

## FTTB Wholesale Service Agreement

FTTB Wholesale Pty Ltd (ACN 087 533 328) (“**Supplier**”) supplies the Service on a wholesale basis and the Customer agrees to acquire the Service from the Supplier on the terms set out below.

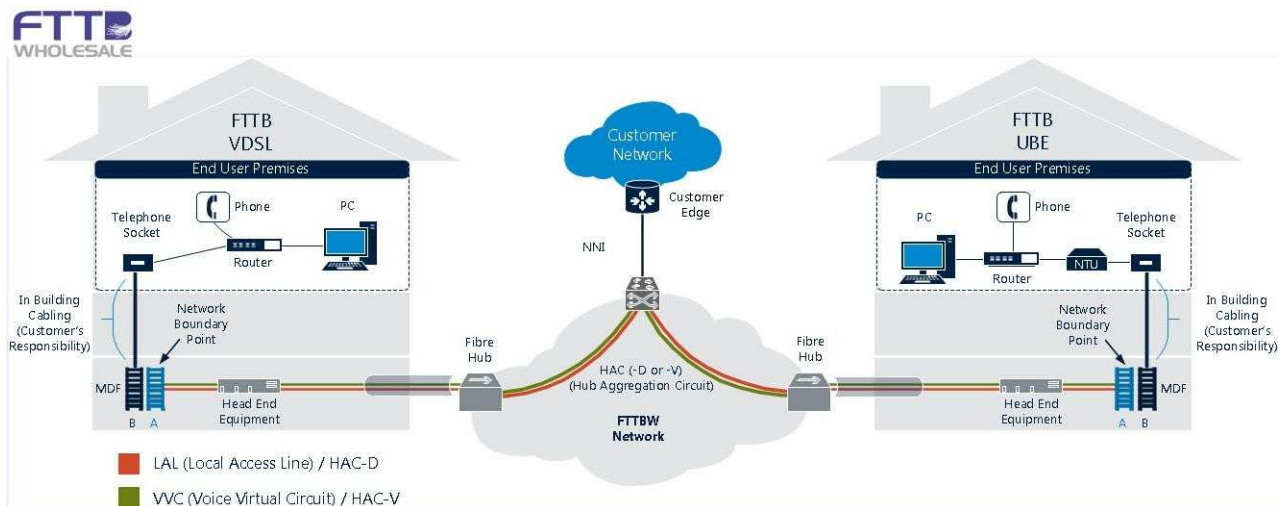
The Supplier is wholly owned by TPG Telecom Limited (ACN 096 304 620) (“**TPG**”). Pipe Networks Pty Limited (ACN 099 104 122), which is also wholly owned by TPG, supplies wholesale services to the Supplier under a services agreement.

### 1. Agreement

- 1.1 Under this Agreement, the Customer shall be entitled to submit Orders with the Supplier for Services during the Term subject to the terms and conditions set out in this Agreement.
- 1.2 This Agreement shall commence on the day the last party executes it and shall continue until it is terminated in accordance with clause 15.
- 1.3 Notwithstanding the acquisition of multiple individual Services, there will only be one Agreement between the Supplier and the Customer in relation to the supply of the Services.

### 2. Service Description

- 2.1 The Service means a layer 2 fixed line broadband service between an End User Demarcation Point and the Point of Interconnection and which is supplied over the Regulated Network and includes the following components each of which will be ordered by the Customer by a separate Order:
  - (a) an Access Circuit;
  - (b) one or more HAC Circuits; and
  - (c) one or more NNIs.
- 2.2 The Service (which may be supplied by way of a FTTH, VDSL variant or a UBE Variant) is depicted in the following diagram in which:
  - (a) the End User Demarcation Point is referred to as “Network Boundary Point”; and
  - (b) an Access Circuit is referred to as LAL or VVC.



- 2.3 The Service is designed for resale by the Customer to End Users who are located in a Building.
- 2.4 A Service ordered under Part 19 of the *Telecommunications Act 1997* (Cth) will comply with the Qualifying

