

OUR CUSTOMER TERMS

CLOUD SERVICES – NEXTDC DATA CENTRE SERVICES

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Certain words are used with the specific meanings set in the General Terms part of the Cloud Services section of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/>, or in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

1 ABOUT THIS PART

- 1.1 This is NEXTDC Data Centre Services part of the Cloud Services section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section, as well as in the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm>, may apply.
- 1.2 See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.
- 1.3 See section one of the General Terms of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.4 As part of your product selection under this NEXTDC Data Centre Services part of the Cloud Services section, we do not monitor or manage any of your other services, including any of your other services provided under the Cloud Services section.

2 SET-UP

- 2.1 We will, subject to the terms and conditions of Your Agreement, commence the Set-Up Services on the Your Agreement Commencement Date.
- 2.2 We will endeavour to complete the Set-Up Services prior to the Service Commencement Date for the Data Centre Services.

3 SERVICES

Data Centre Space

- 3.1 We will provide the Data Centre Space to you (the **Data Centre Services**).
- 3.2 For the purpose of clause 3.1, we grant to you, for the duration of the Service Term for Data Centre Services a non-exclusive right to install, inspect, operate, repair and maintain Your Equipment in the Data Centre Space.

Our Representatives

- 3.3 You acknowledge and agree that notices given or rights exercised by us under Your Agreement may be given or exercised (as applicable) by our Representatives, including the Facility Provider (and its Representatives). You must comply with any notice or instruction issued by our Representative or the Facility Provider (and its Representatives) as though they were notices or instructions issued by us.
- 3.4 You acknowledge that nothing in Your Agreement creates any contractual relationship between you and the Facility Provider or any other third party provider including without

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limitation the provider of AXONVX Services, and that the Facility Provider has no liability to you for any damages or losses arising in connection with use of the Services.

Use

- 3.5 You must use the Data Centre Space for the sole purpose of installing, inspecting, repairing and maintaining Your Equipment in the Data Centre Space.

Access

- 3.6 Subject to clauses 3.7, 3.9, and 3.10, you will have 24/7 access to the Data Centre Space for the purpose of exercising your rights specified in clause 3.2.
- 3.7 You must comply with, and must ensure that your Representatives comply with, the Facility Rules or requirements (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time) relating to access to the Facilities and Data Centre Space.
- 3.8 Without limitation, the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time) may include rules relating to:
- (a) the process for arranging access to the Facility and the Data Centre Space for your Representatives, including the conducting of background checks and the undertaking of induction training;
 - (b) compliance with our instructions concerning security, safety and other general procedures;
 - (c) display of identification and security passes by those authorised to access the Data Centre Space; and
 - (d) issue and return of security passes.
- 3.9 We may suspend your access to the Data Centre Space or may require your Representatives to leave the Data Centre Space and the Facility:
- (a) in an Emergency;
 - (b) if required to do so by a government agency or any law or court order; or
 - (c) in the circumstances contemplated by clause 8.7.
- 3.10 We may refuse access to the Facility or remove from the Facility any of your Representatives whose admission or presence is, or would be, in our reasonable opinion detrimental to the security of the Facility.

Power Allocation

- 3.11 You must enter into a Your Agreement that is reflective of your Power Allocation requirements.
- 3.12 You acknowledge that any consumption by you in excess of your Power Allocation may:

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- (a) affect the supply of power to you;
 - (b) affect the supply of power to another customer; and
 - (c) impact upon the proper operation of the Facility's cooling system.
- 3.13 You must ensure that your power utilisation does not exceed the Power Allocation.
- 3.14 If your power utilisation exceeds the Power Allocation, we may give you notice requiring you to rectify the breach.
- 3.15 You must rectify the breach as soon as reasonably practicable, but in any event within 48 hours of receiving our notice under clause 3.14.
- 3.16 If you fail to rectify the breach within the period specified in clause 3.15, we may take whatever remedial action we deem necessary, including shutting down, or requiring you to shut down, Your Equipment, or disconnecting power to the Data Centre Space.
- 3.17 If we consider it necessary for the protection of the Facility, the Data Centre Space, our other property or property of any third party (including the Facility Provider) or the safety or health of any person, or for our or the Facility Provider's compliance with any requirement of any government agency, any applicable law or court order or any obligation owed to any third party, we may exercise our rights under clause 3.16 without first being required to issue the notice in clause 3.14 or wait for you to rectify the breach under clause 3.15.
- 3.18 If your power utilisation exceeds the Power Allocation for a period of more than 24 hours on more than 2 occasions (with each continuous period exceeding 24 hours being a separate occasion) in any rolling 60 day period we may, in our sole discretion, either:
- (a) in the first instance, having regard to operational requirements and the availability of additional power within the Facility, increase the Power Allocation, in which case you will pay our standard rates pro-rated for the remainder of Your Agreement Term at 1kW increments for the Data Centre Space with the increased Power Allocation from the date upon which the Power Allocation is increased; or
 - (b) immediately exercise our right under clause 17.1 to terminate Your Agreement for a material breach that is incapable of remedy.

Power balance

- 3.19 You must use reasonable efforts to ensure that your power utilisation is evenly spread across each power feed to the Data Centre Space and, where applicable, between phases on a three phase supply.
- 3.20 Regardless of any aggregated Power Allocation, you must ensure that no individual Rack draws in excess of 6kW without our prior written agreement.
- 3.21 If in our reasonable opinion there is a material imbalance in your power utilisation, we may give you a notice requiring you to rectify the imbalance.
- 3.22 You must rectify the imbalance as soon as reasonably practicable, but in any event within 7 days of receiving our notice under clause 3.21.

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Your Equipment

3.23 You must:

- (a) install, inspect, operate, repair and maintain Your Equipment in accordance with the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time) and any of our requirements and instructions;
- (b) ensure that all of Your Equipment is clean and in good repair and condition at the time it is installed in the Data Centre Space and that it is kept in good repair and condition; and
- (c) ensure that you minimise the use of any space external to the Data Centre Space when installing, inspecting, operating, repairing and maintaining Your Equipment.

3.24 We may require you to remove any of Your Equipment from the Data Centre Space and the Facility that does not comply with Your Agreement or the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time).

3.25 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, you are responsible for all loss or damage to Your Equipment however caused, except to the extent caused by our (or the Facility Provider's) recklessness, unlawful conduct or negligence.

Repair and maintenance

3.26 You must:

- (a) ensure that the Data Centre Space is kept in good repair and condition;
- (b) ensure that the Data Centre Space is kept clean and tidy and that no flammable or hazardous materials are left or kept in the Data Centre Space or the Facility;
- (c) comply with our requirements and instructions regarding rubbish removal and recycling;
- (d) inform us in writing of any damage to the Data Centre Space, the Facility, the Facility Provider's Equipment, or our other property or other property of any third party (including the Facility Provider) immediately upon becoming aware of the damage; and
- (e) if requested by us, promptly repair damage to the Data Centre Space, the Facility Provider's Equipment, or the Facility caused or contributed to by you.

Works

3.27 You must not carry out alterations, modifications or other works to the Data Centre Space without our prior written approval.

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- 3.28 If we give our approval under clause 3.27, we may impose conditions on that approval (including what works are to remain, what are to be removed and what are to be reinstated and to what condition when you vacate the Data Centre Space).
- 3.29 You must not begin to carry out works until you have our approval and have satisfied us that, in connection with those works:
- (a) you have obtained all consents, permits, approvals, authorities and licences required; and
 - (b) all insurances required by applicable laws or that we reasonably require are in place.
- 3.30 You must carry out works:
- (a) in a proper and workmanlike manner;
 - (b) in accordance with any conditions imposed by us when giving our approval;
 - (c) in accordance with our requirements and instructions;
 - (d) in accordance with all plans, specifications and schedule of finishes approved by us;
 - (e) in accordance with all applicable laws and any consents, permits, approvals, authorities and licences required in connection with those works;
 - (f) using only contractors approved by us (approval not to be unreasonably withheld); and
 - (g) without disturbing or causing interruption to others.

