Redtrain receives a valid Service Level Claim, it will provide Customer with:
  - (i) Service Level Records for the relevant Billing Period; and
  - (ii) a Service Level Claim Response setting out what, if any, Service Level Rebate it proposes to allow and how it is calculated.
- (d) If Customer disputes a Service Level Claim Response in writing within 10 days, the dispute will be resolved under Part T. Otherwise, the Service Level Claim will be resolved in accordance with Redtrain's Service Level Claim Response.
- (e) Unless a Service Level states otherwise:
  - (i) a Service Level Rebate will be given by way of a credit to Customer's next Invoice in respect of the relevant Service;
  - (ii) if the Service Level Rebate is greater than the amount of the next Invoice, the excess will be applied to later Invoices until it is exhausted; and
  - (iii) a Service Level Rebate is never redeemable in cash.
- (f) A Service Level Claim is void if it is not made in compliance with this clause 17.4.

**18. Changes to Service Characteristics**

**18.1** Non-detrimental changes

- (a) Redtrain may vary the Service Characteristics of a Service in any way that does not cause disadvantage to Customer or its End Users on at least 40 days' notice to Customer, but always:

- (i) in the case of a Mandated Service – subject to the Access Act; and
    - (ii) in the case of a Declared Service – subject to the CCA.
  - (b) For the purposes of clause 18.1(a), a requirement that Customer or an End User must reconfigure equipment settings or alter procedures is taken not to constitute disadvantage.
- 18.2** Mandated changes
- Redtrain may vary the Service Characteristics of a Service as required:
- (a) by Law;
  - (b) by any Regulator;
  - (c) by any Upstream Service Provider; or
  - (d) to mitigate any serious threat to the stability or security of the Network – but will give Customer as much notice of such a variation as it reasonably can.
- 18.3** Elective changes
- Redtrain may otherwise vary the Service Characteristics of a Service on 90 days' notice to Customer. If it does so, Customer may cancel any affected Service Contract, without a Break Charge:
- (a) by 30 days' notice to Redtrain;
  - (b) given within 60 days after Redtrain's notice.
- 18.4** Alternative Services
- Redtrain:
- (a) may, but is not obliged to, offer replacement or alternative Service where Service Characteristics of a Service are varied under this clause; and
  - (b) if it does so offer, will reasonably assist Customer in planning and implementing a migration to such replacement or alternative Service.

## **Part I – Financial**

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### **19. Charges**

#### **19.1** Charges

Redtrain's Charges for Services will be:

- (a) as agreed in writing with Customer; or
- (b) if there is no written agreement – as per Redtrain's Price List.

#### **19.2** Recurring Charges

Recurring Charges for a Service:

- (a) start accruing on the Availability Date (whether or not Customer has used the Service by that date); and
- (b) stop accruing when the Service is Disconnected in accordance with this Agreement.



19.3 Break Charges

Except where:

- (a) this Agreement provides otherwise; or
- (b) Customer has paid a Set Up Charge in respect of a Service –

if Customer disconnects a Service before the end of any applicable Minimum Term, it must pay a Break Charge to Redtrain.

19.4 Pro rating of Recurring Charges

If Redtrain supplies a Service for part of a Billing Period, it will pro rate Recurring Charges on a per day basis.

19.5 Charges, etc exclusive of GST

- (a) Charges and other amounts payable under this Agreement (**Consideration**) are exclusive of GST (except where expressly stated otherwise).
- (b) If GST is or becomes payable on a Supply made under or in connection with this Agreement, the Party providing Consideration for the Supply (**Recipient**) must pay an additional amount (**Additional Amount**) to the Party making that Supply (**Supplier**).
- (c) The payment of the Additional Amount is conditional on receipt of a valid Tax Invoice by the Recipient.
- (d) The Additional Amount is equal to the GST payable on that Supply, calculated in accordance with the GST Act.
- (e) The Recipient must pay the Additional Amount without set off, demand or deduction at the same time and in the same manner as the Consideration.
- (f) If an amount payable under or in connection with this Agreement is calculated by reference to an amount incurred by a Party (**Incurred Amount**) the amount payable will be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of the Incurred Amount.
- (g) If an Adjustment Event occurs, the Parties must do all things necessary to make sure that the Adjustment Event is appropriately accounted for.

20. Invoices

20.1 Issuing invoices

- (a) Redtrain will invoice Customer for amounts payable by Customer under this Agreement in respect of each Billing Period.
- (b) In issuing invoices, Redtrain will comply with the Invoicing Processes previously notified to Customer.

20.2 Billing Period

Redtrain:

- (a) may invoice whenever Charges have accrued;
- (b) normally invoices monthly;
- (c) may invoice at other intervals if it determines;

(d) may issue an interim Invoice –  
and the period between two consecutive Invoices for a Service is the **Billing Period**.

**20.3** Contents of Invoices

After the start of a particular Billing Period (in this clause – **Current Billing Period**) Redtrain will invoice Customer for:

- (a) Recurring Charges in respect of the Current Billing Period; and
- (b) any Charges in respect of any earlier Billing Period that have not already been invoiced; and
- (c) any other amounts payable by Customer under this Agreement that have not already been invoiced; less
- (d) any allowable deductions for Service Level Rebates.

**20.4** Form and contents of Invoices

Each Invoice will:

- (a) set out the amounts Customer must pay;
- (b) contain sufficient information to reasonably enable Customer to identify any Service that the Charges and other amounts relate to; and
- (c) comply with the GST Act as a Tax Invoice.

**20.5** Time for Invoices

- (a) Redtrain will use reasonable endeavours to issue the Invoice for each Billing Period within 10 calendar days after the start of the next Billing Period.
- (b) Subject to clause 20.8, late invoicing does not prejudice Redtrain's right to be paid.

**20.6** Basis of invoices

- (a) Amounts invoiced will be calculated using data recorded by or for Redtrain.
- (b) Redtrain's records are deemed to be accurate unless Customer proves them to be inaccurate.

**20.7** E&OE

If an invoice omits or miscalculates any amounts payable under this Agreement, Redtrain may within 4 months after the Invoice Date:

- (a) subject to clause 20.8, issue an additional Invoice to Customer;
- (b) adjust a later invoice; or
- (c) issue a credit to Customer –  
to correct the omission or miscalculation.

**20.8** Delayed billing

- (a) If paragraph 6.5.4(c) of the TCP Code applies to:
  - (i) a late invoiced amount; or
  - (ii) an omitted or miscalculated amount –

Customer is not required to pay an amount invoiced under clause 20.5(b) or 20.7(a) if it is invoiced more than 95 days after the original Invoice Date.

- (b) Otherwise, Customer is not obliged to pay such an amount if it is invoiced more than 180 days after the original Invoice Date.

## 21. Payment

### 21.1 Obligation to pay

- (a) Subject to clauses 20.8 and 21.1(d), Customer must pay the full amount of each Invoice, on or before the later of:
  - (i) any Due Date specified in the Invoice; or
  - (ii) if no Due Date is specified in the Invoice – 30 days after the Invoice Date.
- (b) The Due Date specified in an Invoice will not be less than 30 days after the Invoice Date.
- (c) If Redtrain issues an invoice to Customer electronically through the Redtrain Portal, Redtrain is deemed to have issued the invoice on the next Business Day.
- (d) If Customer raises a Billing Dispute and:
  - (i) clause 24.4 does not apply to the Billing Dispute;
  - (ii) the Billing Dispute does not relate to or involve Service Level Rebates;
  - (iii) Customer has paid any undisputed amount by the Due Date; and
  - (iv) Customer has otherwise complied with the Billing Dispute Process –

then Customer may withhold payment of the disputed portion until the Billing Dispute is resolved.

### 21.2 Payment method

Customer must pay all amounts:

- (a) by electronic funds transfer direct to Redtrain's nominated bank account;
- (b) without withholding, set-off, counter-claim or deduction except:
  - (i) under clause 21.1(d)); or
  - (ii) of any amount owed by Redtrain to Customer other than a disputed Service Level Rebate; and
- (c) giving sufficient written information (**Remittance Advice**) for Redtrain to identify, process and properly allocate each payment.

### 21.3 Making payment

- (a) Customer's payment is deemed to have been made when:
  - (i) it is credited to Redtrain's nominated bank account; and
  - (ii) it is honoured.
- (b) If Customer's payment is dishonoured, it must reimburse any fees and charges incurred by Redtrain in respect of the dishonour.

**21.4** Notification by Customer if invoice not to be paid for any reason

Customer must immediately notify Redtrain in writing if Customer anticipates that it will not be able to pay Redtrain any undisputed amount on or before the Due Date.

**22. Non-payment**

**22.1** Consequences of non-payment

If Customer fails to pay any Charge or other amount in accordance with this Agreement:

- (a) Customer is in Default.
- (b) The unpaid Charge or amount is an **Overdue Amount**.
- (c) The Overdue Amount incurs interest at
  - (i) the Interest Rate plus two percentage points calculated daily between the date the Charge or amount became an Overdue Amount and the date it is paid.
- (d) Redtrain may, but is not obliged to, draw on Customer's Payment Security (if any) for payment of all or part of the Overdue Amount.
- (e) Redtrain may require that Customer:
  - (i) immediately reinstates its Payment Security (if any) to its full amount, if Redtrain has drawn on it; and
  - (ii) within 14 days – provides (or increase the amount of its existing) Payment Security (if any) in an amount determined by Redtrain (acting reasonably).
- (f) To avoid any doubt, nothing in this clause requires Customer to provide Payment Security if Customer is in compliance with Redtrain's Credit Policy.
- (g) Redtrain may also exercise any other right it has in relation to the Default and the Overdue Amount.

**22.2** Recovering Overdue Amounts

Redtrain may:

- (a) recover any Overdue Amount as a debt due and payable immediately to Redtrain; and
- (b) notify and exchange information regarding Customer with Redtrain's debt collection and credit reporting agencies concerning any Overdue Amount.

**23. Billing Enquiries**

Customer may make an enquiry about a Charge or an Invoice (**Billing Enquiry**).

**24. Billing Disputes**

**24.1** Raising Billing Disputes

- (a) Customer may, acting reasonably, raise a Billing Dispute within 60 days after the date of the Invoice to which the Billing Dispute relates.

- (b) If the parties have agreed any administrative processes for raising Billing Disputes, Customer must comply with them, or the Billing Dispute is not valid.

**24.2 Resolving Billing Disputes**

- (a) If the parties have agreed any administrative processes for resolving Billing Disputes, both Parties must comply with them.
- (b) Each Party must use reasonable endeavours to resolve Billing Disputes promptly and efficiently.
- (c) Each Party must continue to perform all its obligations under this Agreement (except for payment of any amount Customer may withhold under clause 21.1(d)) despite a Billing Dispute.

**24.3 After resolution of Billing Disputes**

- (a) If a Billing Dispute is resolved and it is determined that Customer overpaid Redtrain – Redtrain must, within 14 days of resolution, credit Customer with:
  - (i) the overpaid amount; and
  - (ii) interest at the Interest Rate plus 2 percentage points on the overpaid amount for each day after the seventh day after the day on which the Billing Dispute was resolved until (and including) the day that it is credited to Customer.
- (b) If a Billing Dispute is resolved and it is determined that Customer has underpaid Redtrain – Customer will, within 30 calendar days of that resolution, pay:
  - (i) the amount due to Redtrain; and
  - (ii) interest at the Interest Rate plus 2 percentage points on that amount for each day after the seventh day after the day on which the Billing Dispute was resolved until (and including) the day that it is paid to Redtrain.

