

Exetel Enterprise Ethernet Broadband

Terms and conditions

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1. Definitions and interpretation

1.1 Definitions

In these terms and conditions the following words have the meaning set out below unless the contrary intention clearly appears:

Acceptable Use Policy means Exetel's acceptable use policy (as modified from time to time) which may be found on <http://www.exetel.com.au/files/ExetelAcceptableUsePolicy.pdf>

Accrued Charges means all charges and fees (including access fees) incurred by the Customer, up to and including the date thirty (30) days after the Customer notifies Exetel that the Customer wishes to cancel the Service unless Exetel agrees otherwise, and any outstanding amounts to cover the Fibre Build Charge, Installation Charges and Equipment Charges.

Agreement means the agreement between Exetel and the Customer for the provision of the Service, which agreement is comprised of the Application and these terms and conditions.

Application means the Customer's application to Exetel for provision of the Service which sets out the Minimum Term, Service Description, pricing plan and details of any other charges such as Equipment Charges and Installation Charges.

Business Customer means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership), that acquires and uses the Service for business purposes other than resale, and who completes an application for an Enterprise Ethernet Service.

Business End User means any person:

- a. to whom a Business Customer asks Exetel to supply the Service directly;
- b. to whom a Business Customer (with Exetel's prior permission) re-supplies the Service or allows to distribute the Service;
- c. who a Business Customer allows to use the Service; or
- d. to whom a Business Customer supplies any goods or services which use or rely on the Service.

Cancellation Date means:

- a. the date thirty (30) days after the Customer notifies Exetel that the Customer wishes to cancel the Service, unless Exetel agrees otherwise;
- b. the date at least thirty (30) days after Exetel notifies the Customer that Exetel will be cancelling the Service; or
- c. as otherwise set out in the Agreement.

Cancellation Fee means the monthly access charge payable by the Customer to Exetel multiplied by the number of months (or part of a month) in the unexpired portion of the minimum term.

Competition and Consumer Act means the Competition and Consumer Act 2010 (Cth).

Customer means the person who submits an Application to Exetel and who acquires and uses the Service from Exetel.

Equipment Charge means a charge payable by the Customer to Exetel for use of equipment.

Exetel means Exetel Pty Ltd ABN 350 979 865 46.

Exetel Group Company means Exetel and each of its related corporations.

Fibre Build Charge means a charge that may be imposed by nbn to build fibre to the Premises for the provision of the Service. The Customer agrees that if nbn passes on the Fibre Build Charge to Exetel, Exetel will pass on the Fibre Build Charge to the Customer. The Fibre Build Charge will then be payable by the Customer on a pass-through basis.

Fixed-Term Agreement means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

Industry Participant means the Communications Alliance Limited, and the Telecommunications Industry Ombudsman.

Installation Charge means a charge that may be imposed by Exetel to install the Service, as stated during the Application.

Insolvency Event means:

- a. bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- b. any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- c. any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- d. any step that is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- e. the Customer suspends payment of the Customer's debts



generally; or

- f. the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

Intellectual Property Rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

Intervening Event is an event outside a party's reasonable control which interferes with the operation of the network Exetel uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

Minimum Term means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

Loss means any loss, cost, liability or damage, including reasonable legal costs.

nbn means NBN Co Limited (ACN 136 533 741).

Network means any interconnected telecommunications equipment, facilities, or cabling.

Party means a party to the Agreement.

Personal Information means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of Exetel, includes the employees, agents, contractors or other representatives of any Exetel Group Company.

Premises means locations:

- a. at which Exetel supply the Service, and/or
- b. to which Exetel and nbn needs to have access to supply the Service.

Pricing Plan means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

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

Service means the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by Exetel to the Customer in connection with that service.

Service Description means the part of the Application which describes the Service provided or to be provided by Exetel to the Customer.

Service Start Date for the Service means the date on which

Exetel starts supplying that Service to the Customer once the nbn fibre build and installation is complete as will be notified by Exetel to the Customer.

Site Survey Charge means the charge for the Site Survey as set out in the Application and Service Description.

Special Offer means a special promotion or offer made by Exetel in connection with the Service, including in relation to a particular pricing plan.

Supplier means any supplier of goods or services (including interconnection services) which are used directly or indirectly by Exetel to supply the Service to the Customer.

Tax means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

Telecommunications Legislation means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act.