#### Fixed Line Carriage Service Criteria.

- 2.5 Unless specified in the Order Form, the Service does not include installation, ownership or management of the copper that exists within the Building on the End User side of the End User Demarcation Point. Unless specified in the Order Form, the Customer is responsible for installation of a copper jumper between the network side of the MDF and the End User side of the MDF. The Supplier expressly excludes any liability for any failure or defect in the Service caused by that jumper or in- Building copper.
- 2.6 The Service includes second level support. The Customer is required to provide first level support to its End users. The Customer must ensure that none of its End Users contacts the Supplier.
- 2.7 The Service is only available to Buildings within relevant network coverage area where there is available infrastructure to provision the Service.
- 2.8 The Service comes in a range of speed variants that are set out in the Price Book. The connection speed of the Service will be high speed broadband delivered using FTTH, ADSL2+ or VDSL technology. The Supplier does not guarantee the Customers will achieve maximum FTTH, ADSL2+ or VDSL connection speeds as specified in this Agreement or the Order.
- 2.9 The speeds for the Service can vary substantially due to many factors. Actual throughput speeds may be slower and could vary due to various factors including interference, customer cabling and equipment, download source, and quality and distance of in-building copper and copper connections.
- 2.10 The Service is not a standard telephone service and the Customer Service Guarantee (“**CSG**”) does not apply to it. The Supplier recommends that the Customer obtain from End Users a waiver in relation to the CSG. The Customer indemnifies the Supplier in respect of any claim made against the Supplier (including a claim made by the Customer) under or in connection with the CSG.
- 2.11 If the Service is installed on a copper pair at the Site, the Customer acknowledges and agrees (and warrants that its End User acknowledges and agrees) that it will not be able to use that the copper pair for any telecommunications service supplied by a third party carrier.
- 2.12 The Service does not include the switching of voice calls. If RSP wishes to provide a voice service to its End Users, RSP must establish their own voice switching capability. RSP should inform its End Users that no calls can be made to the emergency service number (000) over the FTTB Network until the Service is activated and the RSP’s voice switching capability is enabled on the Service and that, if the Service is disconnected or there is a power outage, calls to 000 will not be carried. RSPs should recommend to End Users that they should have a mobile service available for use when seeking emergency assistance in case of disconnection or outage. The Customer indemnifies the Supplier in respect of any claim made against the Supplier (including a claim made by the Customer) under or in connection with carriage of voice calls to emergency services.
- 2.13 The Customer acknowledges and agrees the Service does not meet the requirements of priority assistance and if the Customer’s End User requires priority assistance in accordance with Communications Alliance code ACIF C609:2007 (“**Priority Assistance**”), the Customer will need to provide its End User with an appropriate service from another service provider. The Customer indemnifies the Supplier in respect of any claim made against the Supplier (including a claim made by the Customer) under or in connection with Priority Assistance.
- 2.14 It is the sole responsibility of the Customer to comply with all regulatory and legal obligations that is applicable to the Customer’s resupply of the Service to its End User. The Customer indemnifies the Supplier in respect of any claim made against the Supplier (including a claim made by the Customer) under or in connection with the Customer’s failure to comply with such obligations, except to the extent such failure has been caused or contributed to by any material breach by the Supplier under this Agreement.

### 3. Sandpit

- 3.1 Following execution of this Agreement, the Customer shall enter a sandpit phase (“**Sandpit Phase**”) during which:
  - (a) the Customer shall order at least one HAC Circuit and an NNI and the Supplier shall provision those Services;
  - (b) the Supplier will advise the Customer about the B2B Systems that will be available for the Customer to use during the Term;
  - (c) the Customer shall establish its systems to interact with the B2B System; and
  - (d) the Supplier shall provide reasonable testing and reporting information to the Customer for the purposes of assisting the Customer to establish the Customer’s systems that interface with the B2B Systems.
- 3.2 The Sandpit Phase may last for a period of up to 3 months from the signing of this Agreement, following which the Supplier shall have no ongoing obligations under clause 3.1.

### 4. Ordering

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- 4.1 The Customer may Order HAC Circuits and NNI's via an Order form (whether paper or electronic) or such other ordering process as may be accepted by the Supplier.
- 4.2 The Supplier will supply and maintain the B2B System and, subject to this Agreement, Access Circuits may be Ordered by the Customer via the B2B System.
- 4.3 Each Access Circuit will be deemed Ordered when the B2B System transmits to the Customer (or the Customer's system) confirmation of receipt of the Order.
- 4.4 Once Ordered, a HAC Circuit, an NNI, or an Access Circuit may only be cancelled in accordance with clause 6.

## 5. Provisioning of Service

- 5.1 Upon acceptance by the Supplier of the Order, the Supplier agrees to provide and the Customer agrees to acquire the Service as set out in the Order Form.
- 5.2 The Supplier is responsible for delivering the Service between the POI and the End User Demarcation Point at the Building. Unless specified in the Order Form, the Customer is responsible for all cabling and wiring within the Building for UBE and VDSL, including jumpering between the network side of the MDF and the End User side of the MDF. Where cabling does not exist or the Customer has a fault with the wiring in the Building, the Customer must arrange for its own contractor to rectify this.
- 5.3 Subject to clause 5.4, the Service will be activated on the later of the date on which the Supplier is able to provide the Service and the requested activation date nominated in the Order Form. The Supplier will use commercially reasonable endeavours to activate the Service in accordance with the timeframes requested by the Customer.
- 5.4 For Services ordered under Part 19 of the *Telecommunications Act 1997* (Cth), if the Customer has satisfied its obligations under clause 5.2, and the Order is for no more than a single Service per premise, then the Services will be activated on the later of the date on which the Supplier is able to provide the Service and the requested activation date nominated in the Order Form, provided that the Service will be connected by no later than 5 Business Days from acceptance of the Order.
- 5.5 The Customer can request for a Local Access Line to test the service end to end, at the standard LAL cost to test its Hardware. The customer must post or courier a preconfigured modem or router to FTTB Wholesale address. The Supplier will connect the preconfigured modem and or the router for the Customer to test its configuration. This LAL test service is available by prior arrangement and timeslots. Remote hands assistance are limited to simple technical tasks, such as power cycling the unit or connecting a laptop to the modem or router.

