# HUBIFY GENERAL TERMS

**PLEASE READ THESE GENERAL TERMS CAREFULLY AS THEY CONTAIN IMPORTANT TERMS AND CONDITIONS THAT APPLY TO YOUR HUBIFY ORDER**

## 1.      Contracts

**1.1      General Terms**

These General Terms, together with additional terms (if any) set out in an Ordering Document, apply to the supply by Hubify of Services and Deliverables. Those terms are also Hubify's "Standard Form of Agreement" for the purposes of telecommunications legislation.

**1.2      Formation of Contracts**

(a)      From time to time Hubify and the Customer may enter into an Ordering Document for the supply by Hubify of Services and Deliverables to the Customer.

(b)      Each Ordering Document forms a separate contract for the Services and Deliverables described in that Ordering Document (**Contract**) consisting of:

(i)      these General Terms (including the Schedules to these General Terms);

(ii)      the applicable Ordering Document (including the Service Schedules forming part of or attached to an Ordering Document); and

(iii)      any other documents incorporated by reference into the Ordering Document or these General Terms, or which are expressed to form part of that Ordering Document or the General Terms.

(c)      To the extent that there is any inconsistency between any of the terms in those documents listed in clause 1.2(a), the document listed first will govern to the extent necessary to resolve that inconsistency.

**1.3      No other documents**

No confirmation, shipment or delivery docket, invoice or other similar document issued by, or on behalf of the Customer or any of its Personnel (including the terms on any pre-printed purchase order form) will vary or form part of a Contract.

**1.4      Contract Term**

(a)      Except where clause 1.4(e) applies, an Ordering Document will specify whether that Contract is a Monthly Contract or a Minimum Term Contract.

(b)      The term of each Monthly Contract:

(i)      commences on the date specified in the Ordering Document that forms part of that Contract or, if no date is specified in the Ordering Document, the date on which the applicable Ordering Document was executed by the last party; and

(ii)      unless terminated sooner in accordance with the other termination rights in that Contract, will end when either party notifies the other that it wishes to terminate the Contract, which termination will take effect at the end of the billing month after the billing month in which the notice is issued.

(c)      The term of each Minimum Term Contract:

(i)      commences on the date specified in the Ordering Document that forms part of that Contract or, if no date is specified in the Ordering Document, the date on which the applicable Ordering Document was executed by the last party; and

(ii)      will automatically continue at the end of the Minimum Service Period, unless either party notifies the other at least 60 days prior to expiry of the Minimum Service Period (the **Renewal Notice Date**) that it does not wish the term to continue. Hubify will notify the Customer at least 14 days prior to the Renewal Notice Date regarding the expiry of the Minimum Service Period.

(d)      After the Renewal Notice Date:

(i)      either party may terminate the Contract by providing at least 90 days' notice to the other party (or such shorter notice period specified in an Ordering Document); and

(ii)      Hubify may increase the Charges by providing at least 90 days' notice to the Customer, in which case the Customer may terminate the Contract by providing at least 60 days' notice to Hubify.

(e) If the Services supplied under an Ordering Document are project services, resource augmentation services or other limited term services, then clauses 1.4(b), 1.4(c) and 1.4(d) will not apply and those Services will start and end at the time specified in the applicable Ordering Document.

### 1.5 Service Term

Each Service commences on the Service Start Date for that Service and, unless a Contract specifies otherwise, ends on the termination or expiry of the applicable Contract (the **Service Term**).

## 2. No representations

### 2.1 No representations

The Customer acknowledges and agrees that:

(a) each Contract sets out the entire agreement between the parties; and

(b) it has not relied on any representation, promise or statement set out in any Sales Documentation, or otherwise communicated to it by or on behalf of Hubify, except to the extent expressly included in a Contract.

## 3. Supply

### 3.1 Contracted Items

Hubify must:

(a) supply the Services to the Customer with due care and skill;

(b) supply the Services and Deliverables at, or to, the Sites (as applicable);

(c) supply Deliverables that materially conform to the Specifications; and

(d) perform its obligations using suitably qualified and experienced Personnel.

### 3.2 Resources

Each party must supply the Resources specified in a Contract as Resources to be supplied by that party.

### 3.3 Title and risk

(a) Unless otherwise specified in a Contract, title in all Deliverables that are delivered in physical form will pass to Customer on payment for that Deliverable or, in the case of Third Party Products, as specified in Schedule 1 (Third Party Supply Terms).

(b) Risk in all Deliverables will pass to the Customer on the date on which that Deliverable is supplied.

## 4. Customer obligations

### 4.1 Cooperation and access

The Customer must:

(a) provide Hubify with all information, assistance and cooperation; and

(b) provide Hubify and its Personnel with access to the Sites and the Customer Environment,

as required or reasonably requested by Hubify to enable it to perform the Services and supply the Deliverables.

### 4.2 Performance of obligations

The Customer must perform the obligations, and provide the Customer Supplied Items, specified in the applicable Contract.

### 4.3 Use of the Services

(a) When the Customer uses the Services or Deliverables the Customer must comply with:

(i) all Laws;

(ii) all directions and notices issued by an Authority;

(iii) all notices issued by authorisation of or under Law (for example, under the *Copyright Act 1968* (Cth)); and

(iv) all reasonable directions by Hubify.

(b) The Customer must not use, or attempt to use, the Services or Deliverables:

(i) to break any Law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright);

    (ii)    to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted or in any other manner in contravention of the Fair Use Policy;

    (iii)    to intentionally or knowingly expose Hubify to liability; or

    (iv)    in any way which damages, interferes with or interrupts the Services or Deliverables, Hubify's network or a supplier's network used to supply the Services or Deliverables.

(c)    Hubify may ask the Customer to stop doing something which we reasonably believe is contrary to paragraph 4.3(b) above. The Customer must immediately comply with any such request. If the Customer does not comply with a request from Hubify, then Hubify may take any steps reasonably necessary to ensure compliance with paragraph 4.3(b) above or the request.

### 4.4 Creditworthiness

(a)    Hubify may take reasonable steps to assess the Customer's creditworthiness prior to providing any Services or Deliverables or at any time during the Service Term.

(b)    The Customer must provide all information and assistance reasonably requested by Hubify to enable Hubify to undertake credit checks in accordance with its credit policies in place from time to time.

### 4.5 Customer information

The Customer agrees to supply to Hubify or Hubify's Personnel any information reasonably requested by Hubify relating to the Customer:

(a)    to assist Hubify in complying with its regulatory obligations and its obligations to report on compliance with those obligations; or

(b)    where Hubify believes on reasonable grounds that the Customer may be in breach of this Contract, to assess whether or not the Customer has complied, is complying and will be able to continue to comply with the obligations imposed on the Customer under the Contract.

## 5. Customer Supplied Items

### 5.1 Ownership

Ownership in all Customer Supplied Items remains with Customer or its lessors or licensors (as applicable).

### 5.2 Use and access

(a)    Hubify must only use or access Customer Supplied Items for the purposes of performing its obligations under a Contract.

(b)    Hubify must return all Customer Supplied Items in its possession or control, or cease accessing and using any Customer Supplied Items (as applicable), when those Customer Supplied Items are no longer required for the performance of Hubify's obligations under a Contract.

### 5.3 Customer Supplied Items

The Customer must ensure that:

(a)    it has all rights, title and interest (including Intellectual Property Rights) in the Customer Supplied Items to permit Hubify and its Personnel to access and use the Customer Supplied items for the purposes of performing its obligations under a Contract; and

(b)    the Customer Supplied Items conform to the specifications and requirements for those Customer Supplied Items specified in a Contract (or, where applicable, published by the Third Party Vendor for those Customer Supplied Items).