**24.4 Unreasonable use of Billing Disputes**

For a period of 12 months, Redtrain may Suspend Customer's right under clause 21.1(d) to withhold payment of disputed amounts if:

- (a) Customer raises more than two Billing Disputes in any six month period;
- (b) each Billing Dispute is only in respect of Charges for Unregulated Services; and
- (c) in half or more of those Billing Disputes, it is resolved that there was no error in the Charges or in the calculation of the amount of an Invoice which was the subject of the Billing Dispute.

**25. Price Changes**

**25.1 Changes to the Price List and other amounts**

- (a) Redtrain may change the Price List or any other amount payable under this Agreement (**Price Change**) at any time on notice (**Price Change Notice**) to Customer in accordance with this clause 25.
- (b) A Price Change takes effect on the later of:

- (i) the end of any current Validity Period for a Charge; and
    - (ii) the date specified in the Price Change Notice, which will be at least 90 days after the date of the Price Change Notice (unless Redtrain specifies shorter period where reasonably necessary to comply with the Standard Access Obligations.)
  - (c) To avoid any doubt, where a Price Change Notice affects some Charges that are subject to current Validity Periods and others that are not, the Price Change takes effect for the latter in spite of the fact that it may not take effect for the former until the end of their Validity Period/s.
- 25.2 Price Change during Minimum Term
- (a) A Price Change takes effect despite any Minimum Term that may apply to a Service Contract.
  - (b) If a Price Change during a Minimum Term will result in an increase of the amount payable by Customer under the Service Contract, Customer may, within 90 days after receiving the Price Change Notice, Disconnect the Service without incurring a Break Charge.
- 25.3 New Taxes
- If there comes into effect a New Tax that increases Redtrain's cost of providing a Service:
- (a) Redtrain may increase its Charges for that Service by an amount reasonably required to pass the effect of the New Tax on to Customer; and
  - (b) clauses 25.1(b) and 25.2 do not apply to an increase under this clause 25.3

## Part J – Operations

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### 26. Training

Redtrain may mandate skills, processes and Service training for Customer and its staff as a precondition of supply (or continued supply) of a Service.

### 27. Operations Manual

- (a) Redtrain may publish a manual or collection of manuals specifying its operational processes and requirements (**Operations Manual**).
- (b) Redtrain may vary the Operations Manual:
  - (i) in an emergency or urgent circumstances – as soon as necessary subject to giving reasonable notice in the circumstances; and
  - (ii) otherwise – on at least 60 days' notice to Customer.
- (c) Customer must comply with Redtrain's Operations Manual.

**28. Use of Redtrain's Network and Services**

**28.1** Use must be lawful

- (a) Customer must ensure that any use by it and its Personnel of the Network and any Service, is lawful, is in accordance with this Agreement, and will not expose Redtrain to any liability to any third Party.
- (b) Customer must use its best efforts to ensure that any use of the Network or any Service by:
  - (i) its Downstream Customers and their Personnel; and
  - (ii) its End Users and their People –is lawful, does breach this Agreement and will not expose Redtrain to any liability to any third Party.

**28.2** No prejudice to rights of other Redtrain Customers

Customer must not knowingly prevent or hinder any other Redtrain Customer from exercising its rights as a Redtrain Customer.

**29. Network protection and safety**

**29.1** Use must be safe, etc

- (a) Customer must ensure that any use by it and its Personnel of the Network and any Service:
  - (i) is safe;
  - (ii) does not damage or harm the Network;
  - (iii) does not impair the operation of the Network;
  - (iv) does not damage or harm any network to which the Network directly or indirectly connects;
  - (v) does not impair the operation of any network to which the Network directly or indirectly connects; and
  - (vi) does not endanger the health or safety of any person.
- (b) Customer must use its best efforts to ensure that any use of the Network or any Service by:
  - (i) its Downstream Customers and their Personnel; and
  - (ii) its End Users and their People –
    - (A) is safe;
    - (B) does not damage or harm the Network;
    - (C) does not impair the operation of the Network;
    - (D) does not damage or harm any network to which the Network directly or indirectly connects;
    - (E) does not impair the operation of any network to which the Network directly or indirectly connects; and
    - (F) does not endanger the health or safety of any person.

**30. Safeguarding the Network**

- (a) Customer and its Personnel must comply with any instructions, policies or procedures given by Redtrain relating to:
  - (i) protecting the integrity of the Network;
  - (ii) protecting the integrity of any other Redtrain customer's network, systems, equipment or facilities used in connection with the Network;
  - (iii) ensuring the quality of any Service; or
  - (iv) protecting the health or safety of any person.
- (b) Customer must use its best efforts to ensure that:
  - (i) its Downstream Customers and their Personnel; and
  - (ii) its End Users and their People –comply with any instructions, policies or procedures given by Redtrain relating to:
  - (iii) protecting the integrity of the Network;
  - (iv) protecting the integrity of any other Redtrain customer's network, systems, equipment or facilities used in connection with the Network;
  - (v) ensuring the quality of any Service; or
  - (vi) protecting the health or safety of any person.

**31. Compatibility Requirements**

- (a) Redtrain may specify compatibility standards and requirements for connection to the Network and use of a Service (**Compatibility Requirements**).
- (b) Customer must comply with all Compatibility Requirements.
- (c) Customer must use its best efforts to ensure that:
  - (i) its Downstream Customers and their Personnel; and
  - (ii) its End Users and their People –comply with all Compatibility Requirements.

**32. Connection Requirements**

- (a) Redtrain may specify technical preconditions, processes and requirements for connection to the Network (**Connection Requirements**).
- (b) Customer must comply with all Connection Requirements.
- (c) Customer must use its best efforts to ensure that:
  - (i) its Downstream Customers and their Personnel; and
  - (ii) its End Users and their People –comply with all Connection Requirements.



**33. Disconnection from Network**

**33.1 Customer Equipment**

Customer must immediately disconnect or deactivate:

- (a) any Customer Equipment that damages, interferes with, or degrades the operation or performance of the Network or the supply of services to Customer or any other Redtrain Customer;
- (b) any Customer Equipment in breach of the Compatibility Requirements; and
- (c) any connections to the Network in breach of Connection Requirements or any Law.

**33.2 Downstream and End User Equipment**

Customer must use all reasonable endeavours to procure the immediate disconnection or deactivation of:

- (a) any Downstream Equipment or End User Equipment that damages, interferes with, or degrades the operation or performance of the Network or the supply of services to Customer or any other Redtrain Customer;
- (b) any Downstream Equipment or End User Equipment in breach of the Compatibility Requirements; and
- (c) any connections by a Downstream Customer or End User to the Network in breach of Connection Requirements or any Law.

**34. Equipment**

**34.1 Customer Equipment**

Customer must ensure that:

- (a) Customer Equipment has all necessary regulatory approvals;
- (b) the uses to which Customer Equipment is put are not prohibited by any Regulator or Law;
- (c) Customer Equipment is maintained in good repair and condition; and
- (d) Customer Equipment is appropriately configured.

**34.2 Redtrain Equipment**

Redtrain must ensure that:

- (a) Redtrain Equipment has all necessary regulatory approvals;
- (b) the uses to which Redtrain Equipment is put are not prohibited by any Regulator or Law;
- (c) Redtrain Equipment is maintained in good repair and condition; and
- (d) Redtrain Equipment is appropriately configured.

**34.3 Downstream Equipment and End User Equipment**

Customer must use reasonable endeavours to ensure that:

- (a) Downstream Equipment and End User Equipment has all necessary regulatory approvals;

- (b) the uses to which Downstream Equipment and End User Equipment are put are not prohibited by any Regulator or Law;
- (c) Downstream Equipment and End User Equipment is maintained in good repair and condition; and
- (d) Downstream Equipment is appropriately configured.

**34.4 Redtrain Equipment**

- (a) Customer must:
  - (i) comply; and
  - (ii) ensure that its Personnel, Downstream Customers and their Personnel, and End Users, comply –  
with the terms of use of any Redtrain Equipment, as notified by Redtrain from time to time.
- (b) If Customer fails to return any Redtrain Equipment to Redtrain within 15 Business Days of being required to do so, Redtrain may disconnect and recover that Redtrain Equipment in accordance with this Agreement.

**34.5 Lost, stolen or damaged Redtrain Equipment**

- (a) Redtrain may, in its discretion, replace or repair any lost, stolen or damaged Redtrain Equipment at Redtrain's cost.
- (b) If Redtrain reasonably considers that an act or omission of Customer (or any Downstream Customer or any End User) has caused or contributed to the loss or theft of, or damage to, the Redtrain Equipment, then Customer must pay to Redtrain the proportion of Losses incurred by Redtrain in replacing or repairing the Redtrain Equipment to the extent to which Customer (or its Downstream Customer or its End User) has caused or contributed to that loss, theft or damage.

**34.6 Property rights and beneficial interest**

Customer, any Downstream Customer or any End User will have no right, title or interest (legal, equitable or statutory) in any part of the Network, Redtrain Equipment or other platforms, property, software and systems supplied or made available by Redtrain to Customer or used by Redtrain to supply a Service.

**35. Removals and disconnections**

**35.1 Redtrain may disconnect**

If:

- (a) Customer fails to comply with an obligation to disconnect or deactivate Customer Equipment; or
- (b) a Downstream Customer fails to disconnect or deactivate Downstream Customer Equipment as required by Redtrain pursuant to clause 34.3; or
- (c) an End User fails to disconnect or deactivate End User Equipment as required by clause 34.3 –

then:

- (d) Redtrain may disconnect and/or deactivate that Customer Equipment, Downstream Customer Equipment or End User Equipment;

- (e) Customer is deemed to have consented to and authorised Redtrain disconnecting and/or removing that Customer Equipment, Downstream Customer Equipment or End User Equipment.

**36. Premises**

**36.1 Access – General**

- (a) Customer must:
  - (i) use best endeavours to provide Redtrain with safe and timely access to any premises owned, controlled or occupied by Customer and/or any Downstream Customer and/or any End User at which any part of the Network, including Redtrain Equipment, is or will be located, for so long as Customer and/or any Downstream Customer and/or End User (as the case may be) owns, controls or occupies those premises; and
  - (ii) ensure that contracts it enters into with Downstream Customers contain valid and enforceable provisions:
    - (A) permitting Redtrain safe and timely access to those premises; and
    - (B) obliging them to ensure that all contracts with End Users contain valid and enforceable provisions permitting Redtrain safe and timely access to those premises –

where that access is required by Redtrain to:

- (iii) supply any Service;
- (iv) deliver, install, connect, inspect, modify, replace, maintain, repair, reinstate, service, perform any other work on or in relation to, disconnect, and remove part of the Network, including:
  - (A) any Redtrain Equipment; or
  - (B) any other item that is licensed, owned or controlled by Redtrain or, where lawful, any third Party network whether or not in relation to the supply of a Service; or
- (v) exercise any rights or perform any obligations under this Agreement –

and where Redtrain reasonably requires, but is not given, access as contemplated by this clause it has no liability for any adverse consequences arising from that lack of access.

**37. Emergency Works**

**37.1 Emergency Works Notice**

- (a) If Redtrain wishes to implement Emergency Works on the Network, it must give notice to Customer as soon is feasible in the circumstances, and, if feasible, before starting works to implement the Emergency Works (**Emergency Works Notice**).
- (b) An Emergency Works Notice must include a description of the Emergency giving rise to the works.

- (c) If Redtrain implements Emergency Works, the Parties must cooperate in relation to them.

**37.2** Charges during Emergency Works

Customer must pay all Charges and other amounts payable under this Agreement for the duration of the implementation of any Emergency Works, unless otherwise agreed between the Parties.