## 6. Cancelling a Service

- 6.1 Once Ordered, a Service may only be cancelled by the Customer as follows:
  - (a) A HAC Circuit and an NNI may be cancelled by the Customer at any time on the provision of 30 days written notice.
  - (b) An Access Circuit may be cancelled by the Customer by the B2B System but if the Access Circuit is cancelled within 6 months of activation, a cancellation fee as set out in the Price Book will apply.
- 6.2 The Supplier may cancel a Service, without penalty, where:
  - (a) a Regulatory Event occurs which materially affects the Supplier's ability to operate its business or supply of any particular service, subject to the Supplier having first taken all reasonable steps to mitigate the effect(s) of such Regulatory Event prior to electing to cancel the Service. The Supplier is not obligated to take all such reasonable steps where and to the extent that doing so would prevent it from complying with the Regulatory Event, or where the Supplier has been directed to cancel such Service(s) by any order or direction from any law enforcement agency or Regulator); or
  - (b) the Supplier has given to the Customer not less than 60 days' notice of cancellation.

## 7. Service Levels

- 7.1 The Supplier does not warrant that the Service will be uninterrupted or fault free. The Supplier will use its best endeavours to supply the Service with a high availability and to rectify a fault or service difficulty following a report by the Customer s as soon as reasonably possible and, for Services ordered under Part 19 of the *Telecommunications Act 1997* (Cth), within 3 Business Days of the date the Customer has requested the Supplier to conduct a site inspection. Any delays experienced by the Supplier in conducting a site inspection that are attributable to an End User will not be included in the calculation of the 3 Business Day period.
- 7.2 No credits or rebates will be given for any outage or fault with the Service.

## 8. Customer Obligations

- 8.1 Ensure Proper use of the Service: Customer agrees that it will not, and will ensure that its End Users will not, or by any negligent act or omission:
  - (a) use or permit the use of the Service in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort, or otherwise to any third person;

- (b) use or permit the use of the Service in connection with the commission of an offence against the laws of the Commonwealth or the States or Territories;
- (c) use or permit the use of the Service for the transmission of any defamatory, offensive, abusive, indecent, spam or menacing material or the making of any hoax call or in any other manner in contravention of the Acceptable Use Policy;
- (d) use or permit the use of the Service in connection with the transmission of any computer virus that may adversely affect the Supplier Equipment, the Supplier Network, the equipment or network of any third party provider to the Supplier or any network users;
- (e) use or permit the use of the Service to engage in any activities in a manner that may expose the Supplier or any third party provider to the risk of any legal or administrative action including prosecution under any law; or
- (f) interfere or attempt to interfere with the operation of the Service, Service Number or an IP address; any Supplier Equipment; the Supplier Network or the equipment, network or IP Addresses of any other person.

8.2 **Assistance:** Customer must, and, where reasonably required, will procure its End Users must, do everything reasonable to help, and co-operate with, the Supplier and any person engaged by the Supplier to provide to the Customer the Service at the Site. The kinds of assistance the Supplier may require from the Customer (or Customer's End User) include:

- (a) ensuring that it is possible and safe for the Supplier and persons engaged by the Supplier to obtain necessary access to a Site (including for any emergency);
- (b) ensuring that relevant people are available and give to the Supplier timely instructions;
- (c) ensuring that Customer Equipment is ready at the appropriate times;
- (d) at Customer's own expense and following the Supplier's reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable the Supplier to provide the Service;
- (e) informing the Supplier of the location of Supplier Equipment (if any); and
- (f) working together with the Supplier to establish procedures to reduce fraud or the opportunity for fraud in relation to the Service.

8.3 **Reporting and Inspections:** The Customer agrees to supply to the Supplier or the Supplier's nominated agent any information reasonably requested by the Supplier relating to the Customer:

- (a) for credit management purposes (see also clause 13);
- (b) to enable the Supplier to monitor and help reduce the incidence of fraud;
- (c) to assist the Supplier in complying with its regulatory obligations and its obligations to report on compliance with those obligations;
- (d) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all obligations imposed on the Customer under the Agreement; and
- (e) for other purposes reasonably required by the Supplier from time to time and agreed by the Customer.

## 9. Equipment

9.1 **Supplier Equipment.** If required for the provision of the Service, the Supplier will supply to the Customer the Supplier Equipment. Customer is responsible for the Supplier Equipment and must compensate Supplier for any loss or damage to it, (fair wear and tear excepted), unless the Supplier or Supplier's agent causes such loss or damage. If the Customer becomes aware of any loss of, damage to, claim over, or malfunction of the Supplier Equipment, the Customer must promptly notify the Supplier. The Supplier may, at any time and at the Supplier's cost, modify or replace Supplier Equipment provided there is no material adverse impact on the provision of the Service. In respect of Supplier Equipment, the Customer must and ensure its End User must:

- (a) provide an adequate power supply and a suitable physical environment in accordance with the Supplier's reasonable directions;
- (b) only permit the Supplier Equipment to be repaired, serviced, moved or disconnected by the Supplier unless otherwise permitted by the Supplier in writing;
- (c) not remove or obscure any identification marks on the Supplier Equipment;
- (d) make title to the Supplier Equipment clear to all persons;
- (e) comply with all reasonable instructions given by the Supplier to protect the Supplier's ownership of the Supplier Equipment; and
- (f) not do anything or allow anything to be done which might affect the Supplier's ownership of the Supplier Equipment.



