



Super fast,
super simple.

Retailer Service Agreement Terms and Conditions

MyPort Pty Ltd ABN 32 121 129 280 trading as Gigafy
and

[Insert RSP Details and ABN Here]





1. The Structure of the agreement

- 1.1 In accordance with our obligations under the Telecommunications Act as the statutory infrastructure provider, we are required to connect certain premises to a qualifying fixed telecommunications network and supply eligible services on reasonable request by a carriage service provider.
- 1.2 This wholesale Retailer Services Agreement (**RSA**) and any applicable Service Schedules, Service Orders and Our Policies together constitute the agreement for the Services that we provide to you (**Agreement**). The parties have agreed to enter into this Agreement under which you may, in accordance with this RSA, request that we:
- connect a premises in a Service Area to a qualifying fixed telecommunications network in accordance with section 360P of the Telecommunications Act; or
 - supply an eligible service to a premises in a Service Area in accordance with section 360Q of the Telecommunications Act.
- 1.3 This RSA sets out the terms and conditions relating to price, and the other terms and conditions, on which we offer to carry out the connection and supply referred to in clause 1.2.
- 1.4 The Agreement supersedes all prior representations, arrangements, understandings and agreements between you and us regarding matters set out in the Agreement. To the extent of any inconsistency between the documents constituting the Agreement, the inconsistency shall be resolved in the following order of precedence (with a document higher in the list prevailing over any document lower in the list):
- the Price List;
 - the applicable Service Order(s) and any special conditions but only as applicable to the particular Service Order;
 - the applicable Service Schedule(s)
 - this RSA;
 - Our Policies;
- 1.5 During the Term, we may need to vary the terms of the Agreement due to circumstances that are beyond our control, including one of our third party suppliers varying the terms on which they supply services to us that we use to provide Services to you, amendments to relevant Laws, a change in security obligations that are applicable to the Service, or changes to the functionality of a Service or the technology used in providing the Service. You agree that in these circumstances we may vary the terms of the Agreement to the extent required upon giving you reasonable notice. You may terminate the Agreement without penalty if our variation results in a material detriment to you, within 30 days of our notice.
- 1.6 If the Service is a Declared Service, the Agreement is an Access Agreement and prevails over an ACCC access determination or binding rule of conduct made pursuant to Part XIC of the Competition and Consumer Act 2010 (Cth).

2. Definitions and interpretation of the Agreement

2.1 Unless otherwise specified in the Agreement, the following words are defined as:

Access Agreement is defined in section 152BE of the *Competition and Consumer Act 2010* (Cth).

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Australian Consumer Law or **ACL** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not a weekend or public holiday in Queensland or the location where the Service is being provided.

Commencement Date means:

- the estimated date for a service to become operational specified in a Service Order; or
- where the Service only becomes operational on a later date, that later date.



Charges means fees and charges that are payable by you to us and unless set out in a Service Schedule or Service Order will be set out in the Price List.

Communications Data means communications and other data transmitted via a Service by you, your Personnel or your End Users.

Confidential Information means any information disclosed by a party (**first party**) to the other party that it would be reasonable for the other party to infer is the first party's confidential information. Confidential Information includes the terms of the Agreement, Materials, Service Orders, and any Charges or other Service information that we give to you.

Consequential Loss mean loss of revenue, loss of profits, loss or reputation, loss of bargain, loss of actual or anticipated savings, loss of opportunities, loss of data or a special, punitive or exemplary loss or damage (including without limitation, any penalty or fine imposed).

Contract Representative means a staff member of the Customer that is responsible for liaising with us.

Customer means the entity that has entered into this Agreement with us.

Customer Equipment means equipment that you or End Users use in connection with the Services. It does not include Our Equipment. It includes Purchased Equipment including when it has not been paid for.

Declared Service is a service subject to regulation by the ACCC and is defined in Part XIC of the *Competition and Consumer Act 2010* (Cth).

Due Date means the date that you are required to pay Charges and will be specified in an invoice issued by us to you.