## 6. Third Party Supply Terms

Schedule 1 (Third Party Supply Terms) sets out additional terms that apply if an Ordering Document specifies that Hubify will supply Third Party Products.

## 7. Compliance

### 7.1 Laws

Hubify must perform the Services in accordance with all Laws and directions of relevant Authorities applicable to it as a supplier of the Services.

### 7.2 Work health and safety

If Hubify or its Personnel will be providing the Services from the Customer's premises, Hubify must comply with any reasonable policies of the Customer in relation to workplace health and safety at the Customer's premises.

**7.3    Customer Compliance**

The Customer must ensure that it complies with all applicable Laws and directions of relevant Authorities applicable to the performance of its obligations and the receipt of the Services and Deliverables under this Agreement.

## 8.    Implementation

**8.1    Implementation**

Each party must take all steps reasonably necessary to establish all capabilities, and mobilise all required Resources, to enable Hubify to supply, and the Customer to receive, the Services and Deliverables.

**8.2    Implementation Plan**

(a)    If an Ordering Document requires the development of an Implementation Plan then the parties must consult with each other and use reasonable efforts to develop and agree an Implementation Plan that is consistent with the terms of that Ordering Document and the applicable Contract.

(b)    Once an Implementation Plan has been developed and agreed, the parties must use all reasonable efforts to comply with the Implementation Plan.

**8.3    Connecting a Service**

If the Customer does not reasonably co-operate with Hubify or Hubify's Personnel to connect or enable a Service or prepare an Implementation Plan, or if the Customer fails to perform its obligations under the Implementation Plan, then Hubify may do one or more of the following:

(a)    suspend the Service under clause 25 until the time that the parties connect or enable the Service, or agree and implement an Implementation Plan; and

(b)    where the scheduled Service Start Date is not achieved as a result of the Customer's failure to co-operate or perform its obligations, Charge the Customer for that Service with effect from the scheduled Service Start Date (as adjusted to reflect any material costs avoided by Hubify because it is not required to perform the Services).

## 9.    Installation

The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with a Service and located at a Site, and otherwise perform any installation activities set out in an Ordering Document or reasonably required by Hubify.

## 10.    Carriage Services

**10.1    Application**

If the Customer orders Services or Deliverables that are carriage services (as defined in the *Telecommunications Act 1997* (Cth)) then this clause 10 will apply.

**10.2    Interception**

The Customer acknowledges that, where the Services or Deliverables are carriage service, Hubify and Hubify's Personnel, or any supplier whose network is used to supply the Services or Deliverables, may be required to intercept communications over the Services or Deliverables and may also monitor the Customer's usage of the Services or Deliverables and communications sent over it.

**10.3    Bundled Services**

(a)    Some of Hubify's Services can only be provided to the Customer if the Customer also orders related Services and Deliverables (**Bundled Services**).

(b)    If the Customer orders Bundled Services, then the Customer must continue to receive all of the Bundled Services to receive any applicable:

(i)    bundled offer pricing plan for the selected Services; or

(ii)    bundled offer discount for the selected Services.

(c)    If the Customer cancels a Bundled Service (or a component of a Bundled Service) Hubify may:

(i)    remove any bundled offer discount being applied to the remaining Bundled Services; and

(ii)    change the Customer's remaining Bundled Services onto the closest alternative current pricing offered by Hubify; or

(iii)    cancel the Customer's remaining Bundled Services if Hubify does not offer the remaining Bundled Services as a standalone item, or if there are technical or operational constraints on Hubify that prevent Hubify from

continuing to supply the Customer the remaining Bundled Service, in which case Early Termination Charges may apply.

**10.4 Loss of access to Services**

(a) The Customer must notify Hubify's Representative if the Customer cannot access or use the Services.

(b) Subject to clause 21.1, if the Customer is unable to access or use the Services, then the Customer may be entitled to a refund or a rebate of any Charges or a replacement of the affected Services, for the period in which the Customer cannot access the Services.

(c) A refund or rebate will not apply to the affected Services to the extent that the Customer is unable to access or use the affected Services due to an act or omission of the Customer or any of the Customer's Personnel, or due to a failure in a Customer Supplied Item or any part of the Customer Environment.

**10.5 Compliance with third party rules**

The Customer must comply with any rules imposed by any third party whose content or services the Customer accesses using a Service or whose network the Customer's data traverses.

**10.6 Data Charges**

Data Charges may apply to the Services and Deliverables that the Customer orders. Any applicable data Charges will be set out in the applicable Ordering Document.

**10.7 Carrier or carriage service provider**

(a) At the time of entering into an Ordering Document, the Customer must not be a carrier or a carriage service provider.

(b) If the Customer is or becomes a carrier or carriage service provider, Hubify may immediately terminate the Services and Deliverables by giving the Customer notice.

(c) If Hubify terminates the Services or Deliverables under this clause, Hubify will negotiate in good faith with the Customer to enter into an alternative agreement to supply the Services and Deliverables, on terms to be agreed.

**10.8 Transferring Services**

(a) If, in order to provide the Services to the Customer, those Services need to be transferred from another supplier, the Customer:

(i) in the case of phone numbers being ported, authorises Hubify to sign on its behalf any authority reasonably requested by the existing supplier;

(ii) must notify and provide instructions to the existing supplier to transfer the Services to Hubify; and

(iii) must pay all outstanding money to the existing supplier.

(b) If the Customer wishes to transfer the Services to another provider the Customer must provide to Hubify 30 days' written notice of its intention to transfer the Services to another supplier. Early Termination Charges may apply for any termination or cancellation of a Service.

(c) On receipt of a notice under clause 10.8(b), Hubify will provide all reasonable assistance to the Customer to transfer the Services to another provider, provided that:

(i) the Customer is not in breach of a Contract; and

(ii) the Customer has paid all of the Charges that it is required to pay to Hubify under a Contract and those Charges are not in dispute.

**10.9 Service Number Portability**

Subject to any applicable Authorisation or Law, the Customer may transfer its service number from the Customer's existing supplier to Hubify as set out in an applicable Ordering Document.

**10.10 Fair Use Policy**

The Customer must comply with, and agrees to, Hubify's Fair Use Policy in force from time to time. The Fair Use Policy is available on Hubify's website at https://www.hubify.com.au/fair-use-policy/. The Customer acknowledges that Hubify may have the right to suspend or cancel the Hubify One Services, or take other action in relation to the Hubify One Services, in accordance with the Fair Use Policy.

**10.11 Unusual Activity**

Hubify may contact the Customer if Hubify becomes aware of an unusually high use or unusual activity of the Services by the Customer (including to verify any costs or Charges which the Customer may have incurred), however Hubify is under no obligation to do so.

## 11. Changes to Services

### 11.1 Right to make changes

Hubify may change a Contract (or the Services or Deliverables supplied under it):

(a) by agreeing the change with the Customer in writing;

(b) by notice to the Customer, if the change will benefit or not adversely affect the Customer; or

(c) as otherwise required to reflect Hubify's technical and operational requirements from time to time.

### 11.2 Adverse impact

Where Hubify makes a change pursuant to clause 11.1(c):

(a) Hubify must provide the Customer with at least 60 days' notice of the change; and

(b) if the change adversely impacts the Customer, then the Customer may terminate the affected Service and Deliverables by providing at least 45 days' notice to Hubify.

## 12. Charges, invoicing and payment

### 12.1 Charges

The Customer must pay Hubify the Charges for the Services and Deliverables. The Charges will be specified in, or calculated in accordance with the methodology set out in, the applicable Ordering Document.