Unusually High Use means high usage of the Service on a short-term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

1.2 Interpretation

- a. The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
 - i. Carriage service;
 - ii. Carriage service provider;
 - iii. Carrier; and
 - iv. Content service.
- b. a term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- c. the singular includes the plural and vice versa.
- d. different grammatical forms of the same word(s) have the same meaning.
- e. a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f. a reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

2. Terms

- 2.1 The Agreement commences when Exetel accepts the Application.
- 2.2 Exetel will commence providing the Service to the Customer under the Agreement from the Service Start Date.
- 2.3 The Agreement is a Fixed-Term Agreement and Exetel will provide the Service to the Customer in accordance with the Agreement for the Minimum Term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither Party cancels the Service at the end of the Minimum Term, Exetel will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

3. Variation to Agreement

- 3.1 Exetel may vary any part of the Agreement:
 - a. with the Customer's consent; or

- b. without the Customer's consent provided Exetel complies with the Telecommunications Legislation.
- 3.2 If Exetel varies a Fixed-Term Agreement under clause 3.1:
- if the variation affects the Customer and it is not a change of a type listed in clause 3.3, Exetel must:
 - comply with the provisions of the Telecommunications Legislation; and
 - give the Customer twenty-one (21) days' notice in writing of the change before the change occurs.
 - if the variation affects the Customer and is a change of the type listed in clause 3.3, Exetel must comply with any additional notice provisions in clause 3.3; and
 - if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges and the Cancellation Fee.

- 3.3 Exetel may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:
- required by law;
 - in relation to a fee or charge to account for a tax imposed by law;
 - in relation to an amendment, fee or charge for a service ancillary to the supply of the Service by an essential third-party supplier or required or suggested by a law or a regulator;
 - as a result of another carrier or service provider varying the agreement Exetel has with it in relation to a carriage service and as a result Exetel needs to make changes to the Agreement.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without Exetel's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

- 3.6 Exetel may give the Customer notice in writing of any changes to the Agreement by:
- delivering notice of the change to the Customer by mail; or
 - sending the notice to the Customer's email address; or
 - by including a message or insert in an invoice sent to the Customer.

4. Application for the supply of the Service

Exetel may refuse the Customer's Application at its sole discretion.

5. Privacy

5.1 Exetel may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other Exetel Group Companies.

5.2 Exetel may collect, use and disclose personal information

about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of Exetel Group Companies and other organisations.

5.3 Exetel may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:

- a credit reporting agency or credit provider;
- another Exetel Group Company;
- third parties who are not related to Exetel, including Exetel's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
- suppliers who need access to the Customer's personal information to provide Exetel with services to allow supply of the Service; and
- joint venture partners of Exetel Group Companies.

5.4 Exetel may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:

- the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- emergency services organisations; and
- to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.5 Where Exetel will be, or will under the Privacy Act 1988 (Cth), considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:

- Exetel may give information about the Customer to a credit reporting agency for the following purposes:
 - to obtain a consumer credit report about the Customer; and/or
 - to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- Such information is limited to:
 - identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
 - the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
 - the fact that Exetel is a current credit provider to the Customer;
 - loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
 - advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of Exetel, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
 - dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.