**38. Scheduled Works**

**38.1** Scheduled Works Notice

- (a) If Redtrain wishes to implement Scheduled Works on the Network, it must give notice to Customer at least 7 days in advance (**Scheduled Works Notice**).
- (b) If Redtrain implements Scheduled Works, the Parties must cooperate in relation to them.
- (c) Redtrain may schedule Scheduled Works on a recurring or non-recurring basis.
- (d) If any Scheduled Works will, or is likely to, have a material adverse impact on Customer, Redtrain must use reasonable endeavours to:
  - (i) consult with Customer; and
  - (ii) consider any feedback from Customer –  
before performing the Scheduled Works.

**38.2** Charges during Scheduled Works

Customer must pay all Charges and other amounts payable under this Agreement for the duration of the implementation of any Scheduled Works, unless otherwise agreed between the Parties.

**39. Points of Interconnection**

**39.1** Locations of Points of Interconnection

Redtrain will make details of the Points of Interconnection available to Customer from time to time.

**39.2** Changes to location of Points of Interconnection

- (a) Redtrain may relocate any Point of Interconnection on at least 180 days' notice (or, in case of Emergency, as much notice as is feasible) to Customer (**PoI Relocation Notice**).
- (b) A PoI Relocation Notice may include terms and conditions proposed by Redtrain in connection with the relocation (eg contribution towards Customer's relocation expenses).
- (c) Within 30 days after receiving a PoI Relocation Notice, Customer may terminate any Service that will be materially and adversely affected by the relocation, without paying a Break Charge.
- (d) In determining whether a Service will be materially and adversely affected by the relocation, Redtrain's terms and conditions must be taken into account.

- (e) With respect to any Service that is not validly terminated under clause 39.2(c):
  - (i) the relevant Service Contract and all Charges continue in spite of the relocation;
  - (ii) the Parties must cooperate to ensure that the relocation is completed on time and with no unnecessary disruption to either Party; and
  - (iii) except as proposed by Redtrain or otherwise agreed in writing by the Parties, each Party must bear its own costs and expenses of the relocation.

#### **40. Faults**

##### **40.1** Fault diagnosis, reporting, investigation and repair

- (a) Redtrain may specify (including in the Operations Manual) terms and procedures for the diagnosis, reporting, investigation and repair of Faults.
- (b) Redtrain must investigate and repair Redtrain Faults of which it is aware.
- (c) Redtrain must take reasonable steps to (a) alert the owner or operator of any relevant Third Party Facilities of any Third Party Fault and (b) procure the cure or mitigation by that owner or operator of such Third Party Fault.
- (d) Redtrain may, but is not obliged to, investigate, repair or notify any other Faults whether or not they have been validly reported to Redtrain.

##### **40.2** Minimising disruptions investigating and repairing Faults

- (a) Customer acknowledges that investigation and/or repair of Faults may necessitate temporarily disruption to the Network or Services – which disruption will not be regarded as a further Fault.
- (b) Redtrain will use reasonable endeavours to minimise any disruption caused by the investigation and/or repair of any Fault.

## **Part K – Confidential Information**

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#### **41. Confidentiality**

If a Party (**Discloser**) discloses Confidential Information to another (**Recipient**), Recipient must keep it confidential and secure and must not use or disclose it, except as permitted by this Agreement.

#### **42. Permitted use and disclosure – general**

Unless this Agreement provides otherwise, Recipient may only:

- (a) use Confidential Information to exercise its rights or perform its obligations under this Agreement; and
- (b) disclose Confidential Information to:

- (i) Recipient's Personnel who reasonably need to know it for the Recipient to perform its obligations or exercise its rights under this Agreement;
- (ii) Recipient's professional advisers who reasonably need to know it to provide advice to it or exercise or protect its rights under or in connection with this Agreement;
- (iii) a third Party approved by Discloser in writing, but subject to any conditions specified by Discloser;
- (iv) a third Party, to the extent necessary to protect the health or safety of any person provided that Recipient has taken reasonable steps to ensure that such information is not identified with, or attributed to, Discloser; and
- (v) a person or entity lawfully entitled to require the disclosure by Recipient, subject to Recipient giving Discloser as much notice, information and opportunity as it feasibly and lawfully can to challenge such a requirement.

**43. Permitted use and disclosure – Redtrain**

Redtrain may also use or disclose Confidential Information:

- (a) to the extent necessary to protect the integrity of the Network;
- (b) to the extent necessary to comply with, or demonstrate its compliance with, any Standard Access Obligation;
- (c) to the extent necessary for Redtrain to comply with, or demonstrate its compliance with, any obligation under any Law or any SAU;
- (d) subject to Redtrain ensuring that the person to whom the disclosure is made is under an obligation to keep the information confidential:
  - (i) to the extent necessary for the purposes of pull through activities, investigating and rectifying Faults on cables in lead-in conduits;
  - (ii) relating to facilities access by Customer necessary for the supply of a Service;
  - (iii) relating to the ordering, provision, repair or disconnection of a Service;
- (e) to any Regulator;
- (f) to its financial advisers, bankers and financiers (to the extent necessary for those advisers, bankers or financiers to provide financial advice or services to those financiers or investors);
- (g) to current or prospective investors in, or joint venturers with, Redtrain (to the extent necessary for those investors or joint venturers to consider, effect or participate in an investment or joint venture); or
- (h) for the purpose of complying with Division 4B of Part XIC of the CCA.

**44. Network Data**

Redtrain may use Network Data to:

- (a) exercise its rights or perform its obligations under this Agreement;
- (b) plan, operate, maintain, repair or upgrade the Network;
- (c) identify, calculate, validate or prove Charges; and
- (d) comply with any Law –

and in doing so, it will, as far as practicable ensure that such information is not identifiable with Customer and may use Aggregated Network Data for any purpose.

**45. Return of Confidential Information on demand**

Recipient must return, destroy or delete Discloser's Confidential Information on Discloser's demand, except to the extent that it is:

- (a) impracticable to do so; or
- (b) necessary to retain the Confidential Information to comply with the Recipient's internal governance processes, or any Law.

**46. Injunctive relief**

Each Party agrees that damages may not be an adequate remedy for a breach of this Part and that a Party is entitled to seek specific performance or injunctive relief for a breach, anticipatory breach, or reasonably suspected breach of this Part.

**47. Section 152AYA consent**

Clauses 42, 43 and 44 apply to any information that is confidential under section 152AYA of the CCA, and Customer consents to the use and disclosure of that information in accordance with those sections and otherwise as permitted by this Agreement.

**48. Part 4 of Schedule 1 to the Telco Act**

If Customer is a Carrier:

- (a) the rights and obligations of the Parties under clauses 41 to 47 are in addition to their rights and obligations under Part 4 of Schedule 1 to the Telco Act; and
- (b) this Part does not, and is not intended to, constitute terms and conditions subject to section 27 of Schedule 1 to the Telco Act.

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**Part L – Data security and Personal Information**

**49. Data security**

Each Party:

- (a) must employ effective security standards, systems and practices in relation to any data or information (including Confidential Information) of the other Party that the first Party:
  - (i) collects;
  - (ii) stores;

- (iii) uses; or
- (iv) discloses to third Parties –  
by any means inside or outside Australia; and
- (b) must not allow any person inside or outside of Australia to access any such data or information except in compliance with security standards, systems and practices which the first Party follows in Australia.

**50. Personal Information**

- (a) Each Party must:
  - (i) comply with all Privacy Laws;
  - (ii) ensure that its Personnel comply with all Privacy Laws; and
  - (iii) use all reasonable efforts to ensure that any third Party that obtains or accesses Personal Information from or through the Party complies with all Privacy Laws.
- (b) Customer must also:
  - (i) comply with Redtrain's Privacy Policy and:
  - (ii) reasonably assist Redtrain in complying with –
    - (A) Redtrain's Privacy Policy; and
    - (B) all Privacy Laws;
  - (iii) include in Customer's Collection Notification any matter or information reasonably required by Redtrain.

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**Part M – IP Rights**

**51. General principles**

Except as expressly provided, nothing in this Agreement:

- (a) alters the ownership of; or
- (b) grants any licence in respect of –  
any IP Rights of a Party of a third Party.

**52. Confirmation of Redtrain's IP Rights**

Redtrain (or its licensor/s) owns all right, title and interest (including IP Rights) in:

- (a) the Network;
- (b) this Agreement;
- (c) the Services; and
- (d) any materials produced by Redtrain in connection with Network Purposes.

**53. Assignment to Redtrain**

Customer assigns to Redtrain all Developed IP that Customer or its contractors would, but for this clause 53, own in connection with:

- (a) the development of a Service;



- (b) any variation or enhancement of a Service; or
- (c) this Agreement –

and Customer must do all things reasonably necessary to ensure that such Developed IP is owned by Redtrain upon its creation.

**54. Cross-licences**

Subject to clause 58, except as otherwise agreed:

- (a) Customer grants Redtrain a non-exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide licence (including a right to sub-licence) to adapt, modify, develop or use in any other way whatsoever Customer's Background IP, solely to the extent necessary for Redtrain to:
  - (i) fully use and enjoy Developed IP that is subject to clause 53; or
  - (ii) perform its obligations and exercise its rights under this Agreement.
- (b) Redtrain grants Customer a non-exclusive, royalty-free, non-transferable licence for the Term to adapt, modify, develop or use Redtrain's Background IP and Developed IP that is subject to clause 53 in Australia, solely to the extent required for Customer to:
  - (i) use any Service; or
  - (ii) perform its obligations and exercise its rights under this Agreement.
- (c) Customer may sub-licence any of the rights granted to it under clause 54(b) to any of its Downstream Customers, if:
  - (i) any such sub-licence is limited solely to the extent required for such Downstream Customers to use any Service (with the right to further sub-licence where necessary); and
  - (ii) such sub-licence and any further sub-licence contains restrictions equivalent to the restrictions set out in this Agreement which protect the IP Rights of Redtrain –

provided that Customer remains liable for each act or omission of such Downstream Customers in connection with such sub-licence as though it was Customer's act and/or omission.

**55. IP Warranties**

Each Party represents and warrants that:

- (a) it has all the rights necessary to assign or license (or procure the assignment or grant) of rights under this Part;
- (b) the exercise of the rights assigned or licensed under this Part does not, and will not, infringe IP Rights of any third Party; and
- (c) no further authorisation, consent, approval, filing, registration or other action is necessary to assign or license rights as required by this Part.

**56. No unauthorised use**

Each Party must:

- (a) not use any IP Rights licensed to it under this Part:

- (i) for any purpose other than that expressly licensed;
  - (ii) at any time other than that expressly licensed; or
  - (iii) except in accordance with this Agreement; and
- (b) ensure that its Personnel and any person that makes any use of those IP Rights through the Party observes the same restrictions.

**57. Procuring third Party Intellectual Property Rights**

Unless as otherwise agreed, each Party must procure, at its own cost and expense, licences of IP Rights owned by any third Party to the extent reasonably required for the Party or its Personnel to perform its obligations under this Agreement.

**58. Use of other Party's trade marks and branding, etc.**

A Party must not use the trade mark/s, logos or branding of the other Party:

- (a) without that other Party's written consent (which may be withheld in the other Party's absolute discretion); or
- (b) otherwise than in accordance with the terms notified by the consenting Party from time to time, including, in the case of use by Customer, in accordance with any Redtrain Brand Guidelines notified to Customer.