### 12.2 Reimbursable Expenses

A Contract may specify that Hubify may pass-through to the Customer certain costs and expenses that it reasonably incurs relating to performing its obligations under that Contract (**Reimbursable Expenses**).

### 12.3 Invoices

(a) Hubify may invoice the Customer for the Charges and Reimbursable Expenses at the time specified in the applicable Ordering Document or, if no time is specified, monthly in arrears.

(b) Each invoice must be a tax invoice for the purposes of the GST Law.

### 12.4 Payment

(a) The Customer must pay the undisputed amounts specified in each invoice within 14 days after the date of the invoice.

(b) Payment must be made by electronic transfer to the bank account nominated by Hubify or in such other manner specified in a Contract.

### 12.5 Invoice dispute

The Customer may, in good faith, dispute the validity of any invoice. If it does so:

(a) the Customer must notify Hubify of the details and the nature of the dispute prior to the date on which that invoice is payable;

(b) the Customer must pay any undisputed amounts, in accordance with clause 12.4;

(c) either party may invoke the dispute resolution procedure set out in clause 24 to attempt to resolve the dispute; and

(d) to the extent that the parties agree (or it is determined pursuant to the dispute resolution procedure) that the disputed amount is payable by the Customer, then the Customer must pay that amount to Hubify within 10 business days of that agreement or determination.

### 12.6 Late payment

(a) If the Customer does not pay an amount that is due and payable within 14 days after receiving notice that such monies are outstanding, Hubify may charge a finance charge calculated at the Interest Rate from the due date until the date the amount is paid.

(b) If the Customer fails to pay an amount that is due and payable by the due date on two or more occasions, then Hubify may withdraw any credit terms made available to the Customer.

### 12.7 Invoicing errors

The Customer must notify Hubify promptly after identifying an actual or suspected error in any invoice issued by Hubify.

### 12.8 Suspension

If the Customer does not pay an amount that is due and payable under a Contract within 14 days after receiving notice that such monies are outstanding, Hubify may suspend the performance of the Services and delivery of the Deliverables under that Contract, and under all other Contracts, until such time as the amount is paid in full.

**12.9 Changes to Charges**

Hubify may increase the Charges:

(a) under a Monthly Contract, by providing at least 90 days' notice to the Customer;

(b) after expiry of the Minimum Service Period for a Minimum Term Contract, in accordance with clause 1.4(d)(ii); and

(c) for Third Party Products, at any time in accordance with section 1.4 of Schedule 1 (Third Party Supply Terms).

## 13. GST

**13.1 Preliminary**

Words or expressions used in this clause 13 that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning given to them in that Act.

**13.2 GST exclusive consideration**

Any amount specified in a Contract Document as the consideration payable for any taxable supply does not include any GST payable in respect of that supply unless that Contract Document specifically states that GST is included in that amount.

**13.3 Liability to pay GST**

If:

(a) a party makes a taxable supply under a Contract Document (**Provider**); and

(b) the consideration for that taxable supply is not expressed as including GST,

then the recipient of the taxable supply (**Taxable Supply Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

**13.4 Tax invoice**

The Taxable Supply Recipient is not obliged under a Contract Document to pay the amount of any GST payable until the Provider provides it with a valid tax invoice for the taxable supply.

**13.5 Adjustment event**

If an adjustment event arises in relation to a taxable supply made by a Provider under a Contract Document, the amount paid or payable by the Taxable Supply Recipient under clause 13.3 will be amended to reflect this and a payment will be made by the Taxable Supply Recipient to the Provider or vice versa as the case may be.

**13.6 Reimbursement**

If one of the parties is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with a Contract Document, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

## 14. Intellectual Property Rights

**14.1 Pre-existing IPR**

Ownership of:

(a) Pre-existing Hubify IPR, whether or not embedded in a Deliverable, remains with Hubify or its licensor; and

(b) Pre-existing Customer IPR, remains with the Customer or its licensor.

**14.2 Developed IPR**

Except to the extent that a Contract Document specifies that the Customer will own Developed Material developed under that Contract, Hubify will own all IPR in Developed Material, and the Customer assigns to Hubify, all existing and future IPR it may have in the Developed Material.

**14.3 Customer Licence**

The Customer grants to Hubify and its Personnel a non-exclusive licence to use, reproduce and Enhance:

(a) the Customer Supplied Items; and

(b) the Pre-Existing Customer IPR and any Developed Materials owned by the Customer,

but only for the purpose of, and to the extent necessary for, the performance of Hubify's obligations under a Contract.

**14.4 Hubify Licence**

(a) Subject to clause 14.4(b), Hubify grants to the Customer a non-exclusive licence to:

(i) use the Deliverables (but excluding Third Party Products) during the term of the applicable Contract; and

(ii) use the Pre-Existing Hubify IPR and any Developed Materials owned by Hubify (but in each case excluding any Third Party Products) during the term of the applicable Contract, but only to the extent necessary to obtain the benefit of the Services and Deliverables.

(b) Hubify may grant to the Customer additional or alternative rights relating to certain Deliverables by specifying those tights in an Ordering Document.

**14.5 Third Party Products**

To the extent that Hubify supplies, or procures the supply of, Third Party Products, the scope of any licence for those Third Party Products will be limited to the scope of licence granted by the third party licensor as further described in Schedule 1 (Third Party Supply Terms).

## 15. Confidentiality

**15.1 Confidentiality**

(a) Each party (**Recipient**) must keep confidential, and not use or disclose, other than as permitted by a Contract Document, any Confidential Information of the other party (**Disclosing Party**).

(b) The Recipient must take all reasonable steps to safeguard the confidentiality of the Confidential Information of the Disclosing Party.

**15.2 Permitted disclosures**

(a) The Recipient may disclose Confidential Information of the Disclosing Party to those of its Personnel:

(i) that need to know for the Recipient to exercise any of its rights or perform any of its obligations under a Contract Document (and only to the extent that they need to know); and

(ii) that have entered into a confidentiality agreement with the Recipient containing terms protecting the Confidential Information of the Disclosing Party which are no less onerous than this clause 15.

(b) The Recipient must ensure that the Confidential Information of the Disclosing Party is kept confidential by any person to whom it discloses that information.

**15.3 Exclusions**

The obligations in clause 15.1 do not apply to Confidential Information that is:

(a) required to be disclosed by applicable Laws or the rules of any stock exchange upon which the Recipient's or any of its Related Entities' securities are listed;

(b) in the public domain otherwise than as a result of a breach of a Contract Document or another obligation of confidence;

(c) created by the Recipient (whether alone or jointly with any person) independently of the Disclosing Party's Confidential Information; or

(d) already known, or rightfully received, by the Recipient independently of its involvement in a Contract Document or its interaction with the Disclosing Party and free of any obligation of confidence.

## 16. Publicity

**16.1 No publicity**

(a) Subject to clause 16.1(b) a party must not make any press or other announcement or release relating to a Contract without the prior written consent of the other party.

(b) Clause 16.1(a) does not apply:

(i) to any announcement or press release that is required by Law or the rules of a stock exchange on which the securities of a party or its Related Entities are listed; or

(ii) to prevent Hubify from including a reference to the Customer (as being a customer of Hubify) in its marketing or sales materials.

## 17. Customer Data

### 17.1 Limited right to access and use

(a) To the extent that Hubify stores any Customer Data, Hubify will maintain reasonable safeguards for protection of the security and confidentiality of the Customer Data, including measures designed to prevent unauthorised access to, or disclosure of, Customer Data.

