



Structure of the Agreement

- 1.1 The wholesale Master Service Agreement (MSA), along with any relevant Service Schedules, Service Orders, and Our Policies, collectively form the comprehensive agreement governing the provision of Services to you (referred to as the "Agreement"). It is important to note that the Agreement takes precedence over any previous representations, arrangements, understandings, or agreements between you and us concerning the subjects addressed within the Agreement. In the event of any inconsistency among the documents that constitute the Agreement, the inconsistency shall be resolved in the following hierarchical order, with a document higher in the list prevailing over any document lower in the list:
- a) The applicable Service Order(s) and any special conditions but only as applicable to the particular Service Order;
 - b) The applicable Service Schedule(s);
 - c) This MSA;
 - d) Our Policies;
- 1.2 During the terms, we may need to modify the Term of the Agreement due to factors that are beyond our control. These factors may include changes initiated by our third-party suppliers regarding the services they provide to us for delivering Service to you, alterations to relevant laws, adjustments to security obligations applicable to the Service, or modifications to the Service's functionality or the technology used to provide it. You acknowledge and consent that under such circumstances, we reserve the right to adjust the Agreement's terms as needed, while providing you with reasonable advance notice. If our adjustments substantially harm your interests, you have the option to terminate the Agreement without incurring any penalties within 30 days of receiving our notice.
- 1.3 In the event that the Service is designated as a "Declared Service," the Agreement takes on the character of an Access Agreement and takes precedence over any ACCC access determination or legally binding rule of conduct established in accordance with Part XIC of the Competition and Consumer Act 2010 (CTH)

Definitions and Interpretation of the Agreement

- 2.1 Unless otherwise specified in the Agreement, the following words are defined as:
- Fair Use Policy** means the policy available on our website.
- 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 Victoria or the location where the Service is being provided.
- Commencement Date** means:
- a) The estimated date for a service to become operational specified in a Service Order; or
 - b) Where the Service only becomes operational on a later date, that later date.



Charges mean 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 formation 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 means 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 your customer or any person who accesses the Services that we make available to you.

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 Service 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 details in 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 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 Service made available to you by us and as updated from time to time.

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

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

Renewal Term is defined in clause 5.4.

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 Users; or
- c) The date that you or an End User first use the Service.

Security Deposit means a security deposit for an amount specified in a Service Order.

Service Level Agreement or SLA means the service level and service level rebates (if any) specified in a Service Schedule.

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.

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 Netbay Free WiFi Pty Ltd ABN 43 096 999 629 of 106/991 Whitehorse Road, Box Hill VIC 3128 trading as [business name] 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 merely as a matter of convenience and have no impact on the Agreement's formation;
- b. A provision of the Agreement will not be constructed against any party based on the party's involvement in drafting or responsibility for the provision or Agreement's preparation.
- c. "Currency" or "\$" specifically refers to Australian dollars
- d. When referring to a Law, it encompasses all amendments and replacements thereof.
- e. When mentioning a clause, subclause, or paragraph, it pertains to the corresponding element within the Agreement. Similarly, a reference to a subclause or paragraph refers to the one within the clause where the reference is made.
- f. Any reference to time is in accordance with Victoria time.
- g. If an obligation requires performance by multiple parties, it binds them collectively and individually.
- h. The term "person" encompasses individuals, partnerships, companies, joint ventures, government bodies, government departments, and any other legal entities.
- i. Expressions like 'includes,' 'including,' and similar terms should not be interpreted as limiting, but rather as if they were immediately followed by 'but not limited to.'

Your application for a Service from us

- 3.1 Upon your application for a Service, we may accept your request in a Service Order, which becomes binding only when both parties execute it.
- 3.2 You can request modifications to the Services specified in a Service Order by submitting a change order request to us. If we provide written approval for the change order request, the Service Order will be amended as per the request.