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**Part N – Liability: General**

**59. Liability regime comprehensive**

- (a) This Agreement comprehensively and exhaustively governs all liability of a Party to the other Party arising from, or in connection with:
  - (i) this Agreement;
  - (ii) anything done pursuant to or in connection with this Agreement;
  - (iii) any Service; or
  - (iv) the Network –whether that liability arises in contract, negligence or other tort, in equity, under statute, under an indemnity or otherwise.
- (b) Each Party excludes all liability (including for negligence) it would otherwise have to the other Party, except for:
  - (i) Accepted Liability; and
  - (ii) Non-excludable Liability –and a Party may plead this Agreement as an absolute bar to any Claim by the other Party other than in respect of Non-excludable Liability or Accepted Liability.

**59.2 Accepted Liability**

Accepted Liability means:

- (a) in the case of Redtrain – liability (including under an indemnity) in accordance with Part O (subject always to any limitations and exclusions in that Part); and

- (b) in the case of Customer – liability (including under an indemnity) in accordance with Part P (subject always to any limitations and exclusions in that Part).

**59.3 Non-excludable Liability defined**

Non-excludable Liability means:

- (a) liability that cannot lawfully be excluded; and
  - (b) in the case of liability that can lawfully be limited or partly excluded – so much of the liability as cannot lawfully be limited or excluded –
- and includes liability in accordance with clause 60.

**60. Non-excludable Liability – Consumer Guarantees**

**60.1 Consumer Guarantees – PDH goods**

If:

- (a) a Party (**Supplier**) supplies the other Party (**Recipient**) with goods of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) Recipient did not acquire the goods, or hold itself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land –

then:

- (c) Recipient has the benefit of Consumer Guarantees in accordance with the Australian Consumer Law; and
- (d) nothing in this Agreement limits those Consumer Guarantees or Recipient’s remedies for any breach of them.

**60.2 Consumer Guarantees – PDH services**

If Supplier supplies Recipient with services of a kind ordinarily acquired for personal, domestic or household use or consumption, then:

- (a) Recipient has the benefit of Consumer Guarantees in accordance with the Australian Consumer Law; and
- (b) nothing in this Agreement limits those Consumer Guarantees or Recipient’s remedies for any breach of them.

**60.3 Consumer Guarantees – non-PDH goods under \$40,000**

If:

- (a) Supplier supplies Recipient with goods that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- (b) Recipient did not acquire the goods, or hold itself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land –

then:

- (c) Recipient has the benefit of Consumer Guarantees in accordance with the Australian Consumer Law; and
- (d) except if the breach relates to the Consumer Guarantee as to title (section 51 of the Australian Consumer Law) or undisturbed possession (section 52 of the Australian Consumer Law) or undisclosed securities (section 53 of the Australian Consumer Law), Supplier's liability for breach of those Consumer Guarantees is limited to:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired.

**60.4 Consumer Guarantees – non-PDH services under \$40,000**

If Supplier supplies Recipient with services that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption:

- (a) Recipient has the benefit of Consumer Guarantees in accordance with the Australian Consumer Law; and
- (b) Supplier's liability for breach of those Consumer Guarantees is limited to:
  - (i) supplying the services again; or
  - (ii) payment of the cost of having the services supplied again.

**60.5 References to \$40,000**

If an amount other than \$40,000 is prescribed for the purposes of section 4B of the CCA in relation to goods and/or services, a reference in clauses 60.3 or 60.4 shall be taken to be a reference to the prescribed amount from time to time.

**61. Limitation period**

To the extent permitted by law and despite any other provision in this Agreement, a Party (**Respondent Party**) is not liable to the other Party (**Claimant Party**) for Losses arising from or in connection with this Agreement or a Service unless the Claimant Party makes a Claim with respect to such Loss within 12 months after the Claimant Party first became aware or ought reasonably to have been aware of the event giving rise to the Claim.

**62. Apportionment and mitigation**

The liability of a Respondent Party to a Claimant Party in respect of any and all Claims and Losses arising from or in connection with this Agreement or a Service is reduced proportionally to the extent that:

- (a) the Claimant Party has not taken all reasonable or usual steps to minimise and mitigate its own Losses, damage or liability in relation to the act, omission, event or circumstance giving rise to such Claim or Loss; or

- (b) the Claim, Loss or liability of the Respondent Party is caused, or contributed to, by any act or omission of the Claimant Party.

**63. Indemnities**

Payment pursuant to an indemnity under this Agreement cannot be the subject of a Billing Dispute.

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**Part O – Accepted Liability: Redtrain**

**64. Non-excludable Liability**

This Part applies to the fullest lawful extent but does not limit or exclude any Non-excludable Liability.

**65. Personal injury or death**

To the extent that negligence by Redtrain, its servants or agents causes or contributes to personal injury or death, Redtrain accepts liability on normal principles of law.

**66. Service Level Agreements**

If a Service includes a Service Level Agreement (**SLA**):

- (a) Redtrain is liable for any remedy or rebate expressly allowed to Customer under the SLA; and
- (b) Redtrain's liability for breach of the SLA is limited to such remedy or rebate (provided that, if the SLA relates to a Declared Service, this clause 66(b) shall not operate so as to cap a liability that would otherwise not be capped under this Agreement).

**67. Damage to property**

To the extent that negligence by Redtrain, its servants or agents causes or contributes to damage to real or personal property, Redtrain accepts liability on normal principles of law, excluding Indirect Loss.

**68. IP Indemnity**

Redtrain indemnifies Customer against Loss arising from a breach by Redtrain of the warranty in clause 55, excluding Indirect Loss.

**69. Breach of Confidentiality**

Redtrain indemnifies Customer against any Loss arising from a breach by Redtrain of Part K, excluding Indirect Loss.

**70. Other exclusions and limitations**

**70.1** No implied warranties, etc

To the fullest lawful extent:

- (a) any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage or otherwise is excluded; and

- (b) Redtrain does not warrant or represent the performance, accuracy, reliability or continued availability of Services or the Network or that Services or the Network will operate free from faults, errors or interruptions.

**70.2 Annual cap**

Redtrain's aggregate liability to Customer for Accepted Liability (except under clauses 64, 65 or 67) in respect of any calendar year within the Term is limited to \$250,000.

**70.3 Per event cap**

Redtrain's liability to Customer for Accepted Liability (except under clauses 64, 65 or 67) in respect of any one event or series of related events is limited to 25% of the Charges paid to Redtrain by Customer in respect of the calendar year in which the event (or, in the case of a series of related events, the first of them) occurred.

**70.4 Supply failures, etc**

Redtrain excludes all liability to Customer (including any obligation to give a rebate or remedy under an SLA ) arising from, or in connection with any:

- (a) delay in the supply, or non-delivery, of any Service; or
- (b) interruption, interference, degradation or deterioration in the supply, operation or performance of a Service –

to the extent caused or contributed to by any:

- (c) Customer Event;
- (d) Force Majeure Event;
- (e) restriction placed by Redtrain on a Service in accordance with this Agreement;
- (f) any non-supply, interruption, interference, degradation or deterioration in the supply, operation or performance of a facility or service supplied to Redtrain by a third Party and arising from a Force Majeure Event.

**70.5 Excludable third Party claims**

- (a) Subject to clause 70.5(a), Redtrain excludes all liability to Customer in connection with any Claim brought against Customer by a third Party (including a Downstream Customer and an End User) to whom Customer provides products or services under a contract to the extent that that liability could have been lawfully excluded, restricted or limited under that contract.
- (b) Clause 70.5(a) does not apply to liability in connection with products or services that Customer supplies by means of a Declared Service.

**70.6 Minimum Claim**

- (a) Subject to clause 70.6(b), and except for a rebate or remedy allowed under an SLA, Redtrain is not liable for any Claim under or in connection with this Agreement or a Service unless the Claim (alone or together with other Claims made with the Claim) exceeds \$10,000 within any period of 6 consecutive months during the Term.

- (b) Clause 70.6(a) does not apply to liability in connection with products or services that Customer supplies by means of a Declared Service.

## Part P – Accepted Liability: Customer

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### 71. Non-excludable Liability

This Part applies to the fullest lawful extent but does not limit or exclude any Non-excludable Liability.

### 72. Personal injury or death

- (a) To the extent that negligence by Customer, its servants or agents causes or contributes to personal injury or death, Customer accepts liability on normal principles of law.
- (b) Customer indemnifies Redtrain against any Claim or Loss in connection with injury to or death of any person, to the extent that:
  - (i) Redtrain is not liable for the Claim or Loss under clause 65; and
  - (ii) the Claim or Loss is caused or contributed to by Customer, a Downstream Customer or an End User.

### 73. Damage to property

- (a) To the extent that negligence by Customer, its servants or agents causes or contributes to damage to real or personal property, Customer accepts liability on normal principles of law, excluding Indirect Loss.
- (b) Customer indemnifies Redtrain against any Claim or Loss in connection with damage to real or personal property, to the extent that:
  - (i) Redtrain is not liable for the Claim or Loss under clause 67; and
  - (ii) the Claim or Loss is caused or contributed to by Customer, a Downstream Customer or an End User.

### 74. Damage to Network

- (a) Subject to clause 74(b), Customer indemnifies Redtrain against any Loss arising from damage to the Network caused by Customer, any Downstream Customer or any End User, excluding Indirect Loss.
- (b) Clause 74(a) does not apply to liability in connection with damage that occurs in connection with a Declared Service.

### 75. IP Indemnity

Customer indemnifies Redtrain against any Loss arising from a breach by Redtrain of the warranty in clause 55, excluding Indirect Loss.

### 76. Breach of Confidentiality

Customer indemnifies Redtrain against any Loss arising from a breach by Customer of Part K.

**77. Payment of Charges**

- (a) Customer must pay all Charges in accordance with this Agreement, and no limitation or exclusion of liability in this Agreement limits or excludes that obligation.
- (b) Customer indemnifies Redtrain against all Loss it reasonably incurs in enforcing payment of overdue Charges.

**78. Enforcing Agreement**

- (a) Subject to clause 78(b), Customer indemnifies Redtrain against all Loss it reasonably incurs in enforcing compliance by Customer with this Agreement.
- (b) Clause 78(a) does not apply to enforcement in connection with a Declared Service.

**79. Claims by third Parties**

- (a) Subject to clause 79(b), and except to the extent of Redtrain's liability (if any) under clauses 65 or 67, Customer indemnifies Redtrain against:
  - (i) any Claim made against Redtrain by a Downstream Customer or an End User arising out of or in connection with this Agreement or any Service or the Network; and
  - (ii) any Claim made against Redtrain by any third Party, to the extent that the Claim arises from or in connection with any:
    - (A) breach of this Agreement by Customer (including any Claim arising by reason of any failure to include terms in contracts with Downstream Customers or End Users as required by clause 87); or
    - (B) negligent act or omission of Customer arising from or in connection with this Agreement or its subject matter, including the supply of any Service by Customer to any Downstream Customer or End User.
- (b) Clause 79(a) does not apply to a Claim in connection with a Declared Service.

**80. Defamation**

Customer indemnifies Redtrain against any Claim or Loss arising from or in connection with any defamation of a person (or allegation of defamation) involving use of a Service by:

- (a) a Downstream Customer;
- (b) an End User; or
- (c) an End User's People.

**81. Copyright**

- (a) Customer indemnifies Redtrain against any Claim or Loss arising from or in connection with any breach of a person's copyright (or allegation of such a breach) involving use of an Unregulated Service by:
  - (i) a Downstream Customer;



- (ii) an End User; or
  - (iii) an End User's People.
- (b) Customer must use its best efforts to prevent any Claim against or Loss to Redtrain arising from or in connection with any breach of a person's copyright (or allegation of such a breach) involving use of a Declared Service by:
  - (i) a Downstream Customer;
  - (ii) an End User; or
  - (iii) an End User's People.