- (g) The supplier equipment must be returned to FTTBW or other arrangements must be made on termination of the service.
- 9.2 *Customer Equipment*: Customer is responsible for the installation of any Customer Equipment and connections to the Supplier Network necessary for the Supplier to provide the Service. Customer must ensure that Customer Equipment does not have a detrimental effect, as determined by the Supplier, on the Supplier Network and accords with all relevant laws.
- 9.3 The Supplier may, without liability, immediately disconnect all or any of the Customer Equipment if the Supplier reasonably considers that Customer Equipment may:
- cause death or personal injury;
  - cause damage to the property of the Supplier or another person; or
  - materially impair the operation of the Supplier Network,
- provided that, where and to the extent that it is reasonable for the Supplier to do so, the Supplier will notify the Customer before disconnection. Where the Customer Equipment is located at a place under the control of the Customer, the Customer shall promptly comply with a written request from the Supplier to disconnect Customer Equipment in accordance with this clause 9.3.
- 9.4 The supplier supports a limited number of hardware modems, the make and models of the supported modems and router are listed in FTTB Wholesale website and will be updated periodically.
- 9.5 Where the RSP chooses to deploy a different make or model modem or router to the models listed in the FTTB Website, no vendor hardware support will be provided.
- 10. Charges and Payment**
- 10.1 The Price Book sets out the Charges that will be payable in connection with the supply of the Services.
- 10.2 Other ad-hoc and ancillary Charges may be incurred by the Customer. Such ad-hoc charges include remote hands fees, out-of hours or incorrect call out fees, administration charges for moves, adds or changes or other charges notified by the Supplier from time to time. Such ad-hoc fees will only be charged when the Customer has been advised of the fees in advance of ordering the service that leads to the fee.
- 10.3 The Customer's obligation to pay for the Service and for each element of the Service will accrue on and from the Service Commencement Date for each component of the Service (that is, for each HAC Circuit, each Access Circuit and each NNI).
- 10.4 Supplier will periodically issue to the Customer an invoice for the Service and the Customer must pay each Invoice in Australian dollars within 30 days of the Invoice Date ("**Due Date**"). The Customer agrees that Supplier may use a Related Body Corporate of Supplier to perform billing and collection services for Supplier in relation to Invoices and that amounts invoiced by and paid to that Related Body Corporate shall be treated as payments under the Agreement.
- 10.5 To the extent that it is not precluded by regulation from doing so, if Supplier has omitted Charges from an Invoice for any reason, Supplier may include such Charges in a later Invoice.
- 10.6 If the Customer disputes the validity of any Charges in an Invoice:
- The Customer must notify Supplier in writing of the reasons for the dispute within 30 days of the date of that Invoice;
  - The Customer must pay the full amount of the Charges in the disputed Invoice unless the Customer has notified Supplier in writing of the reasons for the dispute by the Due Date of that Invoice and will pay the undisputed portion of the Charges in the Invoice by the Due Date of that Invoice;
  - Supplier will endeavour to give the Customer a determination on the dispute within a reasonable time of receiving the Customer's notice of dispute and Supplier shall keep the Customer informed as to the expected timeframe for finalisation;
  - Where the determination is that a disputed amount is payable to Supplier, the Customer shall pay such amounts within 5 Business Days of receiving notice of the determination; and
  - if the Customer disagrees with the determination, the Customer will be entitled to engage the dispute resolution mechanisms set out in clause 20 below.
- 10.7 If the Customer fails to pay when due any amount Supplier will be entitled to:
- charge interest on the overdue amount (both before and after judgment), at the rate of 6% above the cash rate set by the Reserve Bank of Australia. This interest will be calculated daily and compounded every 30 days;
  - impose a charge to cover its reasonable expenses and costs incurred in enforcing any failure or delay in the payment (including the cost of engaging a debt recovery agent); and
  - suspend provision of the Service in accordance with clause 14 below.
- 10.8 The Customer agrees and acknowledges that the Supplier may pass on any increases in charges incurred by the Supplier following any new or varied regulation that applies in respect of the Regulated Network where such charges impact the cost of supply of the Services to the Customer, including any new tax, levy or other

charge. The Supplier will give the Customer 14 days written notice of any increase to the charges under this clause.

10.9 There is a presumption that records held and logging procedures adopted by the Supplier or any other third party provider with which the Supplier Network is interconnected are correct and that the Charges have been incurred and are payable by the Customer in the absence of manifest error.

### **11. GST and Other Taxes**

11.1 Unless otherwise indicated, Charges do not include GST. The Supplier will include on each invoice a separate amount for the GST payable in respect of the Charges and the Customer must pay the GST to the Supplier.

11.2 The Customer must pay all taxes (including any goods or services tax or any equivalent thereof), duties, stamp duties, impost, levies or government charges relating to the Agreement, the supplied Services, provision of the Supplier Equipment. Should there be an introduction of any new tax, duty, levy or government charge relating to any charges (including Charges) under the Agreement, the Customer must pay the Supplier for such taxes, duty, levy or government charges imposed under such relevant legislation.