Allocation of Data Centre Space

- 3.31 We will allocate the Data Centre Space in our sole discretion.
- 3.32 In the event of an Emergency, we may modify, substitute, replace or change the Data Centre Space.
- 3.33 We will provide you with such notice of the modification, substitution, replacement or change to the Data Centre Space as is reasonable in the circumstances.
- 3.34 We will use reasonable endeavours to minimise any disruption or inconvenience to you during any modification, substitution, replacement or change to the Data Centre Space.

Your general obligations

- 3.35 You must comply with, and must ensure that your Representatives comply with, the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time) at all times.
- 3.36 You must comply with all applicable laws and regulations and must ensure that your Representatives comply with all applicable laws and regulations and that you and your Representatives have obtained all relevant consents, permits, approvals, authorities and licences required.

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- 3.37 You must not do any act or thing (including in connection with the installation, inspection, operation, repair, maintenance or replacement of Your Equipment):
- (a) in the Facility or the Data Centre Space that is fraudulent or illegal or that, in our reasonable opinion, is dangerous, annoying, offensive or immoral;
 - (b) that interferes with, obstructs access to, damages or overloads the Facility, the Data Centre Space or any of our property or property of any third party (including the Facility Provider) such as without limitation the Facility Provider's Equipment;
 - (c) that causes nuisance to or interference with the use of the Facility or any part of the Facility by us, the Facility Provider or any of our other customers or customers of the Facility Provider (or their customers) and, for the purposes of this clause, interference shall include technical interference; or
 - (d) that may cause us or the Facility Provider to be in contravention of any applicable law or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider.

Our right to enter

- 3.38 We may enter the Data Centre Space after giving you reasonable notice:
- (a) to inspect the condition or state of repair of the Data Centre Space;
 - (b) to do repairs to the Data Centre Space or the Facility or other works that cannot reasonably be done unless we enter the Data Centre Space;
 - (c) to do anything we must or may do under Your Agreement or must do under applicable laws or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider;
 - (d) to exercise our rights under clauses 3.16 or 3.17; and
 - (e) to remedy any breach by you under Your Agreement, provided that we have given you a notice of such breach and you have failed to remedy that breach within the time specified in the notice.
- 3.39 We may enter the Data Centre Space as reasonably required in order to perform Add-On Services.
- 3.40 You acknowledge that we may enter the Data Centre Space at any time for the purpose of carrying out Scheduled Maintenance on the Facility or the Data Centre Space.
- 3.41 We may enter the Data Centre Space at any time without notice and remain in the Data Centre Space for as long as necessary if there is an Emergency.

4 ADD-ON SERVICES

General

- 4.1 You may from time to time request us to provide Add-On Services, which may include:

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- (a) Cross Connect Services (including without limitation virtualised cross-connect such as AXONVX Services);
 - (b) Remote Hands Services; or
 - (c) other services that we may agree to provide from time to time.
- 4.2 Any such request must be made:
- (a) on the Application Form if you request the Add-On Services at the same time as the Data Centre Services; or
 - (b) if you request Add-On Services after you have submitted the Application Form for the Data Centre Services, on a MAC (Move Add Change) Form, which we will provide to you on request.
- 4.3 If we agree to provide the Add-On Services, we will advise you in writing that we accept your request.
- 4.4 The terms of Your Agreement shall apply to any Add-On Services that we agree to provide.
- 4.5 We are not obliged to provide any Add-On Services requested by you unless and until we advise you in writing that we accept your request.
- 4.6 You must comply with all of our policies, procedures and requirements applicable to the Add-On Services, including the Facility Rules (being rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time).

Cross Connects

- 4.7 All data connectivity delivered to the Data Centre Space must be delivered by way of a Cross Connect Service provided by us.
- 4.8 If any Cross Connect Service involves Data Centre Space made available by us or the Facility Provider to a third party, you must obtain the consent of the third party to the provision of the Cross Connect Service.
- 4.9 To the extent permitted by law, subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, and any other agreement we have with you, we are not under any circumstances liable for any acts or omissions of any carrier in connection with the supply of any products or services by the carrier to you.
- 4.10 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, we do not warrant that any Cross Connect Service will be continuous, secure, and / or free from interruptions, errors, defects or failures and we do not accept any liability in connection with same.