**82. Spam Act**

- (a) Customer indemnifies Redtrain against any Claim or Loss arising from or in connection with any breach of the *Spam Act 2003* (or allegation of such a breach) involving use of an Unregulated Service by:
  - (i) a Downstream Customer;
  - (ii) an End User; or
  - (iii) an End User's People.
- (b) Customer must use its best efforts to prevent any Claim against or Loss to Redtrain arising from or in connection with any breach of the *Spam Act 2003* (or allegation of such a breach) involving use of a Unregulated Service by:
  - (i) a Downstream Customer;
  - (ii) an End User; or
  - (iii) an End User's People.

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**Part Q – Downstream Customers**

**83. Beyond Network Boundaries**

- (a) Redtrain has no responsibility or liability for anything required to be done or provided outside the Network Boundaries to facilitate provision of any Customer Service.
- (b) Customer is solely responsible and liable at its own cost and risk for anything required to be done or provided outside the Network Boundaries to facilitate provision of any Customer Service.

**84. Responsibility for Customer Services**

Redtrain has no responsibility or liability for any aspect of a Customer Service, or its design or delivery, or Customer's commercial or other relations with Downstream Customers or End Users.

**85. Credit risk**

The credit risk in relation to Downstream Customers and End Users lies exclusively with Customer, and non-payment by any of them will not entitle Customer to delay or deny any payment to Redtrain.

**86. No downstream relationship**

Redtrain shall have no contractual or other relationship with a Downstream Customer by virtue of this Agreement or the supply of any Service to Customer or the resupply of a Service to the Downstream Customer.

**87. Downstream terms**

Customer must ensure that all Downstream Customers are subject to binding contractual terms that:

- (a) exclude to the fullest lawful extent any Claim against of Redtrain arising out of or in connection with a Service or a Customer Service;
- (b) acknowledge that Redtrain supplies no service to the Downstream Customer; and
- (c) acknowledge that Redtrain has no contractual relationship with or obligation to the Downstream Customer.

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**Part R – Insurance**

**88. Insurance Policies**

Customer must effect and maintain:

- (a) workers compensation insurance as required by law (and Redtrain must also do so);
- (b) insurance against common law liability to Customer's Personnel engaged in connection with this Agreement;
- (c) public liability insurance:
  - (i) for at least:
    - (A) \$10 million per occurrence; or
    - (B) \$20 million per occurrence if Customer or its Personnel requires, and is granted, access to any premises under the control or occupation of Redtrain; and
  - (ii) insuring legal liability for:
    - (A) loss of, destruction of or damage to physical property;
    - (B) personal injury, sickness, disease or death of any person; and
    - (C) Indirect Loss resulting from any of the above circumstances, under, arising from or in connection with this Agreement;
- (d) product liability insurance:
  - (i) for at least \$20 million in annual aggregate; or
  - (ii) insuring legal liability for:
    - (A) loss of, destruction of or damage to physical property;
    - (B) personal injury, sickness, disease or death of any person; and

(C) Indirect Loss resulting from any of the above circumstances, under, arising from or in connection with this Agreement;

(e) any other insurance required by law –  
(each an **Insurance Policy**).

**89. Further insurances**

If after the Effective Date:

- (a) there is a material change in:
  - (i) the kind of activities Customer undertakes pursuant to this Agreement; or
  - (ii) the kind of End User Services Customer provides by means of a Service supplied under this Agreement; or
  - (iii) applicable legal requirements; and
- (b) Redtrain's insurance broker or legal advisers, acting reasonably, advise that particular activities of Customer should be subject to specified insurance –

then Customer cannot unreasonably decline to effect that insurance.

**90. Policy requirements**

Each Insurance Policy must:

- (a) be issued by a reputable insurer;
- (b) except for the cover specified in clause 88(c), apply on an occurrence basis, not on a claims-made basis.

**91. Other requirements**

Customer must:

- (a) use reasonable efforts to ensure that Redtrain is named as an additional insured in each Insurance Policy;
- (b) ensure that Redtrain is indemnified with regard to any vicarious or contingent liability incurred as a result of the activity of Customer's Personnel;
- (c) maintain the Insurance Policies throughout the Term;
- (d) provide evidence of the Insurance Policies, their terms and their currency to Redtrain (including certificates of currency) on request;
- (e) not do, permit or fail to do anything which prejudices any of the Insurance Policies or insurance claims or recovery under the Insurance Policies;
- (f) immediately reinstate any lapsed Insurance Policy; and
- (g) promptly notify Redtrain (and Redtrain must also promptly notify Customer) if:
  - (i) any Insurance Policy lapses;
  - (ii) the terms of any Insurance Policy are materially altered, either on renewal or at any other time; or

- (iii) any application for an Insurance Policy or any claim under an Insurance Policy is refused.

**92. Review of insurance coverage**

Once in any three years during the Term, Redtrain may change the minimum cover required in respect of any Insurance Policy, acting reasonably and on three months' notice to Customer.

**93. Failure to insure**

Each party indemnifies the other against any Loss the second party may suffer as a result of the first party's breach of this Part R.

**94. Insurance does not limit obligations**

Nothing in this Part R limits a party's liability or relieves a party from any obligation under this Agreement.

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## Part S – Force Majeure

**95. Force majeure**

Both Parties are excused any failure to comply with this Agreement (except an obligation to pay money) due to Force Majeure.

**96. Obligations re Force Majeure**

If a Party becomes aware of or anticipates Force Majeure:

- (a) it must give the other Party prompt notice of it; and
- (b) the Parties must cooperate to mitigate the Force Majeure and its effects.

**97. Termination for Force Majeure**

If Force Majeure:

- (a) lasts for a continuous period of 30 days or more; and
- (b) has substantially prevented a Party (**Affected Party**) from performing a material obligation under this Agreement for that period –

then the other Party can terminate this Agreement with no obligation to pay any Break Charge on 30 days' notice (provided that such notice lapses if the Force Majeure is resolved, and the Affected Party commences complying with the relevant material obligation), within that 30 days.

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## Part T – Relationship Management

**98. Points of Contact**

- (a) At all times during the Term, each Party must provide a nominated person (**Point of Contact**) to act as the ordinary point of contact between the Parties for day to day issues concerning this Agreement.

- (b) Nothing prevents the Parties from appointing specialised contact points regarding specific issues (eg technical or billing contacts) in addition to the general Points of Contact.
- (c) Each Party must keep the other informed of current contact details for its Point of Contact.
- (d) Each Point of Contact must:
  - (i) respond within one hour to a contact attempt or request made during Business Hours;
  - (ii) respond within two hours to a contact attempt or request made outside Business Hours;
  - (iii) be generally familiar with this Agreement and the activities of the Parties under it; and
  - (iv) have ready access to senior executive and operational managers within their organisation.

**99. Disputes – initial handling**

- (a) As far as practicable and reasonable, disputes in relation to this Agreement (other than Billing Disputes) will be initially discussed by the Points of Contact.
- (b) If a dispute:
  - (i) cannot reasonably and practicably be dealt with by the Points of Contact; or
  - (ii) is not resolved by the Points of Contact within 48 hours – it must be dealt with under clause 100.

**100. All other disputes**

Billing Disputes must be dealt with under clause 24, and nothing in this Agreement prevents a Party from applying to a court for urgent or injunctive relief. Otherwise:

**100.1 Mediation**

Any dispute or difference whatsoever arising out of or in connection with this Agreement and concerning a quantum of \$40,000 or less shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules. If the dispute or difference is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the Parties) it shall be and is hereby submitted to arbitration in accordance with, and subject to:

- (a) where the quantum is less than \$20,000 – clause 100.2; and
- (b) where the quantum is between \$20,000 and \$40,000 – clause 100.3.

**100.2 Disputes under \$20,000**

Any dispute or difference to which this clause 100.2 applies shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules. For disputes in

which the quantum is less than \$20,000 arbitration shall take place using the submission of documents alone unless both Parties agree otherwise.

**100.3** Disputes from \$20,000 to \$40,000

Any dispute or difference to which this clause 100.3 applies shall be submitted to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations.

**100.4** Disputes over \$40,000

Disputes and differences concerning a quantum of more than \$40,000 (except a Billing Dispute) shall be determined in the courts of Victoria.

**100.5** Obligation to perform

Despite a dispute or difference, each Party shall continue to perform the Agreement.

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## Part U – Default, suspension and termination

### **101. Default Notices**

#### **101.1** Issuing a Default Notice

- (a) A Party (**Notifying Party**) may issue a notice (**Default Notice**) to the other Party (**Defaulting Party**) if the Defaulting Party is in default (**Default**) under this Agreement.
- (b) A Default Notice must:
  - (i) specify the Default;
  - (ii) specify what the Notifying Party reasonably requires to be done to cure the default; and
  - (iii) state the date and time (**Deadline**) by which the Notifying Party requires the Default to be cured.

#### **101.2** Curing a default

A Default is taken to have been cured if:

- (a) the Notifying Party is put in substantially as good a position as if the default had not occurred; and/or
- (b) any circumstance constituting the Default no longer persists and the Notifying Party has been reasonably compensated for the Default and its consequences.

#### **101.3** Deadline

The Deadline must be:

- (a) in the case of a failure to pay money when due – at least 24 hours; and
- (b) in the case of a Default that the Notifying Party reasonably considers to be causing, or likely to cause, serious disruption or harm to the Network – at least 48 hours after the notice is served;
- (c) in the case of any other Default – at least 7 days after the notice is served.

**101.4** Effect of cure

A Default Notice is of no further force or effect if the Defaulting Party has cured the Default specified in it before the Deadline.

**102. Termination by Customer**

Customer may, without liability, terminate a Service Contract:

- (a) on 30 days' notice given after the expiry of any Minimum Term; or
- (b) immediately by giving Redtrain notice if:
  - (i) Redtrain does not cure a Default by the Deadline in a Default Notice;
  - (ii) Redtrain suffers an Insolvency Event; or
  - (iii) the Service is not being supplied and that non-supply has continued for more than 20 Business Days as a result of Force Majeure having occurred.

**103. Suspension or termination by Redtrain**

**103.1** Suspension

Redtrain may, without liability, suspend a Service by giving Customer notice:

- (a) if Redtrain reasonably suspects fraud by Customer or any other person (except Redtrain) in connection with the Service and Customer fails to take steps (to Redtrain's satisfaction) to ensure that fraud does not continue or recur, within 24 hours after Redtrain gives Customer notice requiring it to do so;
- (b) to the extent necessary for Redtrain to comply with an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
- (c) if:
  - (i) there is a requirement for a forecast in relation to an Unregulated Service in any part of the Agreement; and
  - (ii) Customer's actual usage of the Unregulated Service materially increases compared to the forecast; and
  - (iii) Redtrain has not agreed to allow this material increase; and
  - (iv) Customer fails to take steps (to Redtrain's satisfaction) to ensure that the increased usage of the Unregulated Service does not continue or recur, within 24 hours after Redtrain gives Customer notice requiring it to do so;
- (d) immediately if Customer or its Downstream Customer/s or End User/s use a Service:
  - (i) to break any Law;
  - (ii) to expose Redtrain to liability; or
  - (iii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted –

(**Offending Activity**) and does not cause the Offending Activity to cease within 24 hours of Redtrain's direction to do so;

- (e) (subject to section 600F of the Corporations Act, where it applies) if Customer suffers an Insolvency Event;
- (f) to the extent the Service is affected by an Emergency; or
- (g) if doing so is necessary to allow Redtrain to repair, maintain or service any part of the Network used to supply the Service.