### **12. Variation of Agreement**

12.1 Except as set out in this clause, the Agreement may not be varied except in writing signed by the parties.

12.2 The parties acknowledge that the Service may be a regulated service and that the Supplier may from time to time wish, or be required, to make changes to the Agreement or the Services for all persons acquiring Services under this Agreement.

12.3 The Supplier may at any time vary the Agreement due to any Regulatory Event by giving to the Customer written notice of the variation (a **Variation Notice**). If the Supplier gives a Variation Notice and the Customer does not accept the variation, the Customer must notify us in writing within 20 Business Days from the date of the Variation Notice. If the Customer fails to do so, the Customer will be deemed to have accepted the variation and the new terms and conditions will take effect from the next billing period after the Variation Notice was given or at the time specified in the Variation Notice.

12.4 If the Customer notifies the Supplier that it does not agree to the variation, the Customer and the Supplier must discuss the proposed variation in good faith. If no agreement on a variation arises within a further 20 Business Days, either party may terminate the Service upon the giving of a further 20 Business Days' notice. For the duration of the further notice period, the terms and conditions applicable immediately preceding the delivery of a Variation Notice will continue to apply.

12.5 Any other variation between the parties will only be binding where agreed in writing.

### **13. Creditworthiness**

13.1 The Supplier's obligations to supply a Service, and to continue supplying a Service, is subject the Supplier being satisfied as to the creditworthiness of the Customer.

13.2 The Supplier may, from time to time, review the Customer's creditworthiness. In doing so, the Supplier may seek from the Customer or an independent person such as a credit reporting agency or credit provider information or advice to assist in the creditworthiness review.

13.3 Customer agrees promptly to cooperate with a review by:

- (a) providing to the Supplier any information (including a completed the Supplier credit application form) the Supplier reasonably requires to conduct any such review; and
- (b) giving to the Supplier permission (which permission is by the signing of the Order Form granted) to communicate with credit reference associations about the Customer's creditworthiness.

The information sought in this clause can include any information reasonably required by the Supplier about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under law.

13.4 The Customer warrants that all material information that it provides to the Supplier in any creditworthiness review will provide a true and fair view of the Customer's financial position at the time it is provided, and that all other information is accurate and complete.

13.5 The Customer is entitled to see and to correct any credit information that the Supplier holds about the Customer.

13.6 Following a creditworthiness review of the Customer which may occur at any time before or during the supply of the Service, the Supplier may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to the Supplier, which shall be in a form and amount that is no more than reasonably required.

13.7 If the Customer fails to provide the security required by the Supplier within a reasonable time or exceeds the nominated Credit Limit, the Supplier may suspend the supply of the Service.

### **14. Service Suspension**

- 14.1 In addition to any other rights of suspension contained in the Agreement, the Supplier may suspend the provision of the Service, or access to the B2B System, to the Customer:
- (a) immediately and, because of the urgency of the need, without prior notice, where:
    - (i) the Supplier is required to undertake the repair, maintenance or service of any part of the Supplier Network (or an interconnected third party provider is required to undertake such work on its network) to attend to any emergency;
    - (ii) it is reasonably required to reduce or prevent fraud or interference within the Supplier Network;
    - (iii) the Supplier believes it is necessary to do so to comply with any law or an order, instruction or request of government, the ACMA, emergency services or other competent authority;
    - (iv) a Force Majeure Event occurs which materially affects the Supplier's ability to provide the Service; or
  - (b) upon giving 10 Business Days' notice where the Customer is in non-breach of the Agreement, or 5 Business Days' notice where the Customer is in material or persistent breach of the Agreement, such suspension to continue for so long as the breach subsists or until termination of the Agreement.

## 15. Termination

- 15.1 A party may, at its election, terminate the Agreement:
- (a) immediately by written notice to the other party if a receiver, liquidator, provisional liquidator or administrator is appointed over any of that other party's undertakings or assets and that appointment continues for a period of 5 Business Days, or if that other party enters into any arrangement with any of its creditors or any class of such creditors or if that other party ceases to carry on business;
  - (b) immediately by written notice to the other party if that other party breaches any other provision of the Agreement and does not rectify that breach within 30 days of receiving written notice from the other party requesting it to do so.
- 15.2 The Supplier may immediately, by giving notice to the Customer, terminate the Agreement if:
- (a) following a suspension of the Service under clause 14.1(b) or 13.7 the Customer fails within 14 days of the commencement of the suspension to rectify the breach giving rise to the suspension; or
  - (b) the Customer commits persistent breaches of the Agreement, or in particular, the Acceptable Use Policy;
  - (c) the Customer is in breach of a license, permit or authorisation relating to the use of or connection of equipment to the relevant access line, or the use of Services;
  - (d) the Supplier reasonably suspects that the Customer has suspended payment of its debts generally;
  - (e) the Supplier reasonably suspects fraud in respect of, or misuse of, the Service by the Customer; or
  - (f) the Supplier is ceasing to sell the Service to any person and the Supplier has given to the Customer not less than 60 days' written notice of this cessation.
- 15.3 A party may terminate this Agreement with immediate effect from the date of service of a notice, or a later date specified in the notice, if a Force Majeure Event significantly affects the other party's ability to perform its obligations (other than an obligation to pay money) under this Agreement for a continuous period of more than 20 Business Days.
- 15.4 Each party must notify the other party immediately if any event referred to in clause 15.1(a) occurs or any step towards the occurrence of such event occurs.