- c. The Customer agrees that:
- i. Exetel may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
 - ii. Exetel may obtain a credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
 - iii. Exetel may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - a. to assess an application by the Customer for credit;
 - b. to notify other credit providers of a default by the Customer;
 - c. to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
 - d. to assess the Customer's credit worthiness; and
 - iv. such information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).
- 5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to Exetel.
- 5.7 If the Customer is an individual, the Customer is entitled to:
- a. gain access to the Customer's personal information held by Exetel, unless Exetel is permitted or required by any applicable law to refuse such access; and
 - b. correct any personal information held by Exetel.
- 5.8 If the Customer does not provide part or all of the personal information requested by Exetel, then Exetel may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.
- 5.9 By providing the Customer's personal information to Exetel and obtaining the Service, the Customer acknowledges and consents to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with Exetel's privacy policy, a copy of which will be made available by Exetel on request or may be viewed on Exetel's website at: <http://www.exetel.com.au/privacy.php>.
- 5.10 If the Customer has authorised Exetel to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Exetel of a password to be used for Exetel's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:
- a. to keep confidential such password;
 - b. that Exetel may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Exetel in connection with the Service on behalf of the Customer;
 - c. that the Customer will not hold Exetel liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Exetel; and
 - d. that all calls made to or from Exetel's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.
- 5.11 The reference to "Customer" in this clause 5 includes a reference to, and is applicable to, Exetel's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.
- ## 6. Using the Service
- 6.1 The Customer must reasonably co-operate with Exetel to allow Exetel, or a supplier, to establish and supply the Service to the Customer safely and efficiently.
- 6.2 Exetel will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults, Exetel will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 6.3 When using the Service, the Customer must comply with:
- a. all laws;
 - b. all directions by a regulator;
 - c. all notices issued by authorisation of or under law;
 - d. the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service); and
 - e. reasonable directions by Exetel.
- 6.4 The Customer must not use, or attempt to use, the Service:
- a. to break any law or to infringe another person's rights;
 - b. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
 - c. in any way that may expose Exetel to liability; or
 - d. in any way which may damage, interfere with or interrupt the Service, the Exetel network or a supplier's network used to supply the Service.
- 6.5 Exetel may require the Customer to stop doing something which Exetel reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which Exetel may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.
- 6.6 The Customer acknowledges that, where the Service is a carriage service, Exetel, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.7 Exetel may (but is not obliged to) contact the Customer if Exetel becomes aware of an unusually high use of the Service by the Customer. Exetel is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.
- 6.8 The Customer must comply with any rules imposed by nbn.

7. Equipment

- 7.1 The Customer must ensure that they have a compatible modem to support the Service. Exetel will not be liable for failure to access the Service, or for service performance issues if the Customer is using incompatible equipment.
- 7.2 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:
- all laws;
 - all directions by a regulator;
 - all notices issued by authorisation of or under law; and
 - reasonable directions by Exetel, failing which Exetel may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.
- 7.3 In relation to equipment:
- any Exetel owned equipment remains Exetel's property;
 - the Customer is responsible for any Exetel owned equipment from the time when the Customer receives it; and
 - the Customer may purchase equipment from Exetel to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.
- 7.4 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.
- 7.5 Unless otherwise agreed between the parties, the Customer must allow Exetel's personnel (and no other person) to service, modify, repair or replace any Exetel owned equipment.
- 7.6 The Customer is responsible for any lost, stolen or damaged Exetel owned equipment, except where this is caused by Exetel or Exetel's personnel.
- 7.7 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from Exetel, even when that equipment is lost, stolen or damaged.

8. Network maintenance, fault reporting and rectification

- 8.1 Exetel may conduct maintenance on the Exetel network and maintenance may be conducted on the nbn network used to supply the Service.
- 8.2 Exetel will endeavour to provide a 24-hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to Exetel, the Customer must take all reasonable steps to ensure that the fault is not caused by any customer network or customer equipment.
- 8.3 The Customer must provide all reasonable assistance to enable Exetel or Exetel personnel, or nbn personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises.
- 8.4 Exetel will repair faults within the Exetel network used to supply the Service. Unless the Service Description expressly provides otherwise, Exetel is not responsible

for repairing any fault in the Service where the fault arises in, or is caused by:

- a supplier's network;
- equipment that is not Exetel owned equipment; or
- facilities outside the Exetel network.

- 8.5 Where a fault arises in, or is caused by, a supplier's network;
- Exetel will notify the supplier of the fault and request that the fault be corrected promptly, but Exetel will not bear any further liability or responsibility.
- 8.6 Where a fault arises in, or is caused by, equipment that is not Exetel owned equipment, Exetel is not responsible for the repair of that fault.
- 8.7 If Exetel investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel, or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by Exetel in investigating.

9. Fees and charges

- 9.1 The Customer must pay:
- the fees and charges for the Service which are set out in the Agreement; and
 - any additional fees and charges noted in the Agreement (including in the Application) or notified by Exetel in accordance with the Agreement from time to time.
- 9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.
- 9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable, or if the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.
- 9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including a Fibre Build Charge and Installation Charge, where applicable), Exetel may charge the Customer administration fees and other similar charges including suspension fees, Cancellation Fees, Accrued Charges, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.
- 9.5 Exetel may also ask the Customer to make a pre-payment charge or request that the Customer make an interim payment (including, for example, if there is a Fibre Build Charge).
- 9.6 Exetel will calculate fees based on billing information generated or received by Exetel which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.
- 9.7 Exetel may offer the Customer a Special Offer from time to time. In such event, Exetel will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the Minimum Term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.