(b) Hubify will only use or access the Customer Data for the purposes of performing Hubify' obligations or exercising Hubify' rights under this Contract or any other contract between Hubify and the Customer (or any of its Affiliates).

(c) Hubify may:

    (i) disclose or transfer any Customer Data to any of its Personnel; or

    (ii) otherwise allow any of its Personnel to access any Customer Data that Hubify hosts or stores,

to the extent that it is necessary for the purpose of performing Hubify' obligations or exercising Hubify' rights under this Contract.

(d) On termination or expiry of a Contract, if requested by the Customer (but subject to clause 17.1(e)), Hubify will perform services to assist the Customer to transfer Customer Data stored by Hubify to the Customer or to a third party service provider in accordance with Hubify's standard processes (**Data Transfer Services**), subject to the payment by the customer of Charges for the Data Transfer Services. The Charges for the Data Transfer Services will be based on Hubify's then current rates but will not exceed one month's Charges for the Services under that Contract.

(e) Hubify is not required to perform the Data Transfer Services:

    (i) if Hubify terminates or has a right to terminate a Contract in accordance with clause 26.1; or

    (ii) if Hubify has suspended, or has a right to suspend, the Services in accordance with clause 25 (but only for the duration of the suspension or while the right to suspend exists (as applicable)).

(f) After the date on which a Contract expires or terminates, Hubify will have no obligation to the Customer to maintain or provide any Customer Data, and may delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, except to the extent it is required by law to retain Customer Data.

## 18. Privacy

(a) Each party must comply with all applicable Privacy Laws in relation to any Personal Information that is collected, stored, used, disclosed or otherwise dealt with under or in connection with this Agreement.

(b) To the extent the Customer discloses any Personal Information to Hubify, the Customer warrants that it has given all necessary notifications and has obtained all necessary consents required to disclose that information to Hubify and to enable its lawful use by Hubify.

## 19. Warranty

Each party represents and warrants that it has the requisite power and authority to enter into each Contract t and to carry out the obligations contemplated by that Contract.

## 20. IPR infringement

### 20.1 Customer IPR Claim

If a Customer IPR Claim occurs, then:

(a) the Customer must comply with the procedures in clause 20.3; and

(b) provided that the Customer has complied with paragraph (a), Hubify indemnifies the Customer against:

    (i) any damages awarded by a Court in determination of, or amounts paid in settlement of, a Customer IPR Claim;

    (ii) legal costs reasonably and properly incurred by Customer in relation to the Customer IPR Claim; and

    (iii) the Customer's reasonable costs of providing the assistance in clause 20.3(d).

### 20.2 Hubify IPR Claim

If a Hubify IPR Claim occurs, then:

(a) Hubify must comply with the procedures in clause 20.3; and

(b) provided that Hubify has complied with paragraph 20.2(a), the Customer indemnifies Hubify against:

    (i) any damages awarded by a Court in determination of, or amounts paid in settlement of, a Hubify IPR Claim;

    (ii) legal costs reasonably and properly incurred by Hubify in relation to the Hubify IPR Claim; and

(iii)   Hubify's reasonable costs of providing the assistance in clause 20.3(d).

## 20.3   Indemnity procedures

The indemnities given in this clause 20 are subject to:

(a)   the indemnified party giving the indemnifying party prompt notice, in writing, of the details of the claim after it becomes aware of the claim;

(b)   the indemnifying party having sole conduct and control of any claim or action which is within the scope of the indemnity including any related settlement negotiations;

(c)   the indemnified party not making any prejudicial statement in relation to the claim provided that nothing in this clause limits any disclosure required to be made by a party by any Law including without limitation by the listing rules of any applicable stock exchange; and

(d)   the indemnified party giving the indemnifying party all reasonable assistance in connection with the claim or action (in which case, the indemnifying party shall pay the indemnified party's reasonable costs).

## 20.4   Replacement of Deliverables

If Hubify becomes aware of a Customer IPR Claim or that a Customer IPR Claim may arise, Hubify may in its sole and exclusive discretion (and at no cost to the Customer):

(a)   modify or replace the Service or Deliverable or both, so that it is no longer subject to the Customer IPR Claim or potential Customer IPR Claim (but continues to meet the requirements of a Contract);

(b)   obtain a licence for the Customer's continued use of the Services Deliverable in accordance with the applicable Contract; or

(c)   if Hubify is unable to do the things specified in clause (a) or (b) despite using commercially reasonable endeavours, then either party may terminate the Contract as it relates to the affected Services and Deliverables on 30 days' written notice to the other party, in which case Hubify must refund the Customer any amounts paid for those Services and Deliverables in respect of the period after termination, and must take all reasonable steps to mitigate the impact on the Customer.

## 21.   Liability

### 21.1   Consumer Guarantees

(a)   Under the Australian Consumer Law (**ACL**), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services. Nothing in a Contract operates to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any guarantee, condition, warranty or other term, or right or remedy, imposed or implied by statute or otherwise at Law (including the ACL) and which cannot be excluded, restricted or modified.

(b)   If Hubify fails to comply with a statutory guarantee which by law may not be excluded, then to the extent the law permits Hubify to limit its liability in respect of such failure, Hubify's liability is limited to:

(i)   in relation to services:

(A)   re-performance of the services; or

(B)   the payment of the cost of having the Services re-performed; and

(ii)   in relation to goods:

(A)   the replacement or resupply of the goods; or

(B)   the repair of the goods; or

(C)   the payment of the cost of having the goods replaced or repaired.

### 21.2   Exclusion of Excluded Loss and limitation of liability

Except for liability to which clause 21.1 applies and subject to clause 21.3, and except where to do so would contravene any Law or cause any part of this clause 21.2 to be void or unenforceable, each party:

(a)   excludes any and all liability to the other party for any and all Excluded Loss; and

(b)   limits its liability for Losses in connection with a Contract to the amount of Charges paid by the Customer under that Contract in the 12 months prior to the acts or omissions giving rise to those Losses.

### 21.3   Exceptions

The exclusions and limitations of liability in clause 21.2, do not apply to:

(a)     the Customer's liability to pay the Charges;

(b)     the liability of a party for injury to or death of any person, or for loss of or damage to any tangible property;

(c)     liability for breach of clause 15 (Confidentiality);

(d)     liability under the indemnities in clause 20.1(b) and clause 20.2(b); and

(e)     liability of a party for fraud.

**21.4    Liability reduced by other party's fault**

Each party's liability to pay Losses to the other party in connection with a Contract is reduced to the extent the liability was caused by the other party or any of its Personnel.

**21.5    Implied terms**

Except where clause 21.1(a) applies, to the extent permitted by Law, Hubify excludes all guarantees, conditions, warranties, guarantees and other terms that may be imposed or implied by statute or otherwise at Law.

## 22.    Insurance

Hubify must effect and maintain until all Contracts have expired or been terminated the following insurance coverage:

(a)     professional indemnity cover for not less than $10 million per occurrence and in the aggregate;

(b)     public and products liability cover for not less than $20 million per occurrence and in the aggregate;

(c)     workers' compensation insurance as required by Law; and

(d)     any other insurance required by Law in the jurisdiction in which Hubify is performing the Services.

## 23.    Force Majeure Event

**23.1    Force Majeure Event**

(a)     If a party is wholly or partially unable to perform its obligations under a Contract because of a Force Majeure Event (**Affected Party**), then:

(i)     the Affected Party must notify the other party of the extent to which the Affected Party is unable to perform its obligations;

(ii)    the Affected Party must use commercially reasonable endeavours to mitigate the effect of the Force Majeure Event; and

(iii)   the Affected Party will not be liable to the other party for Losses the other party suffers or incurs as a result of that Force Majeure Event.