End User means a person who is the ultimate recipient or user of a Service, a resold Service or a service derived from either.

Fair Use Policy means the policy available on our website.

Force Majeure Event means any circumstances beyond our reasonable control.

GST has the meaning given in the GST Law.

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

Initial Term means a minimum term for a Service specified in a Service Order.

Insolvency Event means in respect of a party: (a) the party ceases to carry on business or is unable to pay its debts as and when they fall due; (b) a receiver, liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into a creditors' arrangement (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts, or the party takes the benefit of any Law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the Law of any applicable jurisdiction.

Intellectual Property Rights or **IPR** means all current and future intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, and any other rights of a similar nature and all other rights to intellectual property as defined under Article 2 of the convention establishing the World Intellectual Property Organisation, whether registrable, registered or not, and any applications for registration or rights to make such an application, anywhere in the world.

Law means a statute, regulation, by-law, ordinance, direction, determination, code of practice, standard or subordinate legislation, whether made by a State, Territory, the Commonwealth, local government, government authority or other body.

Material means any information, files, correspondence, materials or documents (whether in electronic or printed form) referring to or describing Our Equipment and/or Services that we provide to you, as updated from time to time.

Network Demarcation Point is the point where our network ends and is connected to your equipment or Customer Equipment and may be described in more detail in the Price List or an applicable Service Schedule or Service Order.

Our Equipment means any of our equipment that we supply to you or use in supplying Services and includes cables, racks, antennas, hardware, equipment, wires, switches, routers and ports.

Our Policies means policies relating to the provision or use of Services that are available on our website including but not limited to the Fair Use Policy.



party means you or us and **parties** means you and us.

Personal Information means any personal information within the meaning in section 6 of the *Privacy Act 1988* (Cth), section 187LA of the *Telecommunications (Interception and Access Act) 1979* (Cth) and information that relates to the affairs or personal particulars of a person pursuant to Part 13 of the *Telecommunications Act 1997* (Cth).

Personnel means any employees, officers, directors, agents and subcontractors of a party.

PPSA means the *Personal Properties Securities Act 2009* (Cth).

Price List means the list of charges for goods or Services made available to you by us and as updated from time to time, the current version of which is the 'Gigafy Wholesale Price List' which is available by completing the wholesale enquiry form on our website at <https://gigafy.com.au/wholesale-enquiry>

Purchased Equipment means equipment purchased from us by you or your End User.

Ready for Service Date or **RFS Date** means the earlier of:

- a) the date that we notify you or an End user that a Service is ready to use;
- b) the date that we first make a Service available to you or an End User; or
- c) the date that you or an End User first use the Service.

Related Body Corporate is defined in section 50 of the *Corporations Act 2001* (Cth).

Renewal Term is defined in clause 5.4.

Security Deposit means a security deposit for an amount specified in a Service Order or as otherwise notified by us under clause 4.2(b).

Service Order means your order for a Service that becomes binding upon our acceptance.

Service Schedule means the document setting out technical details and any applicable terms and conditions of supply for a Service.

Service(s) means the service(s) that we will provide to you as described in a Service Order.

Service Area means the parts of our fibre network in respect of which a declaration made by us under section 360H of the *Telecommunications Act* or a declaration made by the Minister that specifies us as the statutory infrastructure provider under section 360L of the *Telecommunications Act* is in force.

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

Term means the Initial Term and any Renewal Terms.

you and **your** means the entity specified as the customer in the Agreement.

we, our and **us** means MyPort Pty Ltd ABN 32 121 129 280 trading as Gigafy and any of its Related Bodies Corporate and subsidiaries.

2.2 Interpretation of the Agreement

Unless the context requires otherwise, in the Agreement:

- a) headings and underlined words are for convenience only and do not affect the construction of the Agreement;
- b) a provision of the Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision or Agreement;
- c) currency or '\$' refers to Australian dollars;
- d) a reference to a Law includes all amendments and replacements;
- e) a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of the Agreement and a reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made;
- f) a reference to time is to time in Brisbane, Queensland, Australia;
- g) if an obligation must be performed by two or more persons, it binds them jointly and individually.
- h) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity; and
- i) the words 'includes', 'including' and similar expressions are not intended to be words of limitation but should be read as if they were immediately followed by the words 'but not limited to'.