#### 103.2 Suspension or termination

Redtrain may, without liability, suspend or terminate a Service:

- (a) on or after the expiry of any Minimum Term by giving at least 60 days' notice to Customer;
- (b) immediately by giving Customer notice if:
  - (i) Customer ceases to satisfy any Customer Qualification;
  - (ii) Customer does not cure a Default by the Deadline in a Default Notice;
  - (iii) Customer has received three or more Default Notices within a 12 month period, relating to the same (or substantially the same) kind of Default;
  - (iv) (subject to section 600F of the Corporations Act) Customer suffers an Insolvency Event;
  - (v) necessary to comply with an order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
  - (vi) the Service is not being supplied and that non-supply has continued for more than 30 Business Days as a result of Force Majeure having occurred; or
  - (vii) Redtrain is entitled to suspend the Service and the circumstances or condition so entitling it persists for more than 20 days;
- (c) on 7 days' notice if Customer fails to provide Payment Security (if any) required under this Agreement;
- (d) if Redtrain is otherwise entitled to do so under this Agreement.

#### 103.3 Suspension followed by termination

If Redtrain suspends a Service under this clause, it may later terminate that Service or for the same reason if that reason persists.

#### 104. Consequences of suspension

- (a) If a Service is suspended in accordance with the Agreement:
  - (i) Customer is not be liable to pay usage based charges for the Service while it is suspended; but
  - (ii) Customer must pay any other charges arising during suspension if the Service was suspended as a result of Customer's Default.
- (b) If Redtrain reactivates or reinstates a Service after it has been suspended due to Customer's Default, Redtrain may charge a reactivation Charge.



**105. Consequences of termination**

- (a) If:
  - (i) a Service is terminated in accordance with this Agreement due to Customer's Default during any Minimum Term; and
  - (ii) Customer did not pay a Set Up Charge in respect of the Service – Customer must pay Redtrain a Break Charge.
- (b) If a Service is terminated in accordance with the Agreement:
  - (i) Customer acknowledges that the Break Charge represents a genuine pre-estimate of the loss Redtrain will suffer and is not a penalty;
  - (ii) Redtrain may invoice Customer for all valid Charges for the Service that have not been previously invoiced; and
  - (iii) Customer pay to Redtrain all amounts specified in that invoice (provided they are not more than 130 days old), and all other unpaid amounts relating to that Service, within 30 days of the date of that invoice.
- (c) On termination:
  - (i) of a Service for any reason – Customer must (unless otherwise permitted by Redtrain in writing) immediately stop using the Service;
  - (ii) of this Agreement for any reason:
    - (A) each Party will (on request by the other Party) immediately return or destroy the other Party's Confidential Information, except to the extent that it is required by Law to retain it;
    - (B) each Party's accrued rights and obligations are not affected and the parts of the Agreement which are by their nature intended to survive termination of the Agreement will do so;
    - (C) each Party must cease using the other's IP, except as and to the extent permitted by this Agreement;
- (d) Within 30 days after termination, Customer must remove all:
  - (i) Customer Equipment and other items owned or controlled by Customer from any property, facilities or sites owned or controlled by Redtrain; and
  - (ii) equipment and other items owned or controlled by any Downstream Customer from any property, facilities or sites owned or controlled by Redtrain –and Customer must comply with any reasonable instructions given by Redtrain in connection with such work.
- (e) If Customer fails to remove any such equipment or other items from any property, facilities or sites owned or controlled by Redtrain within 30 days after termination:

- (i) Redtrain may remove such equipment and other items by giving Customer at least 5 days' notice of its intention to do so; and
  - (ii) Customer must reimburse Redtrain for all costs and expenses reasonably incurred by Redtrain in removing such equipment and other items.
- (f) Expiry or termination of this Agreement by either Party does not affect the right of either Party to enforce its accrued rights against the other Party.

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## Part V – Notices

### 106. Giving a notice

- (a) Any notice under this Agreement must be written, and faxed, emailed, posted or delivered to a Party's Service Address or personally delivered to the Party or a director of an incorporated Party.
- (b) A notice need not be signed.
- (c) Where the Party giving a notice:
  - (i) is a corporation, its notices may be signed by any director;
  - (ii) has a lawyer, its notices may be signed by the lawyer.

### 107. Service Address

A Party's Service Address is any of:

- (a) in the case of a corporation, its current registered office;
- (b) the last:
  - (i) business address;
  - (ii) fax number;
  - (iii) email address; or
  - (iv) postal address -the Party notified as its address for service of notices.

### 108. Time of delivery

- (a) A notice is deemed to have been given:
  - (i) if personally delivered – at the time of delivery;
  - (ii) if hand delivered to a business address between 9am and 4:45pm on a Business Day – on delivery;
  - (iii) if hand delivered to a business address other than between 9am and 4:45pm on a Business Day – at 9am on the next Business Day;
  - (iv) if posted by ordinary mail – at 10am on the third Business Day next following posting;
  - (v) if emailed – when acknowledged by an officer the recipient;

- (vi) if faxed between 9am and 4:45pm on a Business Day - when the sender's fax machine issues a successful transmission notification; and
  - (vii) if faxed other than between 9am and 4:45pm on a Business Day - at 9am on the next Business Day, subject to the sender's fax machine having issued a successful transmission notification.
- (b) From the Effective Date until further notice, the Parties' Service Addresses are as set out in the Details.

## Part W – Credit management

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### 109. Guarantees and security

- (a) If Customer is not in compliance with Redtrain's Credit Policy, Redtrain can make supply of Service conditional on Customer providing and maintaining Payment Security and/or third Party guarantees to Redtrain's reasonable satisfaction.
- (b) If Redtrain becomes entitled to suspend or terminate Service, it may make the resumption of Service conditional on Customer providing and maintaining Payment Security and/or third Party guarantees to Redtrain's satisfaction.
- (c) Redtrain may use a Payment Security to offset any undisputed amount that Customer owes.

### 110. Credit Policy

- (a) Redtrain may publish a Credit Policy that provides for:
  - (i) assessment of creditworthiness of persons who wish to acquire Services;
  - (ii) credit and solvency requirements;
  - (iii) provision of or increase in Payment Security;
  - (iv) payment terms in specified circumstances; and
  - (v) any related matter.
- (b) Provision and continuation of Service is conditional on Customer complying with Redtrain's Credit Policy.
- (c) Redtrain may vary the Credit Policy, acting reasonably, on 30 days' notice to Customer.

### 111. Credit reports

#### 111.1 Acknowledgment and authority

Customer acknowledges that section 18E(8)(c) of the *Privacy Act 1988* allows Redtrain to give a credit reporting agency certain personal information about Customer, and Customer authorises Redtrain to do so. The information which may be given to a credit reporting agency is listed by Section 18E(1) of the *Privacy Act* and includes:

- (a) the fact that Customer has applied for credit, and the amount;

- (b) the fact that Redtrain is a credit provider to Customer;
- (c) payments which become overdue more than 60 days;
- (d) advice that payments are no longer overdue;
- (e) in specified circumstances, that in Redtrain's opinion, Customer has committed a serious credit infringement; and
- (f) that the credit provided to Customer by Redtrain has been discharged.

**111.2 Authority for us to obtain certain credit information**

If Customer applies to Redtrain for personal or commercial credit, Customer authorises Redtrain:

- (a) to obtain from a credit reporting agency a credit report containing personal credit information about Customer in relation to personal credit provided by Redtrain;
- (b) to obtain from a credit reporting agency a credit report containing personal credit information about Customer in relation to commercial credit provided by Redtrain;
- (c) to obtain a report containing information about Customer's commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by Redtrain; and
- (d) to obtain a report from a credit reporting agency and other information in relation to Customer's commercial credit activities.

**111.3 Authority to exchange information with other credit providers**

- (a) In accordance with Section 18N(1)(b) of the *Privacy Act*, Customer authorises Redtrain to give to and obtain from credit providers named in any credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about Customer's arrangements.
- (b) Customer acknowledges that this information can include any information about Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.
- (c) Customer acknowledges that the information may be used for the following purposes:
  - (i) to assess Customer's application;
  - (ii) to assist Customer to avoid defaulting on your credit obligations;
  - (iii) to notify other credit providers of a default by Customer; or
  - (iv) to assess Customer's creditworthiness.

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**Part X – Other terms**

**112. Not a Standard Form of Agreement**

Part 23 of the Telco Act does not apply to this Agreement.

**113. Compliance with Laws**

- (a) Each Party must comply with all applicable Laws in connection with this Agreement and the Party's activities under it.
- (b) Customer must comply with the interception capability obligations under the Interception Act in relation to Customer Services.
- (c) Each Party must give the other Party such cooperation as it reasonably requires to comply with Laws, including in relation to obligations relating to or arising under:
  - (i) Directory Assistance Services;
  - (ii) Operator Services;
  - (iii) the Integrated Public Number Database;
  - (iv) Emergency Call Services;
  - (v) Part 14 of the Telco Act; and
  - (vi) the Interception Act.
- (d) Each Party may impose reasonable Charges on the other for any such assistance that it provides to the other under this clause 113(c).

**114. Relationship between the Parties**

- (a) This Agreement does not create a fiduciary relationship between the Parties or any agency, partnership or trust.
- (b) The only relationship created under this Agreement between the Parties is of supplier and customer.
- (c) Neither Party has the power to bind the other.

**115. Relationships with third Parties**

- (a) Except where expressly provided otherwise, this Agreement does not create any obligation or legal relationship between Redtrain and any Downstream Customer, End User, or any other third Party (**Third Party**).
- (b) The Parties enter this Agreement in their own legal capacity and not as agent or trustee for, or a partner of, any other person.
- (c) This Agreement does not grant any right or benefit to any Third Party

**116. Warranties**

Each Party represents and warrants that, as at the Effective Date and throughout the Term:

- (a) it is a duly incorporated and valid corporation under the laws of the state or territory in which it is incorporated;
- (b) it has all necessary corporate power and authority to:
  - (i) enter into this Agreement; and
  - (ii) perform its obligations under this Agreement;
- (c) it has taken all necessary corporate action to authorise the execution and performance of this Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation on it, enforceable against it in accordance with its terms; and
- (e) it is not subject to an Insolvency Event.

**117. Governing law**

This Agreement is governed by the laws in force in Victoria.

**118. Assignment and other dealings**

- (a) Neither Customer nor (subject to clause 118(d)) Redtrain can assign, novate or otherwise transfer or deal with any of its rights under this Agreement without the prior written consent of the other Party (**Transfer Consent**).
- (b) For the purposes of clause 118(a), a Change in Control of a Party is treated as a transfer of that Party's rights under this Agreement and this clause 118 applies accordingly to such transfer.
- (c) Transfer Consent must not be unreasonably withheld or delayed if the Party seeking the consent:
  - (i) has given the other Party at least 30 days' notice before the intended effective date of the assignment, novation, transfer or dealing;
  - (ii) is not in Default at any time between the request for consent and the intended effective date of the assignment, novation, transfer or dealing;
  - (iii) complies with the other Party's reasonable requirements in relation to documentation of the intended assignment, novation, transfer or dealing;
  - (iv) pays the other Party's reasonable costs (including reasonable legal costs) in relation to that intended assignment, novation, transfer or dealing;
  - (v) where the Party seeking consent is Customer:
    - (A) Customer proves to the reasonable satisfaction of Redtrain that any assignee, novatee, transferee or third Party to a dealing satisfies (so far as they are applicable) the Credit Policy, Customer Qualifications and otherwise has the ability to perform its obligations under this Agreement; and
    - (B) the assignee, novatee, transferee or third Party to a dealing, by binding instrument in writing, agrees with Redtrain to be bound by and comply with the terms of this Agreement, to Redtrain's reasonable satisfaction; and
  - (vi) where the Party seeking consent is Redtrain:
    - (A) Redtrain proves to the reasonable satisfaction of Customer that any assignee, novatee, transferee or third Party to a dealing has the ability to perform its obligations under this Agreement; and

- (B) the assignee, novatee, transferee or third Party to a dealing, by binding instrument in writing, agrees with Customer to be bound by and comply with the terms of this Agreement, to Customer's reasonable satisfaction
- (d) Redtrain does not require Transfer Consent in the case of assignment, novation, transfer or dealing with:
  - (i) a Related Body Corporate of Redtrain; or
  - (ii) NBN Co.