10. Payments

- 10.1 Exetel will invoice the Customer on a regular basis in advance, unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request Exetel to send a copy of the invoice electronically.
- 10.2 Exetel may invoice the Customer using a billing agent (which may be another Exetel Group Company).
- 10.3 The Customer may pay by one of the payment methods as set out in the payment notification, on the back of the invoice or on Exetel's website.
- 10.4 If the Customer makes a request to Exetel to pay by direct debit from its nominated bank or credit card account and Exetel agrees, the Customer must comply with all terms and conditions imposed by Exetel for the direct debit arrangement. In such event, the Customer acknowledges that the direct debit arrangement may take up to thirty (30) days from the date of the Customer's request to put in place.
- 10.5 If the Customer's payment is not honoured for any reason, Exetel may charge the Customer a fee.
- 10.6 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Exetel.
- 10.7 If the Customer does not pay the invoice by the date the payment is due, Exetel may:
- charge the Customer a late fee which is payable until all outstanding amounts are paid;
 - require the Customer to provide reasonable security to Exetel to secure the payment of future amounts due under the Agreement;
 - suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If Exetel suspends or cancels the Service, Exetel may charge the Customer a suspension fee, Cancellation Fee, Accrued Charges and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
 - engage a mercantile agent to recover the money the Customer owes Exetel and charge the Customer a recovery fee;
 - institute legal proceedings against the Customer to recover the money the Customer owes Exetel and recover from the Customer its legal costs; and/or
 - on-sell any unpaid amounts to a third party.
- 10.8 If the Customer has overpaid, as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or Exetel will use reasonable endeavours to notify the Customer and refund the over payment.
- 10.9 Unless otherwise indicated, the fees and charges set out in the Agreement exclude tax. Exetel will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.
- 10.10 If the Customer requires a copy of any invoice sent by Exetel in relation to the Service after cancellation of the Service or termination of the Agreement, and a copy of such invoice remains retrievable from Exetel's records, the Customer must pay Exetel's reasonable administration fee for

such retrieval.

11. Complaints and disputes

- 11.1 If the Customer has any complaints in connection with the Service, the Customer may complain in writing or by calling Exetel.
- 11.2 Exetel will handle all complaints in accordance with its complaints procedure which is available from Exetel on request or on Exetel's website at: <http://www.exetel.com.au>.
- 11.3 Exetel will use its best endeavours to resolve all complaints, however if Exetel is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.
- 11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, Exetel may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.
- 11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non- Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

12. Cancelling the Service

- 12.1 The Customer may cancel the Service at any time by:
- giving Exetel thirty (30) days' notice (including if the Customer does not wish to continue to use the Service after the end of the Minimum Term of a Fixed-Term Agreement); or
 - giving Exetel notice, if Exetel breaches a material term of the Agreement and Exetel either:
 - cannot remedy that breach; or
 - fails to remedy that breach within thirty (30) days after the Customer gives Exetel notice requiring Exetel to do so.
- 12.2 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.
- 12.3 Exetel may cancel the Service at any time, without liability, if:
- there is an emergency;
 - Exetel reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
 - any amount owing to Exetel in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Exetel gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
 - Exetel reasonably considers the Customer a credit risk because the Customer has not paid amounts owing to Exetel or any Exetel Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
 - the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or