3. Your Application for a Service from us



- 3.1 After you apply to us for a Service, we may accept your application in a Service Order, which is not binding until and unless it is executed by both parties or we otherwise elect to commence providing the Service as set out in the Service Order.
- 3.2 You may request changes to Services set out in a Service Order by sending us a change order request. If we agree in writing to the change order request, the Service Order will be changed as specified in the change order request.

4. Credit assessment and security deposits

- 4.1 We may conduct a credit assessment of you at any time. You authorise us to make all enquiries necessary to determine your creditworthiness and will provide us with all reasonable assistance necessary for the credit assessment.
- 4.2 If we have reason to do so, including your repeated failure to pay invoices when due, concerns about your liquidity or your unfavourable credit rating, we may require that you pay a Security Deposit before we:
 - a) execute a Service Order; or
 - b) continue to provide you a Service after you have failed to pay any undisputed Charges for the Service by the Due Date of an invoice or acting reasonably we believe you are a credit risk, by notifying you of our required Security Deposit (**Security Deposit Notice**).
- 4.3 You must pay the required Security Deposit within 5 Business Days of a Security Deposit Notice. We have no obligation to provide or continue to provide Services referred to in the Security Deposit Notice until payment of the Security Deposit.
- 4.4 Without notice to you, we may apply all or part of the Security Deposit to any outstanding Charges that you do not pay by the Due Date. Within 5 Business Days of a notice from us, you must replenish the Security Deposit to the full amount set out in the Security Deposit Notice if we apply all or part of the Security Deposit to your outstanding Charges.
- 4.5 After deductions of amounts due from you to us, any remaining Security Deposit will be returned to you after termination or expiry of the Agreement and all Service Orders.

5. Our provision of Services to you

- 5.1 We will use reasonable endeavours to make Services ready for use from the Commencement Date specified in a Service Order, however, it is agreed that Commencement Dates are only estimates and are not binding. Services cannot always be activated, or their activation may be delayed due to a range of different reasons, and we are not liable for any such delays or failures. If a Service is not ready for use within three weeks after the Commencement Date set out in the Service Order, you or we may terminate the Service Order without liability at any time before the Service is ready for use. For the purposes of this clause, 'ready for use' means that we have made the Service ready for you or an End User to connect to.
- 5.2 We will provide Services in a professional manner in accordance the applicable Service Schedule.
- 5.3 We may modify the manner in which a Service is provided at any time including by changing the technology, provided that the modification does not have a material adverse effect on the performance of the Service.
- 5.4 Upon expiry of the Initial Term, a Service Order shall automatically and continually renew for one month periods (each, a **Renewal Term**) until and unless:
 - (a) you or we cancel the Service Order with at least 30 days' notice prior to the expiry of the Initial Term or Renewal Term in which case where such notice is given the Service Order will terminate at the end of the Initial Term or then current Renewal Term (as applicable); or
 - (b) the Service Order is terminated in accordance with the Agreement.
- 5.5 Our sole liability and your sole remedy, for non-availability of the Services, is the service level credits calculated as follows :

The availability will be measured on a monthly basis, with the availability being the number of minutes in the month less the number of unavailable minutes divided by the number of minutes in the month, i.e. (minutes in month – unavailable minutes) / (minutes in month).



You waive any right to any other remedies that you might otherwise have in relation to any such matters.