Credit assessment and Security Deposits

- 4.1 We reserve the right to conduct a credit assessment of your creditworthiness at any time. You grant us permission to make all necessary inquiries to assess your creditworthiness, and you agree to provide reasonable assistance for this assessment.
- 4.2 If we have legitimate reasons to do so, which may include your recurrent failure to meet invoice payment deadlines, concerns about your financial stability, or an unfavourable credit history, we may require you to submit a Security Deposit before:
 - a) executing a Service Order, or
 - b) continuing to provide a Service if you have failed to pay any undisputed Charges for the Service by the Due Date of an invoice or if we reasonably believe you pose a credit risk. We will notify you of the required Security Deposit through a Security Notice.
- 4.3 You are obligated to remit the specific Security Deposit within 5 business days of receiving a Security Deposit Notice. We are under no obligation to provide or continue providing Services as indicated in the Security Deposit Notice until the Security Deposit is paid.



- 4.4 Without prior notice, we may apply all or a portion of the Security Deposit to cover any outstanding Charges that you have not paid by the Due Date. Upon receiving notice from us, you must replenish the Security Deposit to the full amount stated in the Security Deposit Notice if we have utilized it to cover your outstanding Charges.
- 4.5 Following deductions for amounts owed by you to us, any remaining Security Deposit will be refunded to you upon termination or expiration of the Agreement and all associated Service Orders.

Our provision of Services to you

- 5.1 We will make reasonable efforts to prepare the Services for use as specified in a Service Order's Commencement Date. However, it's important to note that these Commencement Dates are only approximations and are not legally binding. There can be various reasons that might prevent the immediate activation of Services or cause delays, and we cannot be held responsible for such delays or failures. If a Service is not ready for use within three weeks after the Commencement Date stated in the Service Order, either party has the option to terminate the Service without incurring any liability, at any point prior to the Service becoming ready for use. For clarification, 'ready to use' means that we have made the Service available for you or an End User to connect to.
- 5.2 Our commitment is to deliver Services in a professional manner in accordance with the applicable Service Schedule and, if applicable, a Service Level Agreement (SLA).
- 5.3 We reserve the right to modify the way a Service is provided at any time, including changes in technology, as long as such modifications do not significantly hinder the Service's performance.
- 5.4 After the Initial Term, a Service Order will automatically renew for one-month periods (each referred to as a "Renewal Term") unless:
 - a) either party cancels the Service Order with a minimum of 30 days' notice before the expiry of the Initial Term or the current Renewal Term (if applicable). In such cases, the Service Order will terminate at the end of the relevant term; or
 - b) the Service Order is terminated as per the terms of the Agreement.
- 5.5 Our sole responsibility and your exclusive remedy for any SLA breach or unavailability of Services are the service level credits specified in the SLA. You waive any other rights or remedies you might have concerning such matters.
- 5.6 We may rely on third-party suppliers to provide the Service to you, and circumstances beyond our control may result in Service faults. To the maximum extent allowed by law, we are not obligated to rectify Service faults stemming from damage to our or our third-party suppliers' facilities, interference, Force Majeure Events, or planned outages, including scheduled maintenance, except as your rights under the ACL may apply.
- 5.7 We will give reasonable notice of scheduled maintenance that may affect the Service and will attempt to schedule maintenance at a time that minimizes disruption to your or End Users' Service usage. However, in the case of unscheduled or urgent maintenance, we may not be able to provide notice or schedule maintenance at a convenient time for you or End Users.
- 5.8 We may suspend the Service when necessary due to emergencies, compliance with laws, or to protect individuals, Our Equipment, facilities, our network, and third-party supplier equipment or networks.



- 5.9 If we have reasonable grounds to believe that you, an End User, or anyone utilizing the Service is currently breaching or is likely to breach the Fair Use Policy, we reserve the right to suspend or restrict the service as required to prevent such an actual or potential violation.