- fails to remedy that breach within thirty (30) days' after Exetel gives the Customer notice requiring the Customer to do so;
- f. Exetel is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
 - g. the Customer suffers an insolvency event and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;
 - h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Exetel reasonably believes Exetel is unlikely to receive payment for amounts due;
 - i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
 - j. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
 - k. Exetel is otherwise entitled to do so under the Agreement or Acceptable Use Policy.
- 12.4 Exetel may cancel the Service under clause 12.3 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may cancel the Service immediately if there is an emergency.
- 12.5 If the Service is cancelled:
- a. the Customer is liable for any charges incurred (including the Cancellation Fee and Accrued Charges) up to, and including, the Cancellation Date;
 - b. the Customer authorises Exetel to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the Cancellation Fee and Accrued Charges);
 - c. subject to clause 12.7(b) and unless otherwise set out in the Service Description, Exetel will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer;
 - d. if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises Exetel to debit any undisputed outstanding charges (including any Cancellation Fee and Accrued Charges) from the Customer's nominated bank or credit card account.
- 12.6 No Cancellation Fee shall be payable by the Customer if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the Minimum Term and the Customer has not entered into another Fixed-Term Agreement.
- 12.7 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises):
- a. before the Service Start Date, the Customer must pay Exetel all infrastructure and installation costs incurred by Exetel in connection with preparations for supplying the Service to the Customer as set out in clause 17.2;
 - b. during the Minimum Term, the Customer must pay Exetel a Cancellation Fee and Accrued Charges or such higher amount as may be provided in clause 17;
 - c. the Customer must pay Exetel all costs incurred to rectify the Customer's breach of the Agreement.
- 12.8 If the Customer wishes to reinstate the Service at any time after cancellation the Customer must order a new Service.
- 12.9 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.
- ## 13. Suspending the Service
- 13.1 Exetel may suspend the Service at any time, without liability:
- a. in any of the circumstances described in clause 12.3(a) to (h) and (k);
 - b. if it is necessary to allow Exetel or a supplier to repair, maintain or service any part of the Exetel network or a supplier's network used to supply the Service;
 - c. if Exetel reasonably believes there has been an unusually high use of the Service; or
 - d. problems are experienced interconnecting the Exetel network with any supplier's network used to supply the Service.
- 13.2 Exetel may suspend the Service under clause 13.1 as soon as Exetel gives the Customer notice, unless otherwise set out in the Agreement. However, Exetel may suspend the Service immediately if there is an emergency.
- 13.3 If Exetel suspends the Service, Exetel may later cancel the Service for the same or a different reason.
- 13.4 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.
- 13.5 If the Service is suspended and the suspension was not a result of circumstances attributable to the Customer or non Exetel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.
- 13.6 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Exetel a suspension fee.
- 13.7 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to Exetel provided that if the Service is suspended as a result of circumstances attributable to the Customer and Exetel reactivates the Service, the Customer may have to pay Exetel a reconnection or reactivation fee or such higher amount as may be set out in clause 17.
- ## 14. Liability
- 14.1 The Customer is liable to Exetel for any breach of the Agreement that causes foreseeable loss to Exetel.
- 14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to Exetel for any consequential losses Exetel suffers or for any costs, expenses, loss or charges that Exetel incurs which are not a direct result of something the Customer has done.
- 14.3 Exetel is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Exetel fully indemnified against any loss or damage incurred in connection with any claim against Exetel by a Business End User in relation to:
- a. the use (or attempted use) of the Service; or
 - b. the equipment used in connection with the Service.

14.4 Exetel has responsibilities and obligations under the law, including under:

- a. the Telecommunications Legislation;
- b. the Competition and Consumer Act; and
- c. applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

14.5 Exetel may be liable to the Customer for:

- a. any damage to the Customer's property which has been caused by the fault, negligence or fraud by Exetel or Exetel's personnel during installation, repair or maintenance;
- b. interruptions in the Customer's use of the Service as a result of a fault or negligence of Exetel or Exetel's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law;
- c. death or personal injury caused by Exetel or Exetel's personnel; or
- d. breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Trade Practice Act, Australian Consumer Law or other laws, then Exetel's liability (if any) for breach of that condition or warranty in connection with any goods or services Exetel supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.6 Other than as provided in clauses 14.4 and 14.5, Exetel is not liable to the Customer under this Agreement.

14.7 If the Customer has contributed to any loss or damage the Customer is claiming against Exetel, Exetel's liability is reduced to the extent of the Customer's contribution.

14.8 Exetel is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something Exetel has done.

14.9 In relation to a Business Customer, to the extent permitted by law, Exetel's total liability for loss is limited in aggregate for any claim or series of connected claims, to an amount calculated by multiplying the amount Exetel charges the Customer each month for its Service by 12, to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

15. Assignment and transfer

15.1 Exetel may:

- a. assign some or all of its rights under the

Agreement to any person;

- b. transfer some or all of its obligations under the Agreement to any Exetel Group Company that is able to perform those obligations; and/or
- c. perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Exetel Group Company, provided Exetel remains responsible for the performance of the obligations, and the Customer irrevocably authorises Exetel to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

16. General

16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally resides, and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

16.2 Exetel owns all material (including intellectual property rights) developed by Exetel or Exetel's personnel, at Exetel's direction.