(b)     If a delay or failure to perform resulting from a Force Majeure Event continues or is likely to continue for more than 30 days, either party terminate the affected Contract, in which case neither party will be liable for any Losses of the other party caused by the termination.

## 24.    Complaints

**24.1    Making complaints**

(a)     The Customer may make a complaint in relation to the Services or Deliverables in accordance with Hubify's Complaints Policy, as made available on Hubify's website at https://www.hubify.com.au/wp-content/uploads/2021/10/Customer-Complaints-Policy.pdf.

(b)     Hubify will handle complaints in accordance Hubify's Complaints Policy.

**24.2    Financial Hardship Policy**

Hubify's Financial Hardship Policy contains information about how Hubify assists Customers that are experiencing financial hardship. Customers can access a copy of Hubify's Financial Hardship on Hubify's website at https://www.hubify.com.au/wp-content/uploads/2021/10/Financial-Hardship-Policy.pdf.

## 25.    Suspension

(a)     Hubify may suspend the performance of the Services under a Contract by providing notice to the Customer:

(i)     in accordance with clause 12.8;

(ii)    if an act or omission of the Customer or any of its Personnel:

(A)     causes, or may cause, Hubify to breach any Law or obligation owed to a third party; or

(B)      gives rise to a Hubify IPR claim;

(iii)   if a Service Start Date is delayed due to a failure of the Customer to meet its obligations relating to Implementation;

(iv)   if required by Law or by order or direction of an Authorisation;

(v)    if there is an emergency or a Force Majeure Event;

(vi)   if the Customer commits an act of fraud or Hubify reasonably suspects that the Customer has or will commit an act of fraud in connection with this Agreement or the Services;

(vii)  if Hubify determines that the Customer represents a credit risk and the Customer is unable to address Hubify's reasonable concerns within 14 days of receipt of a notice requiring it to do so; or

(viii) if the Customer commits persistent breaches of a Contract or otherwise misuses the Services or Deliverables.

(b)   Hubify will provide at least 5 business days' advance notice of any suspension where required by law or where it is practicable to do so. Any suspension pursuant to this clause will continue until as soon as practicable after Hubify is satisfied that the cause of the suspension no longer applies (or such earlier date notified by Hubify).

## 25.2    Consequences of Suspension

If the Services or Deliverables (or a component of the Services or Deliverables) are suspended in accordance with clause 25 above as a result of a breach of Contract or other wrongful act or omission of the Customer, then the Customer may be required to pay Hubify's costs of the resumption of Services as set out in the applicable Ordering Form or otherwise notified by Hubify (acting reasonably).

## 26.    Termination

### 26.1    Termination of a Contract by Hubify

Hubify may terminate a Contract or cancel one or more Services or Deliverables supplied under a Contract by providing notice to the Customer if:

(a)   the Customer commits a material breach of that Contract which is not capable of remedy;

(b)   the Customer commits a material breach of that Contract which is capable of remedy and fails to remedy the breach within 30 days of receiving notice requiring it to do so;

(c)   the Customer has failed to pay Charges due and payable under this Agreement and has not rectified that failure within 30 days of receipt of a notice requiring it to do so;

(d)   Hubify has suspended the Services in accordance with clause 25 for a period of 14 days or more, or has issued two or more suspension notices in accordance with clause 25 in any rolling 12 month period, in each case where the suspension is a result of a breach of Contract or other wrongful act or omission of the Customer;

(e)   the Customer suffers an Insolvency Event; or

(f)    in accordance with any additional termination right set out in an Ordering Document.

### 26.2    Termination of Contract by Customer

The Customer may terminate a Contract by providing notice to Hubify if:

(a)   Hubify commits a material breach of that Contract which is not capable of remedy;

(b)   Hubify commits a material breach of that Contract which is capable of remedy and fails to remedy the breach within 30 days of receiving notice requiring it to do so;

(c)   Hubify suffers an Insolvency Event; or

(d)   in accordance with any additional termination right set out in an Ordering Document.

### 26.3    Early Termination Charges

A Contract may specify Early Termination Charges that are payable if a Contract (or a Service or Deliverable supplied under it) is terminated or cancelled prior to expiry of the Minimum Service Period by Hubify as a result of a breach of Contract or other wrongful act or omission of the Customer, or by the Customer in circumstances where there is no breach of Contract or other wrongful act or omission of Hubify. The Customer must pay any such Early Termination Charges in the circumstances set out in, and in accordance with, the applicable Contract.

## 27.    Consequences of termination

### 27.1    Obligations

If a Contract terminates or expires, then:

(a) each party must return or destroy any Confidential Information of the other party in its possession or control, except where and to the extent it is required to retain that information to comply with Law or its internal management obligations; and

(b) the parties must comply with any obligations relating to the handover of the Services and Deliverables specified in a Contract.

## 27.2 Accrued rights and remedies, no merger

(a) The rights and obligations of the parties under a Contract do not merge on completion of any transaction contemplated by that Contract.

(b) Except as expressly set out in a Contract, any termination or expiry of a Contract, in its entirety or as it relates to one or more Services and Deliverables, will not prejudice any right of action or remedy which may have accrued to either party prior to that expiry or termination.

## 27.3 Survival

Any term by its nature intended to survive termination or expiry of a Contract survives that termination or expiry, including clauses 14, 15, 16, 17, 20, 21, 22 and 24.

## 28. Non Solicitation of Employees

(a) The Customer must not, at any time prior to the date that is 12 months after the date on which the last Contract expires or is terminated:

(i) directly or indirectly solicit for employment, employ, engage the services or otherwise contact any of the Hubify Personnel who have been engaged to provide such Services; or

(ii) induce or encourage any of the Hubify Personnel to end their employment or engagement with Hubify.

(b) If the Customer breaches clause 28(a) then:

(i) if required by Hubify, the Customer must pay Hubify (as a liquidated damage) an amount equal to 30% of the annual base compensation of the member of Hubify's Personnel that ceases their employment or engagement with Hubify as a result of that breach; and

(ii) except where Hubify elects to receive the liquidated damage specified above, Hubify may pursue any remedy available to it, including seeking an injunction to restrain the breach or its consequences.

## 29. Novation

## 29.1 Novation

Hubify may at any time novate this agreement to:

(a) a Related Entity of Hubify; or

(b) an entity that has purchased all or any part of Hubify's assets or business, or to which all or any part of Hubify's assets or business have or will be transferred,

(a **New Supplier**) and the Customer irrevocably consents to any such novation, provided that:

(c) the New Supplier has the required capabilities and resources to perform the obligations of Hubify under each Contract; and

(d) following the novation, the Customer and the New Supplier are parties to a contract on the same terms and conditions as each Contract.

## 29.2 Further action

The Customer must promptly sign any documents (including one or more contracts with the New Supplier) and take such other steps reasonably requested by Hubify or the New Supplier in connection with a novation in accordance with clause 29.1. The parties agree that a failure by the Customer to comply with this clause 29.2 will constitute a material breach of this Contract.

## 29.3 Customer Novation

The Customer may at any time novate this agreement to:

(a) a Related Entity of the Customer; or

(b) an entity that has purchased all or any part of the Customer's assets or business, or to which all or any part of Customer's assets or business have or will be transferred,

with Hubify's prior written consent, such consent not to be unreasonably withheld.