Risk and title in equipment

- 6.1 Our equipment retains its title and does not become a fixture or chattel when installed at your or the end user's premises.
- 6.2 Title to the purchased equipment remains with us until payment is received.
- 6.3 The responsibility for loss or damage to our equipment and purchased equipment passes to you upon delivery to your or the end user's location, or upon installation at your or the end user's premises.
- 6.4 You agree that we may register an interest in the Personal Property Securities Act (PPSA) for our equipment and purchased equipment that hasn't been fully paid for, without adhering to any provision of the PPSA or Personal Property Securities Regulations 2010 (Cth) that can be waived.
- 6.5 You may only use our equipment to connect to a service that we provide and in accordance with the provided materials and our reasonable instructions.
- 6.6 Except for reasonable wear and tear, you are responsible for maintaining our equipment and purchased equipment that hasn't been fully paid for in good repair and condition. You must not sell, give away, lose, assign, or allow any security interest or encumbrance to be created over the equipment, including PPSA registration.
- 6.7 You must promptly notify us if our equipment or purchased equipment that hasn't been paid for and delivered to an end user is lost, stolen, or damaged. You are responsible for paying the full replacement value of such equipment.
- 6.8 You must grant us access to maintain, remove, and/or replace our equipment and purchased equipment that hasn't been fully paid for, which is in your or an end user's possession or control, upon reasonable notice. We have the right to repossess any of our equipment and purchased equipment that hasn't been fully paid for upon termination or expiration of any Service Order. You must cooperate fully to provide us with unrestricted and safe access to premises for equipment repossession.
- 6.9 You are accountable for any customer equipment and any equipment or software not provided by us that you or end users use in connection with any Service. You and the end users must use equipment in connection with any Service that complies with all applicable Australian standards regulated by the ACMA.

Your obligations in relation to Services and End Users

- 7.1 You are required to:
- a) Provide all necessary cooperation, assistance, information, and ensure safe access to relevant personnel, premises, equipment, systems, and networks as needed for us to exercise our rights or fulfill our obligations under the Agreement.
 - b) Adhere to the operational and technical specifications outlined in Service Schedules and Service Orders.
 - c) Comply with your obligations as stipulated in the Agreement.



- 7.2 You and your end users must refrain from violating any laws or the Fair Use Policy when utilizing a service.
- 7.3 You bear sole responsibility for managing end users, including tasks such as customer communication and support related to service provision and operation, billing and payment collection, end user dispute resolution, customer relationship management, technical support, and fault resolution. You must ensure you have adequate staff and facilities to meet your obligations to end users and prevent them from contacting us or our third-party suppliers. We and our third-party suppliers have no liability to you, an end user, or a third party resulting from the provision or use of a service by an end user. You indemnify us for any costs incurred in relation to such claims, with the indemnity reduced to the extent that the claim was caused or contributed to by our negligent acts or omissions. You must also ensure that end users consent to us and any relevant third-party supplier being provided with and being able to use their personal information as necessary to supply the services or as required by law.
- 7.4 In the event of a fault, before contacting us, you must attempt to diagnose the cause of the fault and confirm that it is not attributed to your network, your or the end user's equipment, your or the end user's software, electrical supply, content, or any services not provided by us. If it is, then you are responsible for rectifying the fault and for any associated costs we incur. You must provide all necessary assistance to enable us or our suppliers to repair faults, including arranging access to your premises or the end user's premises.
- 7.5 You must appoint sufficiently qualified and experienced contract representatives, who, unless otherwise agreed by us, are the sole individuals authorized to contact us regarding operational issues and other matters pertaining to this Agreement. You must furnish us with the contact details of your contract representatives and notify us when a replacement assumes the role.
- 7.6 You are prohibited from making representations or providing warranties about a service that are inconsistent with the materials provided by us 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 bear no responsibility for events occurring 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, allowing us to lawfully collect, hold, and disclose the communications data in accordance with applicable laws.

Your payment of the Charges

- 8.1 Payment of the specified charges in our invoices must be made by the Due Date without any offset, counterclaim, or deduction.
- 8.2 If you fail to make payment of the charges by the Due Date (resulting in an Overdue Amount), we have the right to:
 - a) Impose interest on the Overdue Amount at a rate 2% higher than our current overdraft rate with our principal banker.