- 5.6 We may be reliant on third party suppliers for supplying the Service to you and circumstances beyond our control may cause faults in the Service. Subject to your rights under the ACL and to the maximum extent permitted by Law, we are not obliged to restore any Service fault that arises because of damage to the facilities used by us or our third party suppliers to provide the Service, interference, Force Majeure Events, or planned outages, including scheduled maintenance.
- 5.7 We will provide reasonable notice of scheduled maintenance that affects the Service and where possible undertake scheduled maintenance at a time that will minimise disruption to your or End Users' use of the Service. If unscheduled or urgent maintenance is required, it may not be possible for us to provide notice or to schedule the maintenance at a time that is convenient to you and End Users.
- 5.8 We may suspend the Service if necessary because of an emergency, to comply with a Law, or if required to protect persons, Our Equipment, facilities or our network, and third party supplier equipment or networks.
- 5.9 Where we believe on reasonable grounds you, an End User or anyone using the Service has or is likely to breach the Fair Use Policy we may suspend or limit the service so far as necessary to prevent such actual or potential breach.
- 5.10 You must ensure that everything connected to the network used by us to provide the Service (including any network of our supplier) (**Our Network**) by you or on your behalf:
- (a) is technically compatible with Our Network;
 - (b) complies with generally-accepted industry codes or standards; and
 - (c) otherwise complies with all reasonable procedures, standards or other requirements notified by us from time to time.
- 5.11 You must not connect anything to Our Network, use the Service or do anything at our site or facility in a way that:
- (a) endangers the health or safety of any person or negatively impacts the normal operation of any network or system over which the Service is supplied;
 - (b) damages or interferes with any of our sites or facilities or telecommunications equipment owned or operated by us or third parties; or
 - (c) interrupts or degrades the normal operation of the Service or of a product or service supplied by us to another customer or supplied by one of our customers.
- 5.12 You:
- (a) must use all reasonable endeavours to ensure that its End Users comply with the obligations described in clauses 5.10 and 5.11 as if the references in those obligations to you were references to End Users; and
 - (b) must comply with any of Telstra's reasonable directions that are intended to ensure that your End Users comply with the obligations referred to in clause 5.12(a).
- 5.13 You:
- (a) must do everything reasonable in the circumstances to ensure that your Resellers comply with all of your obligations in this Agreement that relate to the use and supply of the Service, and any activities ancillary to that use or supply, as if references in those obligations to you were references to the Reseller; and
 - (b) are liable for any non-compliance by your Resellers with those obligations.
- 5.14 The obligations referred to in clause 5.13 include the obligations described in clauses 5.10 and 5.11.

6. Risk and title in equipment



- 6.1 We retain title in our equipment and it does not become a fixture or chattel if installed at your or End User premises.
- 6.2 Until we receive full payment, we retain title in Purchased Equipment.
- 6.3 The risk of loss or damage to Our Equipment and Purchased Equipment passes to you upon delivery of the equipment to you or your End User or the equipment's installation at your or End User premises.
- 6.4 You agree that we may register an interest on the PPSA in Our Equipment and Purchased Equipment that has not been fully paid for without complying with any provision of the PPSA or Personal Property Securities Regulations 2010 (Cth) that may be contracted out of.
- 6.5 You may only use Our Equipment to connect to a Service that we supply and in accordance with the Materials and our reasonable directions.
- 6.6 Subject to an exemption for fair wear and tear, you must ensure that Our Equipment and Purchased Equipment that has not been fully paid for is kept in good repair and condition, and must not sell, give away, lose, assign or permit any security interest or encumbrance to be created over to the equipment including a PPSA registration.
- 6.7 You must promptly notify us if Our Equipment or Purchased Equipment that has not been fully paid for that has been delivered to you or an End User is lost, stolen or damaged. You must pay us the full replacement value of such equipment.
- 6.8 You must allow us to access, maintain, remove and/or replace Our Equipment and Purchased Equipment that has not been fully paid for that is in your or an End User's possession or control at any time on reasonable notice. We may repossess any of Our Equipment and Purchased Equipment that has not been fully paid for on termination or expiry of any Service Order. You must do everything required to provide us with full, unrestricted and safe access to premises in order to repossess equipment.
- 6.9 You are responsible for any Customer Equipment and any equipment or software not supplied by us, that you or End Users use in connection with any Service. You and End Users must only use equipment in connection with any Service that complies with all applicable Australian standards regulated by the ACMA.