## 30.      Notices and communications

### 30.1    Notice requirements

Any notice, demand, approval, consent or other communication under a Contract Document (**Notice**) must be in writing and must be delivered:

(a)    by email; or

(b)    by regular post (or airmail if posted to or from a place outside Australia),

to a party at:

(c)    the address of the party set out in the Ordering Document; or

(d)    such other contact details as the party may from time to time notify to the other party for the purposes of, and in accordance with this clause 30.1.

### 30.2    When Notices considered given and received

A Notice given in accordance with clause 30.1 takes effect when received (or such later time as specified in it), and is taken to be received:

(a)    if posted within Australia by regular post, at 9:00 am on the sixth Business Day after the date of posting;

(b)    if sent to a place outside Australia by airmail, at 9.00 am on the tenth Business Day after the date of posting;

(c)    if sent from a place outside Australia by airmail, at 9.00 am on the twelfth Business Day after the date of posting; or

(d)    if sent by email at the time the sender's information system (as that term is defined in the *Electronic Transactions Act 2000* (NSW)) recorded that email left the sender's information system unless, within four Business Hours after that time, the sender is informed (by automatic notice or otherwise) that the email has not been received by the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day after that delivery, receipt or transmission.

## 31.      Miscellaneous

### 31.1    Governing law and jurisdiction

(a)    Each Contract is governed by the law in force in the State of New South Wales, Australia.

(b)    Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of New South Wales, Australia and the courts having appeal from them.

### 31.2    Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of a Contract.

### 31.3    Severance

If a provision in a Contract is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from a Contract for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of a Contract.

### 31.4    Waiver

(a)    A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.

(b)    A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.

(c)    A waiver given by a party in accordance with clause 31.4(a):

(i)     is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and

(ii)    does not preclude that party from enforcing or exercising any other right, remedy or power under a Contract nor is it to be construed as a waiver of any other obligation or breach.

### 31.5    Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to a Contract and the transactions contemplated by it.

### 31.6    Counterparts

A Contract may be executed in any number of counterparts. Each counterpart is deemed to be an original and all counterparts taken together constitute one document.

**31.7    Electronic execution**

The parties agree that:

(a)    a party may electronically sign an electronic copy of a Contract and any variations or amendments to it via DocuSign or a similar application and bind itself accordingly;

(b)    the written agreement that a document may be electronically signed as contemplated in clause 31.7(a) may itself be electronically signed via DocuSign or a similar electronic signature solution or software approved by Hubify from time to time;

(c)    electronically signing a document in accordance with clause 31.7(a) will satisfy all other requirements for a document to be in writing and signed by that party; and

(d)    an electronic copy of a document signed electronically in accordance with clause 31.7(a) will constitute an executed original counterpart print-out of the electronic original counterpart.

**31.8    Relationship of the parties**

The Customer acknowledges and agrees that:

(a)    Hubify will supply the Services and Deliverables as an independent contractor; and

(b)    a Contract does not create a relationship of employer and employee, principal and agent, or partnership between Hubify and the Customer or any of its Personnel.

## 32.    Definitions and interpretation

**32.1    Definitions**

In a Contract, unless the context requires otherwise:

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| **Authorisation** | means any approval, exemption, permit, registration, clearance or waiver from an Authority and any renewal or variation of any of them. |
| **Authority** | means any government, government department, government body or instrumentality or any other public authority or statutory body which has relevant jurisdiction. |
| **Business Day** | means a day other than a Saturday, Sunday or public holiday in New South Wales. |
| **Business Hour** | means each period of 60 consecutive minutes between 9.00am to 5.00pm on a Business Day. |
| **Charges** | means the fees and charges for the Services and Deliverables specified in, or calculated in accordance with, an Ordering Document, and includes Reimbursable Expenses and Early Termination Charges. |
| **Claim** | means any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action). |
| **Confidential Information** | of a person, means all information, regardless of the form of disclosure or the medium used to store it, and whether created or disclosed prior or subsequent to the execution of a Contract: |
| | (a)    that is treated or designated by that person as confidential; or |
| | (b)    which the person to whom it is disclosed ought to reasonably know is confidential, |
| | and, in the case of Hubify, includes the terms of each Contract and their respective subject matter. |
| **Contract** | has the meaning given to that term in clause 1.2(a). |
| **Control** | means 'control' as defined in section 50AA of the *Corporations Act 2001* (Cth). |
| **Customer** | means the party set out in the Ordering Document. |
| **Customer Data** | data relating to the Customer and its business, operation, suppliers and customers that is collected or generated by, or provided to, Hubify in the course of performing the Services and delivering the Deliverables. |

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| **Customer Environment** | means the information technology and telecommunications services, infrastructure, systems and software used by the Customer. |
| **Customer Group** | means the Customer and each Related Entity of the Customer. |
| **Customer IPR Claim** | means a claim by a third party that Materials supplied to Customer by Hubify under a Contract infringes the Intellectual Property Rights of any person, but excluding any claim arising from: |

(a) improper use of those Materials by the Customer or a third party;

(b) the Customer's failure to comply with any reasonable directions for the use of those Materials provided by Hubify in writing;

(c) the Enhancement of those Materials by the Customer or a third party without Hubify's prior approval;

(d) the combination of those Materials with any Materials that were not supplied by Hubify; or

(e) Customer Supplied Items.

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| **Customer Supplied Items** | means the software (including software licences), hardware, equipment, services, or other items (including Third Party Products) supplied, owned, leased or licensed by Customer and made available to Hubify (or, as the context requires, required to be made available to Hubify) to enable Hubify to perform the Services and deliver the Deliverables. |
| **Deliverable** | means an item supplied (or to be supplied, as the context requires) by or on behalf of Hubify, as specified in an Ordering Document. |
| **Developed Material** | means any Material created or developed by Hubify in the course of performing the Services but excludes Pre-existing Hubify IPR or Pre-Existing Customer IPR. |
| **Direct Supply** | has the meaning given in clause 1.3(b) of Schedule 1 (Third Party Supply Terms). |
| **Document Deliverable** | means a Deliverable that is a document, whether in physical or electronic form. |
| **Documentation** | means any user manual or other operational documentation provided by (as applicable) the manufacturer of hardware, the licensor of software or the supplier of cloud services. |
| **Early Termination Charges** | means the charges that the Customer must pay Hubify if a Contract or a Service or Deliverable is terminated prior to the expiry of a Minimum Service Period, as specified in the applicable Contract. |
| **Enhancement** | of Material means a customisation, modification, adaptation, enhancement or derivative work of that Material. **Enhance** has a corresponding meaning. |
| **Excluded Loss** | means: |

(a) any loss of profit, loss of revenue, loss of anticipated savings, loss of goodwill, business interruption, loss of use, loss of data, loss of opportunity, economic loss or aggravated, punitive or exemplary damages; and

(b) any special, incidental, indirect or consequential loss or damage,

arising out of or in connection a Contract, and whether arising in contract, tort (including negligence) or under any statute or under any other cause of action.

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| **Facilitated Supply** | has the meaning given in clause 1.3(a) of Schedule 1 (Third Party Supply Terms). |
| **Force Majeure Event** | means any: |

(a) flood, earthquake or act of God;

(b) riot, civil disorder, rebellion or revolution, war, terrorism, civil war, sabotage, national emergency (whether in fact or law), imposition of martial law, or any other unlawful act against public order or authority;

(c)    natural disasters and adverse weather conditions, including fires, floods, tsunamis, earthquakes, landslides, storms, cyclones;

(d)    epidemics, pandemics, quarantines, radiation and contamination;

(e)    circumstance where restrictions come into effect under the *Public Health Act 2010* (NSW), the *Biosecurity Act 2015* (Cth) or any other applicable Law relating to a disease, sickness or health condition;

(f)    boycotts, strikes and other labour difficulties (other than difficulties caused by or solely impacting the non-performing party); and

(g)    ongoing third party data, internet or telecommunications outage (but excluding any outage caused by the non-performing party or its subcontractors),

and any other act or event (other than lack of available funds) beyond the reasonable control of the non-performing party.