16.3 Exetel may permit the Customer to use this material, or other material licensed by Exetel, as part of the Service. This permission is subject to any conditions which Exetel may impose from time to time and will cease when the Service is cancelled.

16.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, Exetel may suspend or cancel the Service without notice.

16.5 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:

- a. the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- b. the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.

16.6 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer is or becomes a carrier or carriage service provider, Exetel may immediately cancel the Service by giving the Customer notice.

16.7 If the Customer breaches the Agreement and Exetel does not exercise a right that Exetel has because of the Customer's breach, Exetel does not waive:

- a. that right unless Exetel gives the Customer notice in writing confirming that Exetel have waived that right; or
- b. Exetel's right to insist that the Customer perform any obligation the Customer has under the Agreement.

16.8 Exetel may pay a commission to any of Exetel's personnel in connection with the Agreement.

16.9 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

16.10 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry

Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.

16.11 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a. to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to Exetel in writing; and
- b. to Exetel at Exetel's latest address and facsimile number indicated on Exetel's website at <http://www.exetel.com.au>.

Any such notice shall be deemed to be received:

- a. in the case of delivery, at the time of delivery;
- b. if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed;
- c. in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error; or
- d. in the case of an e-mail, on production of an e-mail header indicating delivery without error.

16.12 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.

16.13 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

17. Special terms and conditions applicable to the Service

17.1 The Agreement is a Fixed-Term Agreement with a minimum term of twelve (12), twenty-four (24), or thirty-six (36) months (as indicated by the Customer on the Application). Therefore, if the Agreement is terminated during the Minimum Term for any reason, the Customer shall be liable to pay to Exetel a Cancellation Fee equivalent to the sum of:

- a. the monthly access charge payable to Exetel multiplied by the number of months (or part of a month) in the unexpired portion of the minimum term; and
- b. the Cancellation Fee is in addition to any other right that Exetel may have under the Agreement.

17.2 If the Service is cancelled by the Customer before the Service Start Date then (unless the Service is cancelled as a result of circumstances reasonably attributable to Exetel) the Customer must pay Exetel a Cancellation Fee based on the nbn order stages below:

- a. orders placed and accepted by Exetel and in the nbn planning stage - \$900;
- b. orders in the nbn design stage - \$2,200;

c. orders in the nbn build or pre-delivery stage - \$9,500 plus any applicable Fibre Build Charge as notified during the order.

17.3 Fibre build timeframes will be provided after acceptance of an order (**Fibre Build Timeframe**). The Fibre Build Timeframe for the Fibre Build can be more than 50 Business Days from the date of acceptance as specified by nbn and is not within Exetel's control. Exetel is not liable for any loss or delay as a result of the Fibre Build Timeframes by nbn.

17.4 For Services Exetel orders through the NBN there may be an upfront Fibre Build Charge or cost which You will be required to pay. This Fibre Build Charge may be adjusted higher retrospectively by NBN if they determine that the actual cost they will incur is higher. You agree that if NBN passes on a higher Fibre Build Charge to Exetel, Exetel may pass it onto You. However, prior to the order being accepted, you can decline these Fibre Build Charges and cancel the order without financial penalty. Once the order is accepted, Fibre Build Charges will apply and be payable by the Customer.

17.5 Orders are accepted by Exetel in the normal course of our business on the basis that there are no outstanding matters that require information from the Customer, or the approval of the Customer. Approval will be sought from the Customer where additional charges may be applied in assessing or delivering the Service to the nominated Premises, such as Site Survey Charges or Fibre Build Charges, as determined by nbn.

17.6 Upon Exetel advising the Customer of these additional charges, the Customer can elect to withdraw the order without penalty, unless another agreement has been made which requires the Customer to pay for the costs of the site survey or other works required to assess service delivery.

17.7 Once the Service has been accepted by the Customer, standard Cancellation Fees will apply.

17.8 Upon acceptance by Exetel of an Application and subject to You meeting your responsibilities under Agreement, Exetel will provide the Service to You. The Customer will need to provide requested supplementary information to Exetel after the initial order placement. Failure to provide this requested supplementary information in a reasonable timeframe will result in the cancellation of the order by Exetel.