- b) Suspend the provision of the Service. This suspension will remain in effect until we receive full payment of the Overdue Amount, along with any accrued interest, or until the Service is terminated.
- 8.3 All charges outlined in the Agreement do not include GST. If GST applies to any taxable supply, as defined by the GST Law, we will issue you a tax invoice related to that taxable supply, and you are obligated to remit the GST concurrently with payment for the relevant taxable supply.
- 8.4 We reserve the right to modify our Price List and Service Schedules. We will furnish you with a written notice of such variations 90 days in advance. However, the charges for a Service that was sold to an End User before the effective date of the modification will remain applicable for the Initial Term (or the current Renewal Term) of that Service Order.

Disputed Charges

- 9.1 You must notify us in writing before the due date if you dispute any amounts specified in an invoice and provide a reasonably detailed explanation of the basis for your claim (referred to as a "Charge Dispute Notice"). In such situations, you must ensure that all charges not in dispute are paid by the Due Date.
- 9.2 You should only submit a Charge Dispute Notice if you genuinely believe that the amount is not payable, and disputes regarding charges should be handled exclusively in accordance with this clause.
- 9.3 If you submit a Charge Dispute Notice, both parties must adhere to the dispute resolution process outlined in clause 16.
- 9.4 We will continue to provide services that are the subject of a Charge Dispute Notice unless the dispute remains unresolved after the four-week period specified in clause 16.3, at which point we reserve the right to terminate the relevant Service Order with one week's written notice to you.
- 9.5 If a Charge Dispute Notice is resolved in our favor, you are required to pay us interest on the charges that you withheld. This interest will be calculated at a rate of 2% above our current overdraft rate with our principal banker, from the Due Date until the actual date of payment, in addition to the disputed amount that was withheld.
- 9.6 You have the option to dispute an invoice up to six months after receiving it, even if you have already made payment. However, if you have paid an invoice that subsequently becomes the subject of a Charge Dispute Notice, you must ensure that all other invoices that are not in dispute are paid as well.

Liability and Warranties

- 10.1 Neither party holds liability towards the other party for Consequential Loss under any circumstances.
- 10.2 Unless already excluded or specified differently, each party's liability for any loss or damage resulting from a breach of the Agreement is limited, in total, for one or more breaches, to a capped amount equal to the Charges paid by you during the 12 months preceding the breach. This cap is further reduced if the party claiming loss or damage either caused or was responsible for it, failed to take reasonable steps to minimize the loss or damage, or if the loss or damage resulted from a Force Majeure Event.



- 10.3 In cases where the goods or services supplied by us to you are subject to a non-excludable condition, warranty, guarantee, right, or remedy implied by the ACL (Australian Consumer Law) or any other applicable Law, and these goods or services are not typically acquired for personal, domestic, or household use, we limit our liability for a breach of such non-excludable warranty, guarantee, right, or remedy, in respect of each of the goods and services, to one or more of the following options:
- a) If the breach relates to goods: replacement or resupply of the goods or cost of replacement, or repair or payment for the repair of the goods.
 - b) If the breach relates to services: resupplying the services or the cost of resupplying the services.
- 10.4 All representations, warranties, guarantees, and conditions that are not expressly outlined in the Agreement are excluded from the Agreement, except for any non-excludable warranty, guarantee, right, or remedy implied by the ACL or any other applicable Law.
- 10.5 You acknowledge and accept that we are not liable to pay you damages as stipulated under section 118A of the Telecommunications (Consumer Protection and Service Standards) Act 1999.