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| **GST** | has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). |
| **Hubify** | means Hubify Communications Pty Ltd ABN 50 166 679 894. |
| **Hubify Group** | means Hubify and each of its Related Entities from time to time. |

**Hubify IPR Claim**    means a claim by a third party that Hubify's access to or use of any Customer Supplied Items or any other Materials made available by the Customer infringes the Intellectual Property Rights of any person, but excluding any claim arising from:

(a)    improper use of those Materials by Hubify; or

(b)    Hubify's failure to comply with any reasonable directions for the use of those Materials provided by the Customer in writing.

**Insolvency Event**    means any one or more of the following events occurring in respect of a person:

(a)    a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation, which, in the case of a party, is on terms which have been previously approved in writing by the other party);

(b)    a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of that person;

(c)    a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of that person;

(d)    that person makes any composition or arrangement or assignment with, or for the benefit of, its creditors;

(e)    that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;

(f)    that person ceases, or threatens to cease, to carry on its business;

(g)    that person becomes unable to pay its debts as and when they become due; or

(h)    any event analogous or equivalent to the events described in paragraphs (a) to (g) occurs in respect of that person.

**Intellectual Property Rights or IPR**    means all intellectual property rights and related rights, anywhere in the world, registered or unregistered, including the following rights:

(a)    patents, copyright (including software), rights in circuit layouts, registered designs, trade marks, know-how, inventions and the right to have confidential information kept confidential; and

(b)    any application or right to apply for registration or grant of any of the rights referred to in paragraph (a).

**Law**    means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction.

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| **Loss or Losses** | means all liabilities, losses, damages, costs and expenses suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute or under any other cause of action. |
| **Material** | means any tools, methodologies, databases, software, firmware, documentation or other material in whatever form. |
| **Minimum Service Period** | means the minimum service period applicable under a Contract, as specified in an Ordering Document. |
| **Minimum Term Contract** | means a Contract that has a Minimum Service Period and whose term is as determined in accordance with clause 1.4(c).. |
| **Monthly Contract** | means a Contract with no Minimum Service Period and whose term is as determined in accordance with clause 1.4(b). |
| **Ordering Document** | means any application form, order form, Statement of Work or other ordering document in the form adopted by Hubify from time to time. |
| **Personal Information** | has the meaning given to that term in the *Privacy Act 1988* (Cth). |
| **Personnel** | of a person means the officers, employees, contractors and agents of that person or any of its Related Entities. |
| **PPSA** | means the *Personal Property Securities Act 2009* (Cth). |
| **Pre-Existing Customer Material** | means:<br>(a)  Material developed or created by the Customer before the effective date of the Master Services Agreement or independently of a Contract Document; and<br>(b)  any Enhancements of that Material. |
| **Pre-Existing Hubify Material** | means:<br>(a)  Material developed or created by Hubify before the effective date of the Master Services Agreement or independently of a Contract Document; and<br>(b)  any Enhancements of that Material. |
| **Privacy Laws** | means the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles. |
| **Reimbursable Charges** | has the meaning given to that term in clause 12.2. |
| **Related Entity** | for an entity means any entity which:<br>(a)  Controls the first entity;<br>(b)  the first entity Controls; or<br>(c)  is under common Control with the first entity. |
| **Third Party Products** | means a Third Party Product supplied by Hubify as part of the Services or Deliverables. |
| **Representative** | for a party means the person listed for that party in the Agreement Details. |
| **Resources** | means Personnel, Materials, facilities, accommodation, equipment, hardware, systems, products, and any other resources of any kind. |
| **Sales Documentation** | any proposals, marketing materials, sales or promotional materials, or any other documentation or correspondence exchanged by the parties prior to the execution of a Contract Document. |
| **Services** | means the services to be performed or delivered by Hubify, as specified in an Ordering |

Document, and includes supply of the Deliverables.

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| **Service Start Date** | for Services, means the date specified in the applicable Contract as the 'service start date' or otherwise specified as the date on which those Services are due to commence. |
| **Service Term** | means the term for a Service as determined in accordance with clause 1.5. |
| **Site** | means a site at, or to which, Services or Deliverables are to be supplied, as described in the applicable Contract. |

**Specifications**

(a) for a Deliverable (other than Third Party Products), means any functional, technical or performance specifications specified for that Deliverable in the applicable Contract Document; and

(b) for Third Party Products, means the applicable specifications set out in any Documentation supplied by the third party manufacturer.

**Third Party Products**    means any product (including software (and any related services), cloud software, equipment and hardware) or other Material the Intellectual Property Rights in which are owned by a third party, or which are manufactured or supplied by a third party.

**Third Party Vendor**    means the supplier of a Third Party Product and refers to (as applicable):

(a) the manufacturer or distributor of hardware or equipment;

(b) the licensor of software; or

(c) the supplier of cloud or SaaS software or services.

**Vendor Terms**    the Third Party Vendor's terms and conditions that apply to Third Party Products.

## 32.2    Interpretation

In a Contract, unless the contrary intention appears:

(a) headings and italicised, highlighted or bold type do not affect the interpretation of that Contract;

(b) the singular includes the plural and the plural includes the singular;

(c) other grammatical forms of a word or phrase defined in a Contract Document have a corresponding meaning;

(d) a reference to a 'person' or 'entity' includes any individual, firm, company, partnership, joint venture, unincorporated body or association, trust, corporation or other body corporate and any Authority;

(e) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;

(f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 32.2(f) implies that performance of part of an obligation constitutes performance of the obligation;

(g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, a Contract and a reference to a Contract includes any clause, annexure, exhibit and schedule;

(h) a reference to a document (including a Contract) includes all amendments or supplements to, or replacements or novations of, that document;

(i) a reference to a party to any document includes that party's successors and permitted assigns;

(j) a reference to time is to Sydney, Australia time;

(k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;

(l) a reference to a body, other than a party to a Contract (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

(m) a provision of a Contract may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of a Contract or the preparation or proposal of that provision;

(n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in a Contract Document do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

(o) a reference to '$', 'A$', 'AUD', 'dollars' or 'Dollars' is a reference to Australian dollars; and

(p)     a reference to a Uniform Resource Locator or any other link which ceases to exist (**Discontinued Link**) is a reference to the new Uniform Resource Locator or link where the content (or any replacement of that content) that was the subject of the Discontinued Link is accessible.

# Schedule 1    Third Party Supply Terms

## 1.    General

### 1.1    Application

This Schedule 1 (Third Party Supply Terms) is incorporated into and forms part of a Contract if the Ordering Document for that Contract specifies that Hubify will supply Third Party Products.

### 1.2    Supply of Third Party Products

Hubify will make the Third Party Products specified in an Ordering Document available to the Customer in accordance with the terms of the applicable Ordering Document and this Contract. Hubify will also supply any Documentation relating to the Third Party Products made available by the Third Party Vendor.

### 1.3    Supply arrangements

Hubify may supply Third Party Products to the Customer:

(a)    by procuring that a third party enter into a Contract with the Customer for those Third Party Products (a **Facilitated Supply**) - see further section 2 below; or

(b)    by itself contracting with a third party for the Third Party Products and then on-supplying those Third Party Products to the Customer (a **Direct Supply**) - see further section 3 below.