7. Your obligations in relation to Services and End Users

7.1 You must:

- a) provide all reasonably necessary cooperation, assistance, information, and ensure safe access to all relevant Personnel, premises, equipment, systems and networks, as required for us to exercise our rights or perform our obligations under the Agreement;
- b) comply with operational and technical specifications specified in Service Schedules and Service Orders; and
- c) comply with your obligations in the Agreement.

7.2 You and your End Users must not breach any Law or the Fair Use Policy when using a Service.

7.3 You are solely responsible for dealing with End Users, including but not limited to, customer contact and support relating to the provision and operation of services, billing and collection of their payments, End User dispute resolution, customer relationship management, technical support and fault rectification. You must ensure that you have sufficient staff and facilities to meet your obligations to End Users. You must ensure that End Users do not contact us or our third party suppliers. We and our third party suppliers have no liability to you, an End User, or a third party arising from the provision to or use of a Service by an End User and you indemnify us for any costs we incur in relation to any such claim, with such indemnity being reduced to the extent that the claim was caused by or contributed to by our negligent acts or omissions. You must ensure that End Users consent to us and any relevant third party supplier being supplied with and being able to use their Personal Information to the extent necessary to supply the Services or if required by Law.



- 7.4 If a fault occurs, prior to contacting us you must attempt to diagnose the cause of the fault and determine that the fault is not caused by your network, your or End User's equipment, your or End User's software, electrical supply, content or any services that are not supplied to you by us, and if it is then you are responsible for fault rectification and for any costs that we incur in relation to faults that arise for such a reason. You must provide all assistance required to enable us or our suppliers to repair faults, including arranging access to your premises or End User premises.
- 7.5 You must appoint sufficiently qualified and experienced Contract Representatives who unless otherwise agreed by us are the only persons that can contact us in regard to operational issues and other matters relating to this Agreement. You must provide us contact details of your Contract Representatives and give us notice when a replacement person assumes the role.
- 7.6 You must not make a representation or give a warranty about a Service that is not consistent with Materials that we give you for that purpose.
- 7.7 You or your End User are responsible for network security, data backups and the installation and maintenance of cabling or other equipment beyond the Network Demarcation Point, the electrical supply at the premises specified in a Service Order and the maintenance of your networks. We are not responsible for anything that occurs on your or an End User's side of the Network Demarcation Point.
- 7.8 You must ensure that no Communications Data is transmitted via the Services by you or any End User unless all relevant consents have been obtained by you for us to lawfully collect, hold and disclose the Communications Data in accordance with applicable Laws.

8. Your Payment of the charges

- 8.1 We may invoice you for the Services whether you or End Users use or start use of the Services. You must pay all charges in the manner specified in our invoices by the Due Date without setoff, counterclaim or deduction.
- 8.2 Subject to clause 9, if you fail to pay Charges by the Due Date (Overdue Amount), we may:
- charge you interest on the Overdue Amount at a rate of 2% above the current overdraft rate that we have with our principal banker; and/or
 - suspend the provision of the Service. The suspension will remain in place until we receive full payment of the Overdue Amount and any accrued interest or the Service is terminated.
- 8.3 Unless otherwise expressly specified in the Price List in respect of a particular Charge, all Charges specified in the Agreement are exclusive of GST. If GST is applicable with respect to any taxable supply, as defined under the GST Law, we will issue you a tax invoice with respect to that taxable supply and you must pay the GST at the same time as the payment for the relevant taxable supply.
- 8.4 We may vary our Price List and Service Schedules and will provide you 30 days' written notice of variations to the Price List and Service Schedules, provided that the Charges for a Service sold to an End User before the effective date of the variation will continue to apply for the Initial Term (or the then current Renewal Term) of that Service Order.