**119. Costs, expenses and duties**

- (a) Except where this Agreement provides otherwise, each Party is responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and any other instrument executed under this Agreement and complying with its obligations under this Agreement.
- (b) Customer must pay all stamp duty (including interest, fines and penalties) assessed to be payable on this Agreement, the performance of this Agreement (including the transfer of any property) and any transaction contemplated by it.

**120. Counterparts**

- (a) This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts.
- (b) Each counterpart constitutes an original of this Agreement and all together constitute one agreement.

**121. Cumulative rights**

The rights of each Party under this Agreement are in addition to, and do not exclude or limit, any other rights or remedies provided by law (except where this Agreement provides otherwise).

**122. Entire agreement**

This Agreement is the entire agreement between the Parties about its subject matter and supersedes any prior agreement or understanding between the Parties and any prior representation or warranty given or made by a Party.

**123. Further assurances**

Each Party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by the other Party to give effect to this Agreement.

**124. Surviving provisions**

The following provisions of this Agreement survive its termination in any circumstances: clauses 21, 22 and 33, Part K, Part L, Part M (except for clauses 54(b) and 54(c)), Part N, Part O, Part P, Part R (to the extent it relates to insurable events occurring during the Term), clauses 105, 117, 119 and 124.

## Part Y – Dictionary and interpretation

### 125. Dictionary

In this Agreement, unless the context indicates otherwise:

the expression:	means:
<b>ACCC</b>	Australian Competition and Consumer Commission
<b>Access Act</b>	<i>Telecommunications Legislation Amendment (National Broadband Network Measures – Access Arrangements) Act 2011</i>
<b>ACMA</b>	Australian Communications and Media Authority
<b>Additional Amount</b>	see clause 19.5(b)
<b>Adjustment Event</b>	an event in relation to any taxable supply made under or in connection with this Agreement that gives rise to an increase or decrease in GST properly payable in respect of that taxable supply
<b>AEST</b>	Australian Eastern Standard Time
<b>Aggregated Network Data</b>	Network Data that has been aggregated such that it cannot reasonably be identified with, attributed to or associated with Customer, a Downstream Customer or an End User
<b>Agreement</b>	this agreement as in force at any time, including Schedules and documents incorporated by reference
<b>Australian Consumer Law</b>	Schedule 2 of the <i>Competition and Consumer Act 2010</i>
<b>Australian Privacy Principles</b>	the Australian Privacy Principles in Schedule 1 of the <i>Privacy Act 1988</i>
<b>Availability Date</b>	the date on which a Service ordered by Customer is available for use by Customer, unless the relevant Order states an earlier date
<b>Billing Dispute</b>	a dispute because Customer, acting reasonably, considers there is an error in the amount of an Invoice under this Agreement
<b>Billing Dispute Process</b>	processes in accordance with clause 24
<b>Billing Period</b>	see clause 20.2
<b>Brand Guidelines</b>	written directions of Redtrain regarding the way in which its branding, trade mark/s, business names, get up and other indicia may be used



<b>Break Charge</b>	in respect of the early termination of a Service – an amount fixed by Redtrain in its discretion not exceeding (a) an amount determined in accordance with the Service Conditions for a Service or (if the Service Conditions do not provide for such a Charge) (b) the Fixed Charges that would have been payable for the Service over the balance of any Minimum Term applicable to the Service
<b>Bundling Condition</b>	see clause 14
<b>Business Day</b>	Monday to Friday excluding any day that is a public holiday at the place that an event or act is to occur
<b>Business Hours</b>	9am to 5pm AEST on a Business Day
<b>Cancellation Charge</b>	an amount determined as the cancellation or early termination fee in accordance with a Service Contract or, if a Service Contract makes no other provision, the balance of Charges in respect of any Minimum Term of a Service Contract excluding any Usage-based Charges
<b>Carriage Service</b>	as in the Telco Act
<b>Carriage Service Provider</b>	as in the Telco Act
<b>Carrier</b>	as in the Telco Act
<b>CCA</b>	<i>Competition and Consumer Act 2010</i>
<b>Change in Control</b>	in relation to a Party, a change in the entity which Controls the Party or, if no entity Controls the Party, the assumption of Control of the Party by an entity
<b>Charges</b>	fees and charges as supplied in writing to Customer at or about the Commencement Date
<b>Claim</b>	any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim and a claim for indemnity or contribution in relation to any Loss)
<b>Collection Notification</b>	disclosure, or other reasonable steps, taken by a person to comply with Australian Privacy Principle 5
<b>Compatibility Requirements</b>	see clause 31(a)
<b>Confidential Information</b>	of a Party means all information of that Party or any of its Related Bodies Corporate in connection

with this Agreement, including information of a third Party that is used or disclosed by that Party or any of its Related Bodies Corporate under licence from that third Party and including information derived from that Party's Confidential Information (regardless of form) which (a) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed and (b) is disclosed to or observed by the other Party in connection with this Agreement, but does not include information (c) which is in or comes into the public domain, other than by disclosure in breach of this Agreement or an obligation of confidence owed to a Party (d) which, at the time of first disclosure to or observation by the other Party, was already in the lawful possession of that Party; (e) which is disclosed to, or observed by, the other Party from a third Party entitled to disclose it – but always excluding Aggregated Network Data

<b>Connection Requirements</b>	see clause 32(a)
<b>Consideration</b>	see clause 19.5(a)
<b>Consumer Guarantees</b>	Consumer Guarantees under the ACL
<b>Content Service Provider</b>	as in the Telco Act
<b>Control</b>	as in section 50AA of the Corporations Act
<b>Credit Policy</b>	a policy under clause 110(a)
<b>Current Billing Period</b>	see clause 20.3
<b>Customer</b>	the person in item 3 of the Details
<b>Customer Background IP</b>	IP that Customer develops or acquires independently of Redtrain and this Agreement
<b>Customer Equipment</b>	any equipment that is (a) used by Customer in connection with the Network or a Service or (b) provided by or on behalf of Customer to any of its own Downstream Customers or End Users for use in connection with the Network or a Service – but excluding all Redtrain Equipment
<b>Customer Event</b>	(a) any act or omission of Customer, any Downstream Customer or any End User other than in accordance with this Agreement or that is negligent, wrongful, malicious or unlawful or (b) any event or circumstance to the extent caused or contributed to by facilities, systems, equipment, software, infrastructure or processes of

	Customer, any Downstream Customer or any End User
<b>Customer Network</b>	the networks, services, systems, equipment and facilities that are owned or used by Customer in providing any Customer Service but excluding the Network or a Service
<b>Customer Qualification</b>	see clause 8(a)
<b>Customer Service</b>	any service provided by Customer to a Downstream Customer or an End User
<b>Deadline</b>	see clause 101
<b>Declared Service</b>	as in the CCA and including the LABS
<b>Default</b>	see clause 101
<b>Default Notice</b>	see clause 101
<b>Defaulting Party</b>	see clause 101
<b>Details</b>	the Part of this Agreement so titled
<b>Developed IP</b>	IP that is created after the Effective Date
<b>Dictionary</b>	this table of defined expressions
<b>Directory Assistance Services</b>	as in the Telco Act
<b>Dollar or \$</b>	the lawful currency of Australia
<b>Downstream Customer</b>	a person who acquires a Service from or makes use of a Service through Customer, other than an End User
<b>Downstream Equipment</b>	any equipment that is (a) used by a Downstream Customer in connection with the Network or a Service or (b) provided by or on behalf of a Downstream Customer to any other Downstream Customer or an End User for use in connection with the Network or a Service – but excluding all Redtrain Equipment
<b>Effective Date</b>	the date in item 1 of the Details
<b>Elapsed Business Hours</b>	elapsed time, ignoring any time that falls outside Business Hours
<b>Emergency</b>	an actual or potential state of danger requiring action without delay to prevent or mitigate any loss, damage, personal injury or significant risk of death

<b>Emergency Call Services</b>	as in the Telco Act
<b>Emergency Works</b>	works to avoid, cure or mitigate an Emergency and which, in Redtrain's opinion, should be undertaken without unnecessary delay
<b>Emergency Works Notice</b>	see clause 37.1(a)
<b>End User</b>	a person who acquires a Service from or makes use of a Service through Customer, and does not resell or resupply it for charge or other remuneration
<b>End User Equipment</b>	any equipment that is used by an End User in connection with the Network or a Service – but excluding all Redtrain Equipment
<b>Exempt End User</b>	an End User that (a) is subject to an exemption in section 145, 146, 147, 148, 149, 150 or 151 of the Telco Act and (b) acquires a Carriage Service and (c) solely uses that Carriage Service for a purpose specified in section 145, 146, 147, 148, 149, 150 or 151 of the Telco Act (as applicable to them) and (d) does not re-supply the Carriage Service
<b>Fault</b>	a condition that materially impairs the normal operation of the Network
<b>Fixed Charges</b>	Charges other than Usage-based Charges
<b>Force Majeure</b>	any event or circumstance that (a) is not within the reasonable control of a Party ( <b>Affected Party</b> ) and (b) the Affected Party is not reasonably able to prevent or overcome by the exercise of reasonable care and (c) causes the Affected Party to fail to perform any of its obligations under this Agreement, but does not include: (d) any event or circumstance that arises as a result of any lack of funds or any other inability to pay or (e) any event or circumstance that arises as a result of any act or omission of the Affected Party that is negligent, wrongful, malicious or unlawful
<b>Future IP Rights</b>	IP Rights that arise or are created after the Effective Date and includes future copyright within the meaning of the Copyright Act 1968
<b>Government Authority</b>	any court or tribunal of competent jurisdiction or any Regulator, agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the

	Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies
<b>GST</b>	as in the GST Act
<b>GST Act</b>	A New Tax System (Goods and Services Tax) ACT 1999 (as amended)
<b>Incurred Amount</b>	see clause 19.5(f)
<b>Indirect Loss</b>	<ul style="list-style-type: none"><li>• economic loss</li><li>• business interruption</li><li>• loss of revenue, profits, actual or potential business opportunities or contracts</li><li>• anticipated savings</li><li>• loss of profits</li><li>• loss of production</li><li>• loss of data</li><li>• indirect or consequential loss</li><li>• loss of reputation</li><li>• damage to goodwill</li><li>• loss of management time, or</li><li>• Loss which does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question –</li></ul> and all Loss constituted by or arising out of any of them
<b>Insolvency Event</b>	<ul style="list-style-type: none"><li>• an application is made to a court for an order (and is not stayed, withdrawn or dismissed within 21 days) or an order is made that a body corporate be wound up</li><li>• an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, (and is not stayed, withdrawn or dismissed within 21 days) or one of them is appointed, whether or not under an order</li><li>• except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganization, moratorium or other administration involving any of them or appoints an administrator or controller (as those terms are defined in section 9 of the</li></ul>

Corporations Act)

- a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent, or is otherwise wound up or dissolved
- a body corporate is or states that it is insolvent
- as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand
- a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act
- a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate or a receiver is appointed to any part of its property
- a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event
- anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction

**Insurance Policy**

any insurance cover required under this Agreement including those detailed in clause 88