Mutual indemnity

- 11.1 You are required to provide indemnification to us and our personnel for any liability arising from or connected to:
- a) Personal injury or death of an individual, damage to physical property, or a breach of third-party intellectual property rights resulting from your or your end user's actions or omissions.
 - b) Any claims made against us or our suppliers by any of your end users, with the indemnity amount 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 end user that, if committed by you, would constitute a breach of the Agreement.
 - d) A breach of any Law by you or an end user.
- 11.2 We undertake to indemnify you and your personnel for any liability arising from or related to:
- a) Personal injury or death of an individual, damage to tangible property, or a breach of third-party intellectual property rights resulting from our actions or omissions.
 - b) Our breach of any law.
- 11.3 It's important to note that the indemnities specified in this Agreement are reduced to the extent that the other party, their personnel, or suppliers are responsible for or contribute to the liability.
- 11.4 Both parties are obligated to take reasonable measures to mitigate any liability pertaining to a claim made by the other party in connection with this Agreement.

Termination of the Agreement or a Service Order

- 12.1 We reserve the right to terminate a Service Order or the Agreement under the following circumstances.



- a) You breach an essential term of the Agreement, and the breach cannot be remedied.
 - b) You breach an essential term of the Agreement, the breach can be remedied, but you fail to rectify it within 7 days after receiving notice from us.
 - c) You experience an Insolvency Event, except when such termination would contravene the Corporations Act 2001 (Cth) or any other applicable Law.
 - d) We reasonably suspect fraudulent activity by you, an end user, or any person using a Service.
 - e) A Force Majeure Event prevents us from supplying a Service for more than 60 consecutive days.
 - f) We are compelled to do so to comply with any applicable Law or a directive from a government authority.
- 12.2 You have the option to terminate a Service Order or this Agreement under the following circumstances.
- a) We breach an essential term of the Agreement, and the breach cannot be rectified.
 - b) We breach an essential term of the Agreement, the breach can be remedied, but we fail to address it within 7 days of receiving notice from you.
 - c) We experience an Insolvency Event, except where the termination would violate the Corporations Act 2001 (Cth) or any other relevant Law.
 - d) A Force Majeure Event prevents us from providing a Service for more than 60 consecutive days.
- 12.3 It's important to note that all Service Orders automatically terminate if the Agreement itself is terminated.
- 12.4 In the event of the termination or expiration of a Service Order:
- a) We will cease providing you with the relevant Service.
 - b) If we have supplied Our Equipment or Purchased Equipment that has not been fully paid for:
 - i) Within 5 days, you must return Our Equipment and any Purchased Equipment that remains unpaid for.
 - ii) Upon prior notice, we may arrange for the collection of Our Equipment and any Purchased Equipment that has not been fully paid for at your expense.
 - iii) Failure to return or facilitate the collection of Our Equipment and any Purchased Equipment that remains unpaid for will result in your liability for the full replacement cost of the equipment.
- 12.5 If a Service Order or the Agreement is terminated before the expiration of the Initial Term for any reason (except due to our breach of the Agreement, our insolvency, a Force Majeure Event, or our termination to comply with a Law or government authority directive), you are obligated to pay Early Termination Charges. These charges will be based on the table below or as otherwise specified in the Service Order. You will receive an invoice for the Early Termination Charges, which must be settled within 30 days. You acknowledge that Early Termination Charges are not punitive but rather intended to compensate us for reasonable losses incurred due to early termination of the Service Order or Agreement. You also agree not to dispute the validity of Early Termination Charges calculated in accordance with this clause.

Initial terms	Early Termination Charge
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Less than or equal 12 months	100% of the total payable amount of the remaining initial term
More than 12 months	If terminated in the first 12 month, 100% of the total payable amount of the first 12 months of the initial term plus 50% of the total payable amount of the remaining term beyond the first 12 months. If terminated beyond first 12 months of the initial term, 50% of the total payable amounts for the remaining initial term.