9. Disputed Charges

- 9.1 You must notify us in writing prior to the Due Date of any amounts set out in an invoice that you dispute and provide a reasonably detailed explanation of the basis for your claim (Charge Dispute Notice). In such circumstances you must pay all non-disputed Charges by the Due Date.
- 9.2 You must not raise a Charge Dispute Notice unless you genuinely believe that the amount is not payable and must not dispute Charges except in accordance with this clause.
- 9.3 If you give us a Charge Dispute Notice, both parties must follow the dispute resolution procedure set out in clause 16.
- 9.4 We will continue to supply Services that are the subject to a Charge Dispute Notice, unless the dispute remains unresolved after the 4 week period set out in clause 16.3, in which case we may terminate the applicable Service Order on 1 week's written notice to you.
- 9.5 If a Charge Dispute Notice is resolved in our favour, you must pay us interest on the Charges that you withheld at a rate of 2% above the current overdraft rate that we have with our principal banker from



time to time, from the Due Date until the actual date of payment, together with the disputed amount that you withheld.

9.6 You may dispute an invoice up to 6 months after receipt including when you have paid the invoice, however, if you have paid an invoice that becomes the subject of a Charge Dispute Notice you must pay all other invoices that are not in dispute.

10. Liability and warranties

10.1 Neither party is liable to the other party for Consequential Loss howsoever arising.

10.2 Except for liability pursuant to an indemnity, unpaid Charges or under clause 12.6 or 12.7, to the extent not already otherwise excluded, each party is only liable for loss or damage incurred by the other party as a result of a breach of the Agreement, in the aggregate, for one or more breaches, up to a capped amount equivalent to the Charges paid by you in the 12 months preceding the breach, and which cap is reduced to the extent the party claiming loss or damage caused or was responsible for such loss or damage, failed to take reasonable steps to mitigate the loss or damage or the loss or damage was caused by a Force Majeure Event.

10.3 If the goods or services we supply to you are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the ACL or any other applicable Law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to section 64A of the ACL, where possible we limit our liability for breach of any such non-excludable warranty, guarantee, right or remedy, in respect of each of the goods and services, at our option, to one or more of the following:

- a) if the breach relates to goods, the replacement or resupply of the goods or cost of replacement, or the repair or payment of the repair of the goods; and
- b) if the breach relates to services, resupplying the services or the cost of resupplying the services.

10.4 Except for any non-excludable warranty, guarantee, right or remedy implied by the ACL or any other applicable Law, all representations, warranties, guarantees and conditions that are not expressly set out in the Agreement are excluded from the Agreement.

10.5 You agree that we have no liability to pay you damages pursuant to section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

11. Mutual indemnity

11.1 You must indemnify us and our Personnel from and against all liability to the extent that such liability arises out of or in connection with:

- a) personal injury or death of a person, damage to tangible property or breach of third party intellectual property rights that arises from the acts or omissions of you or your Reseller or End User;
- b) any claim brought against us or our suppliers by any of your Resellers or End Users with such indemnity being reduced to the extent that the claim is caused by or contributed to by our negligent acts or omissions;
- c) an act or omission by any Reseller or End User, which, if committed by you, would constitute a breach of the Agreement by you; and
- d) a breach of a Law by you, a Reseller or an End User.

11.2 We will indemnify you and your Personnel from and against all liability to the extent that such liability arises out of or in connection with:

- a) personal injury or death of a person, damage to tangible property or breach of third party intellectual property rights that arises from our acts or omissions; and
- b) a breach of a Law by us.



11.3 The indemnities in this Agreement are reduced to the extent the other party, their Personnel or suppliers cause or contribute to the liability.

11.4 Each party must take all reasonable steps to mitigate any liability that relates to a claim by the other party in connection with this Agreement.