### 1.4    Pricing

(a)    The Charges for Third Party Products will be as specified in the applicable Ordering Document.

(b)    The Customer acknowledges and agrees that the fees or charges for Third Party Products may be increased by a Third Party Vendor during a Contract Term, and that such increase may be passed through to the Customer, subject to paragraph (c) below.

(c)    To the extent that any increase referred to in paragraph (b) is material and is not contemplated by the pricing terms in a Contract or in the applicable Vendor Terms, then:

(i)    Hubify will provide the Customer with reasonable notice of the increase (having regard to the amount of notice provided to Hubify by the Third Party Vendor);

(ii)    the parties must discuss the increase and its impact on the Charges and the Services and Deliverables in good faith; and

(iii)    if requested by the Customer, Hubify must use reasonable endeavours to identify and propose an alternative to the affected Third Party Products to attempt to minimise the impact on the Customer.

### 1.5    Title in Third Party Products

(a)    Notwithstanding delivery and passing of risk, title in any tangible Third Party Products (including hardware and equipment) shall pass to the Customer on the later of:

(i)    the time on which title passes pursuant to any applicable Vendor Terms; and

(ii)    the date on which the Customer has paid all monies owed by it to Hubify relating to those Third Party Products.

(b)    In the event of non-payment of Charges by the Customer, or if the Customer experiences an Insolvency Event, Hubify and (if applicable) the Third Party Vendor is granted a right of access and entry into the Customer's Sites for the limited right to recover the Third Party Products in respect of which title has not transferred to the Customer.

(c)    The Customer shall not encumber or otherwise transfer title or ownership of Third Party Products until title has passed to the Customer, and any such purported encumbrance or transfer of ownership shall be null and void.

### 1.6    Personal Property Securities Act 2009 (Cth)

(a)    A term used in this clause 1.6 has the same meaning as in the PPSA.

(b)    If Hubify determines that a Contract is or contains a Security Interest, the conditions in this clause will apply to the applicable Contract.

(c)    The Customer acknowledges that:

(i)    a Contract may constitute a security agreement which creates a Security Interest in favour of Hubify with respect to Third Party Products; and

(ii)    Vendor Terms may constitute a security agreement which creates a Security Interest in favour of a Third Party Vendor with respect to Third Party Products.

(d) If required, the Customer agrees to grant a PMSI in Third Party Products to Hubify and/or a Third Party Vendor.

(e) The Customer agrees that the PMSI has attached to all Third Party Products now or in the future supplied to the Customer.

(f) The Customer agrees, until title in the Third Party Products pass to it, to keep all Third Party Products free of any charge, lien or security interest except as created under a Contract and not otherwise deal with the Third Party Products in a way that will or may prejudice the rights of Hubify or a Third Party Vendor under a Contract or the PPSA.

(g) The Customer undertakes to (at its cost) sign any further documents, take any further actions or provide any further information which Hubify or a Third Party Vendor may reasonably require to ensure that the Security Interest is otherwise enforceable, perfected and effective.

(h) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under a Contract or under Vendor Terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of the Security Interest(s) created under a Contract in relation to personal property:

   (i) section 95 (notice of removal of accession), to the extent that it requires Hubify or a Third Party Vendor to give a notice to the Customer;

   (ii) section 121(4) (enforcement of liquid assets - notice to grantor);

   (iii) section 125 (obligation to dispose of or retain collateral);

   (iv) section 130 (notice of disposal), to the extent that it requires the Hubify or a Third Party Vendor to give a notice to the Customer;

   (v) paragraph 132(3)(d) (contents of statement of account after disposal);

   (vi) subsection 132(4) (statement of account if no disposal);

   (vii) section 135 (notice of retention);

   (viii) section 142 (redemption of collateral); and

   (ix) section 143 (reinstatement of security agreement).

(i) Hubify does not need to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

(j) Neither party will disclose to an 'interested person' (as defined in section 275(9) of the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA unless:

   (i) section 275(7) of the PPSA applies;

   (ii) that information is publicly available; or

   (iii) in the case of Hubify, to a Third Party Vendor, or if that information is permitted to be disclosed by the Hubify under another term of this Agreement.

(k) The Customer must not authorise the disclosure of any information of the kind described in section 275(1) of the PPSA as contemplated under section 275(7)(c) of the PPSA.

## 2. Facilitated Supply arrangements

### 2.1 Application

This section 2 applies where Hubify supplies Third Party Products to the Customer as a Facilitated Supply.

### 2.2 Vendor Terms

(a) The Customer acknowledges that Hubify does not itself supply or licence the Third Party Products to the Customer.

(b) The Third Party Products are supplied to the Customer directly by the Third Party Vendor pursuant to the Vendor Terms.

(c) The Vendor Terms for a Third Party Product will be set out in the Ordering Document or otherwise provided to the Customer (which may be by providing an electronic link to the relevant Vendor Terms).

(d) The Customer agrees that acceptance of the Vendor Terms is a condition of the use of the Third Party Product.

### 2.3 Defects and Warranty

(a) Except as expressly set out in a Contract, Hubify does not make any representation or warranty in relation to the Third Party Products. The extent of any warranty or representation in relation to the Third Party Products made by a Third Party Vendor will be as set out in the Vendor Terms.

(b) Except to the extent that the management of Third Party Product warranty claims is expressly included within the scope of the Services set out in an Ordering Document, the Customer will be responsible for resolving any Defects or issues with the Third Party Products directly with the Third Party Vendor. The Customer acknowledges that:

(i) Hubify has no liability for any Defects in or issues with the Third Party Products; and

(ii) the Customer's sole and exclusive remedy in relation to any Defects in or issues with Third Party Products is as provided in the Vendor Terms.

## 2.4 Vendor acceptance

The Customer acknowledges and agrees that the Third Party Vendor of the Third Party Product can refuse, in its discretion, to make the Third Party Product available to the Customer until such time as the order has been placed and confirmed by the Third Party Vendor. Hubify has no control over, or liability in relation to, any such refusal.

## 2.5 Compliance with Vendor Terms

The Customer must comply with the relevant Vendor Terms and will indemnify and hold harmless Hubify and its Personnel from and against any Loss incurred or suffered by Hubify or its Personnel arising from or in connection with a breach by the Customer of the Vendor Terms.

## 2.6 Payment

The Ordering Document will specify (or if it does not, Hubify may direct) whether the Customer must pay Hubify or the Third Party Vendor any Charges for the Third Party Products.

## 3. Direct Supply arrangements

## 3.1 Application

This section 3 applies where Hubify supplies Third Party Products to the Customer as a Direct Supply.

## 3.2 Vendor Terms

The Customer acknowledges and agrees that:

(a) the Customer's use of Third Party Products may be subject to conditions, restrictions or requirements of the Third Party Vendor, as set out in the Ordering Document or in Vendor Terms or other documentation provided by Hubify to the Customer (which may be by providing an electronic link to the relevant Vendor Terms or other documentation). Any such conditions, restrictions or requirements are incorporated into the applicable Contract (and the Customer must comply with those conditions, restrictions or requirements);

(b) to the extent permitted by law and without limiting Hubify's obligations under clause 21.1 of the General Terms, the scope, extent and duration of any warranty for the Third Party Products will be limited to the warranty offered by the applicable Third Party Vendor; and

(c) the scope of any licence for Third Party Products will be limited to the scope of licence granted by the third party licensor in respect of the Third Party Products, as set out in the Vendor Terms or other documentation provided by Hubify to the Customer.