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

Confidentiality and Interception

- 13.1 The recipient of Confidential Information shall refrain from disclosing such information to any third party, except to those personnel of the disclosing party who are bound by confidentiality obligations and have a legitimate need to access such information for the purposes of the Agreement.
- 13.2 The recipient is allowed to disclose the disclosing party's Confidential Information under the following circumstances:
 - a) When required by Law, government authority, or a court order.
 - b) To its accountants, legal counsel, and professional advisors, provided that such disclosure is treated with utmost confidentiality.
- 13.3 You also consent to our potential need to disclose Confidential Information and Personal Information to our third-party suppliers for the purpose of providing the Service and fulfilling our obligations under the Agreement. It is your responsibility to ensure that your end users provide consent for the disclosure of their Personal Information to the extent necessary for the provision of the Service and compliance with Laws.
- 13.4 You also consent to our potential need to disclose Confidential Information and Personal Information to our third-party suppliers for the purpose of providing the Service and fulfilling our obligations under the Agreement. It is your responsibility to ensure that your end users provide consent for the disclosure of their Personal Information to the extent necessary for the provision of the Service and compliance with Laws.
- 13.5 Upon the termination of the Agreement, at the option of the other party, the recipient must either return or destroy all Confidential Information received from the other party. However, it's important to note that the parties are not required to delete Confidential Information stored in backup systems that cannot be deleted or that are necessary for audit or regulatory purposes, provided that such information continues to be treated as confidential.

Intellectual Property Rights

- 14.1 You acknowledge that the Agreement does not entail the transfer or assignment of any Intellectual Property Rights (IPR) to you, and the following points apply.



- a) We retain ownership of all IPR related to the Services, Materials, and any underlying software used in providing the Services.
 - b) You are prohibited from taking any deliberate actions that may invalidate or undermine our IPR.
- 14.2 In the context of our relationship, you possess all IPR pertaining to Communications Data.
- 14.3 You grant us the authorization to display your logo on our website or other materials as an available Retail Service Provider (RSP). This includes providing a link to your website and taking reasonable steps that are necessary for us to inform third parties about the availability of your services on our wholesale network.

Notice

- 15.1 Notifications can be transmitted through personal delivery, postal mail, or email using the addresses provided in the Service Order, or as updated through notification to the other party as necessary.
- 15.2 Notifications sent by personal delivery shall be considered delivered once the notice has been left at the premises of the receiving party.
- 15.3 Notifications sent by postal mail shall be considered delivered 5 Business Days after being posted if mailed within Australia, or 10 Business Days after posting if mailed from a different country.
- 15.4 Notifications sent via email shall be considered delivered once the sender receives a read receipt, delivery receipt, a reply to the original email, or after four hours from the time the email was sent, unless the sender receives an automated message indicating non-delivery or an out-of-office response from the recipient, or an equivalent notification.

Dispute Resolution

- 16.1 In the event of a dispute arising between the parties concerning the Agreement (referred to as a "Dispute"), the parties must make an effort to address and resolve the dispute following the guidelines outlined in this clause 16. It is important to note that, except as otherwise specified in this clause, a party must adhere to the procedures outlined herein prior to initiating legal proceedings.
- 16.2 If a party believes that a Dispute has emerged, that party must provide the other party with a notice containing sufficient details about the Dispute and potential resolution methods (referred to as a "Dispute Notice"). Within one week of delivering the Dispute Notice, the parties must actively engage in collaborative efforts to resolve the Dispute. If the Dispute remains unresolved two weeks after the delivery of the Dispute Notice, both parties must escalate the matter to their respective chief executive officers.
- 16.3 If the Dispute remains unresolved four weeks after the delivery of the Dispute Notice, both parties will have the right to pursue the course of action they deem appropriate, which may include initiating legal proceedings.
- 16.4 It's important to emphasize that nothing in this clause restricts a party's ability to seek urgent interlocutory relief from a court.



General Provisions

- 17.1 **Variation of the Agreement:** Except as permitted under his 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 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 unreasonably withheld. (b) You agree that we may assign, novate or transfer our rights and obligations under the Agreement to our Related 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 Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.
- 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.

Netbay Free WiFi



Signed by the parties as an agreement.

Signed by Netbay Free WiFi Pty Ltd ABN 43 096 999 629 trading as Netbay Free WiFi in accordance with section 127 of the Corporations Act 2001:

Signed by Director

Name of Director

Date

Signed by [insert name RSP and its ACN]
In accordance with section 127 if the Corporations Act 2001:

Signed by Director

Name of Director

Date