12. Termination of the Agreement or a Service Order

12.1 We may terminate a Service Order or the Agreement if:

- a) you breach an essential term of the Agreement and the breach is incapable of remedy;
- b) you breach an essential term of the Agreement, the breach is capable of remedy but you fail to remedy the breach within 7 days of a notice from us;
- c) you suffer an Insolvency Event, except where the termination would be in breach of the *Corporations Act 2001* (Cth) or any other applicable Law;
- d) we reasonably suspect fraud by you, an End User or anyone using a Service;
- e) a Force Majeure Event that prevents us from being able to supply a Service lasts for more than 60 consecutive days; or
- f) we need to do so in order to comply with any applicable Law or direction of a government authority.

12.2 You may terminate a Service Order or this Agreement if:

- a) we breach an essential term of the Agreement and the breach is incapable of remedy;
- b) we breach an essential term of the Agreement, the breach is capable of remedy but we fail to remedy the breach within 7 days of a notice from you;
- c) we suffer an Insolvency Event, except where the termination would be in breach of the *Corporations Act 2001* (Cth) or any other applicable Law; and
- d) a Force Majeure Event that prevents us from being able to supply a Service lasts for more than 60 consecutive days.

12.3 All Service Orders automatically terminate if the Agreement is terminated.

12.4 If a Service Order is terminated or expires:

- a) we will cease to provide you with the relevant Service;
- b) if we supplied you with Our Equipment or Purchased Equipment that has not been fully paid for: within 5 days, you must return to us Our Equipment and any Purchased Equipment that has not been fully paid for; or

12.5 upon providing you with prior notice, at your cost we will arrange collection of Our Equipment and any Purchased Equipment that has not been fully paid for; and

12.6 if you fail to return or fail to allow and pay for the collection of Our Equipment and any Purchased Equipment that has not been fully for, you will be liable for the full replacement cost of the equipment.

12.7 If a Service Order or the Agreement is terminated prior to the expiry of the Initial Term for any reason (other than due to our breach of the Agreement, our insolvency, a Force Majeure Event or because we terminate the Agreement to comply with a Law or direction of a government authority), you will pay any amounts (**Early Termination Charges**) that would have been payable by you under the Service Order or Agreement for the remainder of the Initial Term had the Service Order or Agreement not been terminated detailed in the table below or as otherwise detailed in the Service Order. We will send you an invoice for the Early Termination Charges, which you must pay within one month. You agree that



Early Termination Charges are not intended to be and are not a penalty or punitive in nature but rather are intended to compensate us for reasonable losses incurred because of early termination of the Service Order or Agreement. You agree that you will not challenge the validity of Early Termination Charges calculated in accordance with this clause.

Initial Term	Early Termination Charge
Less than or equal to 12 months	100% of the amounts that would have been payable for the remainder of the Initial Term
More than 12 Months	If terminated within the first 12 months of the Initial Term, 100% of the amounts that would have been payable for the period from the date of termination to the end of the first 12 months and 50% of the amounts that would have been payable for the remainder of the Initial Term after the end of the first 12 months; or If terminated after the first of the first 12 months of the Initial Term, 50% of the amounts that would have been payable for the remainder of the Initial Term.

12.6 Termination does not affect any accrued rights of either party.

13. Confidentiality and Interception

- 13.1 A Recipient must not disclose to any third party any Confidential Information that it receives from the other party, except to that party's Personnel who are bound by obligations of confidence and who have a need to know such information for the purposes of the Agreement.
- 13.2 The Recipient may disclose the other party's Confidential Information:
- a) if it is required to do so by Law, government authority or court order;
 - b) to its accountants, lawyers and professional advisors on a confidential basis.
- 13.3 You agree that we may be required to intercept, monitor, retain and disclose Communications Data, Personal Information and information about Services to comply with Laws and that we may monitor usage of a Service for billing, support and operational purposes.
- 13.4 You agree that we may need to disclose Confidential Information and Personal Information to our third party suppliers to provide the Service and to meet our obligations under the Agreement. You must ensure that your End Users consent to the disclosure of their Personal Information to the extent required to provide the Service and comply with Laws.
- 13.5 Upon termination of the Agreement, at the other party's option the Recipient must return or destroy all Confidential Information of the other party except that the parties are not required to delete Confidential Information stored in backup systems that cannot be deleted or are required for audit or regulatory purposes, subject to the party continuing to treat the information as confidential.