## 16. Effects Of Termination

- 16.1 On termination of the Agreement:
- (a) The Customer's right to use the Service ceases;
  - (b) if the Supplier requests, the Customer must immediately inform the Supplier of the specific location of any Supplier Equipment;
  - (c) the Customer must immediately cease using and return to the Supplier the Supplier Equipment used in relation to the Service and, if the Customer does not comply, it must, subject to any usual security arrangements, permit, or procure permission for, the Supplier to access the location at which that the Supplier Equipment is situated at any time or times for the purpose of removing that the Supplier Equipment;
  - (d) the Customer must immediately pay to the Supplier, without deduction or set off, all outstanding Charges and any other amounts payable to the Supplier under the Agreement at the date of

termination; and

- (e) the Supplier will refund to the Customer the balance (if any) of any Charges or other money paid in advance to the Supplier under the Agreement after deducting all amounts payable to the Supplier under sub-clause 16.1(d) above.

16.2 Termination of the Agreement does not affect the accrued rights or liabilities of either party nor does it affect the provisions which expressly or by implication are intended to operate after termination, including, without limitation clause 9.1 (the Supplier Equipment); clause 18 (Liability and Indemnity); and clause 19 (Confidentiality).

## **17. Force Majeure**

17.1 Neither party will be liable to the other party for any failure to perform or delay in performance of any obligation under the Agreement caused by a Force Majeure Event (other than an obligation to pay money). Each party will provide notice of the date of commencement of a Force Majeure Event and the date of cessation of a Force Majeure Event.

## **18. Liability & Indemnity**

18.1 The Customer must take out, and maintain during the term of the Agreement a valid and enforceable public liability insurance policy that provides coverage of at least \$20 million per occurrence and on request by the Supplier from time to time, immediately provide the Supplier with a certificate of currency in respect of that policy.

18.2 To the maximum extent permitted by law:

- (a) the Supplier excludes all conditions and warranties implied into the Agreement;
- (b) the parties exclude any liability for any indirect, special or consequential loss, costs, or damage (including, but not limited to, loss of profits, loss of revenue, loss of data, loss of bargain, damage to reputation and expectation loss) arising out of the Agreement, whether arising as a result of any act, omission or negligence of the other party or otherwise.

18.3 Subject to clause 18.2, the Supplier limits its liability in respect of any liability which is not otherwise limited and which may arise out of or in connection with the Agreement, (whether based in contract, tort (including negligence) statutory duty or otherwise) to an amount which is:

- (a) in respect of any particular service, 50% of the Charges received by the Supplier for the Service for the 12 months preceding the event giving rise to the liability for each event or series of connected events; and
- (b) in respect of any other liability, in the aggregate, the amount of Charges received by the Supplier under the Agreement.

18.4 Each party's liability under the Agreement is diminished to the extent that the other party's acts or omissions contribute to or cause the loss or liability.

18.5 Nothing in this clause 18 is intended to limit the Supplier's liability for claims relating to personal injury (including sickness, death or disability) of the Customer or the Customer's employees directly resulting from the Supplier's negligent acts or omissions arising under the Agreement.

18.6 The Customer indemnifies the Supplier on demand against any claim or liability arising from the Customer's acts or omissions, or the acts or omissions of a third party acting on the Customer's behalf or engaged by the Customer in any capacity, relating to the use of the Service.

## **19. Confidentiality**

19.1 Each party acknowledges that the Confidential Information of the other party is confidential and secret and each party must preserve the confidential and secret nature of the other party's Confidential Information.

19.2 A party must not:

- (a) disclose or copy the other party's Confidential Information (including the terms and conditions of the Agreement) for any purpose other than as contemplated by the Agreement;
- (b) make the other party's Confidential Information available to any third party, other than by the Customer to its employees, and by the Supplier to its employees and the employees of any Related Bodies Corporate of the Supplier which are engaged in the wholesale supply of carriage services, in each case if and only to the extent the employees have a need to know the information to enable the Service to be used in the manner contemplated by the Agreement; or
- (c) use the other party's Confidential Information for any purpose other than as contemplated by the Agreement.

19.3 Neither party may use in any way any the name, logo, trade mark, registered design, or copyright material of the other party without having first obtained the written consent of the owner of the property to such use.



Neither party will issue a press release, or make any public announcement, concerning the existence of, or any fact arising out of, or connected to, the Agreement or the other party without first having obtained the prior written consent of the other party to the terms of such press release or announcement.

## **20. Disputes**

- 20.1 Before resorting to external dispute resolution mechanisms, the parties must seek to resolve any dispute in relation to the Agreement by referring the matter to the respective chief executive officers of the parties or their nominees.
- 20.2 If the parties cannot resolve the dispute in accordance with clause 20.1 within 60 days, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (**ACDC**) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC.
- 20.3 Nothing in this clause prevents a party from seeking interlocutory relief.