**Interception Act**

*Telecommunications (Interception and Access) Act 1979*

**Interest Rate**

- (a) the 30 day Bank Bill Swap Rate: Average Bid quoted in the *Australian Financial Review* on the due date for payment of the relevant amount or, if no such rate is quoted on the due date, on the first date preceding the due date on which such rate is quoted in the *Australian Financial Review*; or
- (b) if the *Australian Financial Review* ceases to quote that rate, or there is a manifest error in the publication of that rate, or the

*Australian Financial Review* ceases to be published, such other rate reasonably determined by Redtrain

<b>Invoice</b>	a written claim by Redtrain for payment of Charges specified by the claim
<b>Invoice Date</b>	the issue date on an Invoice and, if none is stated, the date on which Customer receives the invoice
<b>Invoicing Process</b>	processes and procedures adopted or amended by Redtrain from time to time in relation to invoicing
<b>IP or IP Rights</b>	<ul style="list-style-type: none"><li>• copyright</li><li>• trade marks</li><li>• patents</li><li>• designs</li><li>• trade secrets and the right that they not be unlawfully used or disclosed</li><li>• confidential information and the right that it not be unlawfully used or disclosed</li><li>• performer's rights</li><li>• rights as registrant of a domain name</li><li>• the right not to have third Party goods or services passed off as one's own goods or services</li><li>• any other rights analogous to any of the above</li><li>• the right to apply for registration of any of the above –</li><li>• in any jurisdiction whether arising under statute or at common law and whether registered or not</li></ul>
<b>IPND</b>	the Integrated Public Number Database as per the Telco Act
<b>LABS</b>	the Local Access Bitstream Service declared by ACCC on 24 February 2012
<b>Law</b>	all laws, Acts, regulations, binding codes and binding ethical, industry or professional requirements relevant to this Agreement or the Parties, as updated or replaced from time to time and a binding direction of a Regulator
<b>Loss</b>	harm, loss or damage suffered by any person (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not

	<p>loss or damage the risk of which the person causing the harm, loss or damage was or should have been aware), including but not limited to:</p> <ul style="list-style-type: none"><li>• costs and expenses incurred in relation to any Claim;</li><li>• an obligation to indemnify another person;</li><li>• an obligation to contribute to the compensation of loss or damage suffered by another person</li></ul>
<b>Mandated Service</b>	a Service that Redtrain is required by the Access Act to supply, including the LABS
<b>Minimum Term</b>	see clause 14
<b>NBN Co</b>	ACN 136 533 741 or any Related Body Corporate of it
<b>Network or Redtrain Network</b>	(a) the network unit/s (within the meaning of the Telco Act) used by Redtrain to provide a Service including and (b) all facilities and infrastructure owned or operated by Redtrain or a Related Company that support or are associated with those network units and (c) where the context admits – any Third Party Facility but always excluding any Customer Network
<b>Network Boundaries</b>	at one end – the physical interface on the Redtrain-supplied network terminal device that immediately services the premises of an End Customer, and at the other end – the PoI Interface between the Redtrain Network and the Customer Network
<b>Network Data</b>	any data regarding Customer, any Downstream Customer or End User that is (a) generated by or within the Network and its related systems as a result of the supply or use of any Service or (b) otherwise obtained from Customer in respect of the supply or use of any Service
<b>Network Purposes</b>	designing, building, commissioning, operating, maintaining, repairing, upgrading, extending, altering, documenting, decommissioning, interconnecting or auditing the Network, providing Services by means of the Network, or doing anything required to comply with any Law in relation to the Network
<b>New Tax</b>	any of the following, to the extent that they were not in force and applicable to Redtrain or its operations as at 1 November 2011:



- any new Tax assessed, levied or imposed on Redtrain, the Redtrain Network or any facilities or land used, occupied or accessed in connection with the Redtrain Network, or the supply of Services, or anything used, occupied or accessed in connection with the supply of Services
- any increase in the rate of a pre-existing Tax assessed, levied or imposed on Redtrain, the Redtrain Network or any facilities or land used, occupied or accessed in connection with the Redtrain Network, or the supply of Services, or anything used, occupied or accessed in connection with the supply of Services
- any amount is charged by any third Party to Redtrain and specifically identified by that third Party as a charge for a Tax of the same or similar nature to a Tax described above, or an increased Tax described above, and is an amount that third Party is required to pay
- ACT Utilities Tax or an increase in the rate of it
- any amount charged by any person to Redtrain arising from a Tax imposed on facilities, land or infrastructure used, occupied or accessed in connection with the Redtrain Network (or any increase in such an amount)

<b>Notifying Party</b>	see clause 101
<b>Offending Activity</b>	see clause 103
<b>Operations Manual</b>	see clause 27(a)
<b>Operator Services</b>	as in the Telco Act
<b>Order</b>	an order for a Service, subject to Redtrain's acceptance or rejection
<b>Order Process</b>	see clause 15(a)
<b>Overdue Amount</b>	see clause 22.1(b)
<b>Part</b>	a part of this Agreement so headed
<b>Party</b>	a Party to this Agreement
<b>Payment Security</b>	a cash deposit, bank guarantee or another form of security acceptable to Redtrain
<b>People</b>	in relation to an End User means employees, staff, family, guests and like persons whom the End

	User permits to make use of a Service without charge
<b>Personal Information</b>	as in the <i>Privacy Act 1988</i>
<b>Personnel</b>	in relation to a Party or third Party, the officers, employees, agents, subcontractors and consultants of that Party or third Party
<b>PoI Interface</b>	the physical interface between the Redtrain Network and the Customer Network at a PoI
<b>PoI Relocation Notice</b>	see clause 39.2(a)
<b>Point of Contact</b>	see clause 98
<b>Point of Interconnection or PoI</b>	a point at which the Redtrain Network interconnects with the Customer Network
<b>Price Change</b>	see clause 25.1(a)
<b>Price Change Notice</b>	see clause 25.1(a)
<b>Price List</b>	Redtrain's current standard list of Services and Charges from time to time
<b>Privacy Law</b>	(a) the <i>Privacy Act 1988</i> (b) Part 13 of the Telco Act and (c) any other law (whether Commonwealth or State) that applies to a Party with respect to the privacy of information and (c) any other law that obliges a Party to maintain privacy or confidentiality with respect to information or communications
<b>Recipient</b>	see clause 19.5(b)
<b>Redtrain Equipment</b>	any equipment owned, operated or controlled by Redtrain (or its Related Body Corporate) (a) that is provided by Redtrain (or its Related Body Corporate) to Customer for use as part of, or in connection with, any Service or (b) to which Redtrain (or its Related Body Corporate) permits Customer to access (or grant such access to any Downstream Customer or any End User) as part of, or in connection with, any Service
<b>Redtrain Fault</b>	a Fault located or occurring in any Redtrain Facilities
<b>Redtrain Facilities</b>	Redtrain Equipment and premises, third Party supply rights and other facilities owned or controlled by Redtrain and used in connection with the provision of any Service
<b>Redtrain Network or</b>	see Network

<b>Network</b>	
<b>Redtrain Portal</b>	any web portal provided by Redtrain for Customer's use in its capacity as Customer under this Agreement, and which may include provision for placing Orders and other matters
<b>Reference Rate</b>	the rate from time to time charged by Redtrain's principal bankers on overdraft amounts in excess of \$100,000
<b>Regulator</b>	any person empowered to enforce or administer any Law including, without limitation, ACCC and ACMA
<b>Related Body Corporate</b>	a body that is related to another body within the meaning of section 50 of the Corporations Act
<b>Remittance Advice</b>	see clause 21.2(c)
<b>Retail Service Provider</b>	a Service Provider that provides services to End Users and/or has a direct customer relationship with End Users
<b>SAU or Standard Access Obligations</b>	the obligations in Division 3 of Part XIC of the CCA, to the extent they apply to Redtrain
<b>Scheduled Works</b>	works in relation to the Network that are not Emergency Works
<b>Scheduled Works Notice</b>	see clause 38.1(a)
<b>Service</b>	wholesale Carriage Services provided by Redtrain from time to time
<b>Service Address</b>	see clause 107
<b>Service Book</b>	see clause 13
<b>Service Characteristics</b>	features, technical specifications or mode of delivery of a Service
<b>Service Conditions</b>	see clause 14
<b>Service Contract</b>	see clause 15(f)
<b>Service Levels</b>	see clause 17.1
<b>Service Level Claim</b>	a claim for a Service Level Rebate

<b>Service Level Claim Response</b>	a response to a Service Level Claim in accordance with clause 17.4(c)(ii)
<b>Service Level Rebate</b>	see clause 17.1
<b>Service Level Records</b>	see clause 17.3
<b>Service Provider</b>	a Carriage Service Provider or a Content Service Provider
<b>Service Term</b>	see clause 15(f)
<b>Set Up Charge</b>	a Charge in respect of a Service made at or about the time the Service commences, in respect of the establishment of the Service
<b>Standard Access Obligations or SAU</b>	the obligations in Division 3 of Part XIC of the CCA, to the extent they apply to Redtrain
<b>Supplier</b>	see clause 19.5(b)
<b>Supply</b>	a supply of goods or services
<b>Tax</b>	any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Authority, including the ACT Utilities Tax, but excluding any tax (however described) that relates to income, profit or capital gains
<b>Tax Invoice</b>	a valid tax invoice for the purposes of the GST Act
<b>TCP Code</b>	Telecommunications Consumer Protections Code C628:2007 or any Code or Industry Standard that superseded it
<b>Telco Act</b>	<i>Telecommunications Act 1997</i>
<b>Term</b>	see clause 7
<b>Third Party Facilities</b>	Third Party equipment and premises, supply rights and other facilities owned or controlled by a third Party and used by or Supplied to Redtrain in connection with the provision of any Service
<b>Third Party Fault</b>	a Fault located or occurring in any Third Party Facilities

<b>Transfer Consent</b>	see clause 118(a)
<b>Unregulated Service</b>	a Service that is not a Declared Service
<b>Upstream Service Provider</b>	a person (not being a Related Body Corporate of Redtrain) that supplies data carriage services to Redtrain or a Related Body Corporate of Redtrain in connection with the provision of any Service
<b>Usage-based Charges</b>	Charges that vary according to how much a Service is used in a Billing Period
<b>Validity Period</b>	a period, so described in writing by Redtrain, for which it agrees not to increase a Charge

## 126. Interpretation

This Agreement is to be interpreted as follows.

- (a) If an expression is defined in the Dictionary in clause 125, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint red', then 'coloured' means 'painted red'.)
- (c) Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) In the case of a Downstream Customer or an End User, a reference to a Service includes the a service that incorporates or depends on the Service or is supplied in whole or part by means of that Service.
- (e) Headings are only for convenience. They are to be ignored when interpreting this Agreement.
- (f) A schedule to a document is part of that document.
- (g) A reference to the singular includes the plural and vice versa.
- (h) There is no significance in the use of gender-specific language.
- (i) A 'person' includes any entity which can sue and be sued.
- (j) A 'person' includes any legal successor to or representative of that person.
- (k) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (l) Anything that Redtrain can do, it may do through an appropriately authorised representative.
- (m) Any matter in Redtrain's discretion is in its absolute and unfettered discretion.
- (n) A reference to a document includes the document as modified from time to time and any document replacing it.

- (o) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (p) The words 'in writing' include any communication sent by letter, fax or email or any other form of communication capable of being read by the recipient.
- (q) A reference to all or any part of a statute, rule, regulation or ordinance (statute) or Law includes that statute or Law as amended, consolidated, re-enacted or replaced from time to time.
- (r) Money amounts are stated in Australian currency unless otherwise specified.
- (s) A reference to a Default includes a reference to a failure to cure a Default.