17.9 You must provide accurate and complete Premises address information to Exetel for use in qualifying each Service. You may be liable for any costs incurred by Exetel due to any incorrect, false or misleading information You provide. If You change a Premises prior to the delivery of the Service, You must pay Exetel's reasonable costs and fees (if any) arising from the change of Premises

17.10 The Customer must provide all reasonable assistance to enable Exetel or Exetel personnel, or nbn personnel, to provide adequate and timely access to the Premises. Failure to provide adequate and timely access to the Premises may result in Service delays and/or additional charges which may be payable by the Customer.

17.11 The Customer acknowledges and agrees that:

- a. the Customer must comply with all reasonable terms and conditions imposed by the Wholesale Supplier in connection with the Service.
- b. if the Customer purchases any equipment to support the Service such as a modem from Exetel then, unless otherwise stated:
 - i. the charges for the equipment will be included as part of the fees applicable to the Service and will be invoiced to the Customer under the terms of the Agreement;
 - ii. title to the equipment remains with Exetel until Exetel has been paid in full;
 - iii. risk in the equipment passes to the Customer upon

delivery to the Premises; and

- iv. the Customer is solely responsible for the configuration and maintenance of the equipment including its internetwork operating system (IOS) and software configuration.
- c. All hardware (including the modem) supplied with the Service comes with a twelve (12) months' limited manufacturer's warranty.
- d. The Customer authorises and permits Exetel to provide nbn or its nominees with the Customer's personal information (including name, address and telephone number) provided to Exetel as may be necessary for the purpose of fulfilling obligations under the Wholesale Supplier's agreement with Exetel, including in relation to the sale of equipment where applicable.
- e. The Customer authorises Exetel to act as the Customer's authorised agent or representative in Exetel's dealings with the Wholesale Supplier to the extent required to comply with industry codes and practices for the provision of the Service.

Appendix A

Service Levels

Exetel provides Enterprise Ethernet using nbn. While Exetel Pty Ltd will enter into a service level agreement with an End User, Exetel's ability to deliver services under such an agreement is dependent upon the performance of the nbn network to a large extent, which is provided with the following service level guarantees.

1. Service Level Offered

- 1.1 Enterprise Ethernet includes a Premium - 12 (24/7) assurance service option as standard.
- 1.2 Exetel will apply the NBN Service Levels for Premium Assurance Service as detailed in the NBN Enterprise Ethernet Service Schedule accessible by this link: <https://www.nbnco.com.au/sell-nbn-services/supply-agreements>.

2. Pro-Active Notifications

Major Outages

- 2.1 In the event that a network outage should occur with the potential to impact multiple End Users, Exetel will, when possible, pro-actively communicate to Customers with SMS and email as follows: Notifications may be via:

*SMS with summary details for a limited number of customer contacts; and/or

*E-mail with more detailed information for all nominated customer contacts.

- 2.2 It is the Customer's responsibility to ensure that Exetel has the correct and current list of nominated contacts and the Customer's contact details at all times.

Planned Service Outages

- 2.3 Exetel will use best efforts to provide 5 working days' notification of any scheduled or planned service outages to affected customers. Where practicable, planned service outages will occur from 1am local time in the affected state, the planned service outage may happen any day of the week. The process for notifying customers of planned service outages will be as follows:

*Exetel may plan a service outage to conduct necessary maintenance and upgrade to its network. Planned service outages may also originate from nbn who are providing

services to Exetel; and/or

*Exetel will notify all effected customers via e-mail.

The e-mail will include details of the planned service outage.

- 2.4 In circumstances where an emergency service interruption is required, Exetel reserves the right to undertake the service interruption without notice. In such cases Exetel will use best efforts to notify the customer prior to any service interruption. Notification via the SMS facility (as described above) may be used in case of an emergency service interruption.

3. Service Credit Calculation

- 3.1 Exetel will pass through to Customers service credits provided by nbn in relation to the impacted service.

4. Service credit conditions

The following conditions apply to Service credits:

- 4.1 Service credits apply from the first full calendar month that the eligible Service is operational;
- 4.2 Where the credit is available, the credit is the only remedy in the event of any failure to meet the defined target (where the credit is not available, no remedy is available);
- 4.3 You must apply for the credit by contacting the Help Desk and following the prescribed process for obtaining credits within 30 calendar days of the end of the month to which the credit applies;
- 4.4 The Service credit may only be applied by way of a credit, and cannot be redeemed for cash; and
- 4.5 The maximum Service credit available for each eligible Service in any month will not exceed 50% of the total monthly Charges for that eligible Service in that month.