## **21. Notices**

- 21.1 For a notice under the Agreement to be effective, it must be
- (a) in writing;
  - (b) addressed to the contact person of the other party; and
  - (c) personally delivered, or sent by prepaid post, to the address, or by email to the address, email address stipulated for each party in an Order or last notified by each party to the other in writing
- 21.2 A notice given in accordance with clause 21.1 is received:
- (a) if left at the recipient's address, on the date of delivery;
  - (b) if sent by prepaid post, five days after the date of posting; and
  - (c) if sent by email, when the sender's email system generates an electronic delivery receipt confirming the successful transmission from the sender's mail server unless the sender receives an electronic notification that the transmission was unsuccessful.

## **22. General**

- 22.1 Headings are for ease of reference only and not as an aid to interpretation.
- 22.2 A party will not assign, novate or otherwise transfer this Agreement or any right or obligation under this Agreement without the prior written approval of the other party, which will not be unreasonably withheld.
- 22.3 Nothing in the Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, employer and employee or principal and agent between the Supplier and the Customer.
- 22.4 The Supplier may set off or apply any credit balance in any of the Customer's accounts with the Supplier or any amounts owed by the Supplier to the Customer against any amount due and payable by the Customer to the Supplier under this Agreement.
- 22.5 Failure by either party to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of the right or of any other right on any later occasion.
- 22.6 If part or all of any clause of the Agreement is illegal, invalid or unenforceable it will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable or if this is not possible, the affected clause or part will be severed from the Agreement, the remaining provisions of the Agreement will continue to have full force and effect and the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter severed.
- 22.7 The Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by the Supplier.
- 22.8 The Agreement is governed by the laws applicable in the State of New South Wales in the Commonwealth of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

## GLOSSARY

**Act** means the Telecommunications Act 1997 (Cth).

**ACMA** means the Australian Communications & Media Authority.

**Acceptable Use Policy** means the acceptable use policy set out in Annexure A to this Agreement which may be modified by the Supplier from time to time provided that such modifications are reasonable.

**Access Circuit** means a virtual circuit supplied by the Supplier using the Regulated Network for an End User.

**Agreement** means this agreement for the provision of the Services between the Supplier and the Customer.

**B2B System** means an online system established and maintained by the Supplier through which the Customer will be able to order and cancel Access Circuits subject to the terms of this Agreement.

**Building** means a multi-dwelling unit building in which the Supplier has installed Regulated Network.

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

**Business Hours** means the hours between 9.00am and 7.00pm in Sydney on any Business Day.

**Charges** means the charges for the Service which are payable by the Customer in accordance with clause 10.

**Confidential Information** of a party means information (including the Agreement), know-how, ideas, concepts, and industrial knowledge, in whatever format, of that party, other than information which:

- (a) is generally available in the public domain without a breach of confidence or unauthorised disclosure by either party.
- (b) is lawfully disclosed by a third party without restriction on disclosure; or
- (c) is required by law or the Australian Stock Exchange to be disclosed.

**Customer Service Guarantee** means the current minimum performance standard set by the ACMA under sections 115, 117 and 120 of the Telecommunications (Consumer Protection and Service Standards) Act 1999.

**Customer** means the customer identified in the Order Form.

**Customer Equipment** means all equipment and facilities located on the Customer side of the End User Demarcation Point other than the Supplier Equipment used in connection with the Service and may include equipment of the Customer's End User or part of the common property of a Building.

**End User** means any person who acquires or will acquire an Access Circuit from the Customer.

**End User Demarcation Point** means the telecommunications network side of the main distribution frame for copper wiring located within a Building.

**Force Majeure Event** means:

- (a) fire, flood, earthquake, elements of nature or act of God;
- (b) riot, civil disorder, rebellion or revolution; or
- (c) other matter outside of the reasonable control of the non-performing party,

but in each case only if, and to the extent that, the non-performing party is without fault in respect of the default or delay and the default or delay could not have been prevented by taking steps specifically required under the Agreement.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**HAC Circuit** means a virtual circuit over which traffic from the Access Circuits supplied by the Supplier to the Customer may be carried.

**IP Address** means an internet protocol address.

**Minimum Service Period** of the Service means the minimum supply period or contract term (if any) specified in the Order Form from the Service Commencement Date.

**NNI** means a point of interconnect between the Supplier Network and the network of the Customer.

**Order** means the submission of a physical or online application for Services by the Customer to the Supplier (whether described as an Order or an Order Form and whether or not submitted through the B2B System).

**Planned Outage** means a period of time that the Supplier may interrupt the supply of Services to the Customer other than an interruption which is less than 100 milliseconds in duration (a **Nominal Outage**) for routine maintenance or up-grading or other similar processes, after giving the Customer 5 Business Days prior notice, which outage does not exceed the period of time specified in that notice.

**Price Book** means the schedule of Service Components and Charges available on the Supplier's website at <https://fttbwholesale.com.au/form.php>, as varied from time to time in accordance with this Agreement.

**Qualifying Carriage Service Criteria** means qualifying fixed line carriage services as defined in section 360A of the Telecommunications Act, 1997 (Cth).