14. Intellectual Property Rights

- 14.1 You agree that the Agreement does not transfer or assign any IPR to you and:
- a) we own all IPR in the Services, Materials and in any software underlying the Services;
 - b) you must not knowingly take any step to invalidate or prejudice our IPR.
- 14.2 As between you and us, you own all IPR in Communications Data.
- 14.3 You authorise us to publish your logo on our website or other material as an available RSP, to provide a link to your website and take such other reasonable steps as reasonably necessary for us to inform third parties of the availability of your services on our wholesale network.



15. Notices

- 15.1 Notices may be delivered by hand, post or email using the addresses set out in the Service Order, or as updated by notice to the other party from time to time.
- 15.2 Notices delivered by hand shall be deemed delivered upon the notice being left at the other party's premises.
- 15.3 Notices delivered by post shall be deemed delivered 5 Business Days after posting if posted within Australia, or 10 Business Days after posting, if posted from another country.
- 15.4 Notices delivered via email shall be deemed delivered upon the sender receiving a read receipt, delivery receipt, reply to the original email, or four hours after the email was sent unless the sender receives an automated message that the email was not delivered or that the recipient is out of office or equivalent.

16. Dispute Resolution

- 16.1 If a dispute relating to the Agreement arises between the parties (Dispute), the parties must attempt to resolve the dispute in accordance with this clause 16. Except as otherwise provided in this clause, a party must follow this clause before commencing court proceedings.
- 16.2 If a party considers a Dispute has arisen, that party must give the other party a notice that sufficiently details the Dispute and how it may be resolved (Dispute Notice). Within one week of delivery of a Dispute Notice, the parties must actively engage in efforts to resolve the Dispute. If the Dispute is not resolved within two weeks of delivery of a Dispute Notice, each party must refer resolution of the Dispute to its chief executive officer.
- 16.3 If the Dispute has not been resolved within 4 weeks of delivery of a Dispute Notice, then each party will be entitled to pursue such course of action as it determines appropriate, including commencing court proceedings.
- 16.4 Nothing in this clause limits a party's right to seek urgent interlocutory relief from any court.

17. General Provisions

- 17.1 **Variation of the Agreement:** Except as permitted under this Agreement, the Agreement or a Service Order may only be varied by written agreement.
- 17.2 **Severability:** If any provision of the Agreement is deemed invalid by a court, the remainder of the Agreement shall continue to operate and remain enforceable.
- 17.3 **Relationship of the parties:** The parties are independent contractors, this Agreement does not create any relationship of partnership, joint venture, or employer and employee.
- 17.4 **Assignment:**
 - (a) Subject to subclauses (b) and (c) neither party may assign, novate or transfer its rights or obligations under the Agreement without the prior written consent of the other party, which will not be unreasonably withheld.
 - (b) You agree that we may assign, novate or transfer our rights and obligations under the Agreement to our Related Body Corporate or to a purchaser of our business.
 - (c) We may subcontract any of our obligations under the Agreement.
- 17.5 **Jurisdiction:** The Agreement shall be interpreted in accordance with the Laws of Queensland. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.
- 17.6 **Counterparts and electronic exchange of Agreement:** The Agreement and Service Orders may be executed in counterparts and exchanged electronically by the parties.
- 17.7 **Survival:** Provisions of the Agreement that by their nature are intended to survive termination or expiry of the Agreement will survive termination or expiry of the Agreement.



SIGNED by the parties as an agreement.

SIGNED by Myport Pty Ltd ABN 32 121 129 280 trading as Gigafy
in accordance with section 127 of the Corporations Act 2001:

Signed by Director

Signed by Director/Secretary

Name of Director

Name of Director/Secretary

Date

Date

SIGNED by [insert name of RSP and its ACN]

Signed by Director

Signed by Director/Secretary

Name of Director

Name of Director/Secretary

Date

Date