**Regulatory Event** means:

- (a) any change in a law or regulation, or any judicial, regulatory or administrative action, that relates in whole or part to any aspect of the subject matter of this Agreement, including:
  - (i) amendments to or repeals of any part of any statute, ordinance, code or Law including the Act, the Competition and Consumer Act 2010 (Cth) or the introduction of a new statute, ordinance, code, standard or law;
  - (ii) a directive of, or determination by, a Regulator; registration or determination of a new industry code or industry standard under the Act, or amendments to or repeals of any existing code or industry standard;
  - (iii) the issue by the ACCC of a Competition Notice (as defined in section 151AB of the Competition and Consumer Act 2010 (Cth) which affects any Services or the subject matter of the Agreement, (or where the Supplier reasonably considers that the ACCC is likely to issue a Competition Notice);
  - (iv) the determination, addition, variation or removal of a Service Provider Rule (as defined by section 98 of the Act) applicable to the Supplier or any third party provider;
  - (v) the grant of an injunction against the Supplier in relation to a breach or alleged contravention of any Law; and
  - (vi) an amendment, declaration, addition, variation or removal of a condition to the Supplier's carrier licence; or
- (b) any order or direction from any law enforcement agency or Regulator.

**Regulator** means ACMA, ACCC, Communications Alliance Ltd, Communications Compliance Ltd, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

**Regulated Network** means that part of the Supplier Network made up of local access lines or parts of local access lines which are subject to local, State and Commonwealth laws and regulations that restrict how the Supplier can use those parts of the Supplier Network to offer and/or supply Superfast Carriage Services or Specified Broadband Services to residential customers.

**Related Body Corporate** has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001*.

**Service** means a service identified in, and to be delivered pursuant to, an Order and as described in clause 2 of this Agreement.

**Service Commencement Date** of the Service means the date on which the Service (or a relevantly Ordered component) is available for use by the Customer (or the Customer's End User as relevant).

**Site** means the location at which the Service is to be supplied by the Supplier and may include the premises of the Customer's End Users.

**Specified Broadband Services** means a carriage service which has the following characteristics:

- (a) it enables end-users to download communications; and
- (b) its download transmission speed is normally 6 megabits per second or more; and
- (c) it is supplied using a line to premises occupied or used by an end-user.

**Superfast Carriage Services** has the same meaning as in subsection 141(10) of the *Telecommunications Act 1997*.

**Supplier** means FTTB Wholesale Pty Ltd (ABN 18 087 533 328) of Suite 1920, Level 19, 1 O'Connell Street Sydney NSW 2000.

**Supplier Equipment** means equipment (if any) of the Supplier or a supplier to the Supplier located on the Site or other Customer premises (including premises leased by the Customer or co-location spaces licensed by the Customer) for the provision of the Service.

**Supplier Network** means a telecommunications network of the Supplier.

**Telecommunications Act** means the *Telecommunications Act 1997*(Cth).

**Term** means the period between the commencement of the Agreement and the termination of the Agreement pursuant to clause 1 above.



**SIGNATURES**

**For and on behalf of the Customer**

Customer Name	Customer ABN	
Signature	Name & Position(Printed)	Date

Signatory warrants that (s)he has the authority to enter into this Agreement on the Customer's behalf. The Supplier's acceptance of these Terms & Conditions is signified by its signing the Order Form relating to these Terms and Conditions or by delivery of the Service.

**For and on behalf of FTTB Wholesale Pty Ltd (ABN 18 087 533 328)**

<u>Signature:</u>	<u>Name &amp; Position:</u> Robert Lee – Sole Director	<u>Date:</u>
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## ANNEXURE A - ACCEPTABLE USE POLICY

FTTB Wholesale Pty Ltd considers the following are unacceptable uses of the Internet and the FTTB Wholesale Network:

1. SPAM: including sending or causing the sending of any unsolicited or unauthorised advertising, promotional materials, junk mail, bulk unsolicited email, mail bombing, chain letters, multiple newsgroup cross-posting, or other form of solicitation;
2. BENEFITING FROM SPAM: including hosting any website which, on a regular basis, is advertised by any person sending unsolicited commercial email or unsolicited bulk email or spam;
3. EMPLOYING IDENTITY-DISGUIISING TECHNIQUES IN CONNECTION WITH SPAM: including relaying email via a third party's mail server without permission, hosting an open mail relay server, or employing similar techniques to hide or obscure the source of an email;
4. BREACHING INTELLECTUAL PROPERTY RIGHTS: including hosting any content which infringes any copyright, trademark, trade secret, patent or other property or other intellectual property rights of any third party unless you are the owner of, or have the permission of the owner to post or transmit the content;
5. SPREADING VIRUSES: including knowingly hosting or transmitting any content that contains any software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
6. HOSTING CONTENT WHICH IS UNLAWFUL/CRIMINAL: including hosting or transmitting any content the hosting or transmitting of which would be a contravention of any law of the Commonwealth of, or a State in, Australia, such as, for example, material of a pornographic nature depicting children; and
7. MALICIOUS ACTIVITY AGAINST OTHER HOSTS ON THE INTERNET: including (i) defacing of web- sites without the permission of the website owner; (ii) obtaining (or attempting to obtain) un-authorized access to data by circumventing (or attempting to circumvent) security controls designed to prevent un- authorised access; (iii) the use of "probing" of devices on the internet with the intent of searching for and/or identifying security weaknesses on those devices (iv) interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks and denial of service attacks.

This Acceptable Use Policy may be revised by FTTB Wholesale Pty Ltd from time to time. Published June 2016.