AXONVX Services

- 4.11 We will provide you with AXONVX Services from the AXONVX Connection Date or such later date as we may agree and upon doing so grant you a non-exclusive right to use the AXONVX Services.

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- 4.12 You are solely responsible for (at your own cost):
- (a) ensuring that Your Equipment is compatible with the Facility Provider Equipment;
 - (b) ensuring that all cabling (including cross connects) at the Facility between the Facility Provider Equipment and Your Equipment is established and maintained.
- 4.13 You are responsible for all data accessed or transmitted using the AXONVX Services, including any requirements in relation to Intellectual Property Rights in relation to such data.
- 4.14 You must not on-sell the AXONVX Services.

5 ONEDC® APPLICATION

Access Rights

- 5.1 You may apply for access to the Facility Provider's vendor-independent, web-based SaaS platform for managing Data Centre Intelligence (DCI) ("**ONEDC**").
- 5.2 In relation to the terms relating to ONEDC references to 'you' include anyone you grant access to ONEDC, including but not limited to your employees, officers, consultants, agents, contractors, invitees, licensees and customers
- 5.3 When you sign up for ONEDC, you can nominate one or more Users as an administrator ("**Administrator Users**"). Administrator Users are responsible for managing all Users and their access rights.
- 5.4 To access ONEDC you must have credentials, validly authenticated by the Facility Provider.
- 5.5 You must ensure that credentials required to access ONEDC are kept and remain confidential and secure.
- 5.6 You must notify us or Facility Provider immediately if you know of or suspect any unauthorised use of your credentials or any other breach of security relating to access of ONEDC.
- 5.7 You will use ONEDC only for your own lawful internal purposes, in accordance with these terms.

Licence

- 5.8 Subject to any third party rights, we grant you and your Users a non-exclusive, non-transferable licence for Your Agreement Term to use ONEDC (the "**Purpose**").
- 5.9 By accessing ONEDC, you acknowledge that you have read, understood and accept these licence terms.
- 5.10 For clarity, this licence does not include the right to sublicense to third parties.

Limitations under Licence

- 5.11 When using ONEDC, you must:
- (a) comply with all applicable laws; and

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- (b) comply with all Facility Provider's policies and procedures, as updated from time to time.

5.12 You must not perform any illegal or unlawful acts in connection with use of ONEDC.

5.13 Without limiting anything in these license limitations, you must not:

- (a) attempt to access any data of a third party;
- (b) use ONEDC to post or transmit software, or other materials that contain viruses or other potentially harmful or disruptive components;
- (c) attempt to access any part of ONEDC, the Facility Provider network or a data centre operated by Facility Provider that you do not have the authority to access;
- (d) use ONEDC:
 - (i) to engage in fraudulent behaviour;
 - (ii) to defame or harass any third party;
 - (iii) to gain unauthorised access to or interfere with any third party's resources or systems including by any form of hacking;
 - (iv) to circumvent any security measures;
 - (v) to interfere with any third party's online resources or systems including by carrying out a denial of service attack;
 - (vi) to distribute, view or create any material that:
 - (A) is or may be pornographic, defamatory, offensive, obscene, illegal or unlawful; or
 - (B) infringes any third party's Intellectual Property Rights;
 - (vii) in a way that infringes any third party's Intellectual Property Rights;
 - (viii) in a way that disrupts, misuses or excessively uses the hardware, bandwidth access, storage space or other resources of Facility Provider or other customers of Facility Provider who use ONEDC; or
- (e) in any other manner that is unacceptable to Facility Provider.

Reverse Engineering

5.14 You must not:

- (a) decompile, disassemble or reverse engineer the whole or any part of ONEDC;
- (b) make any modification to ONEDC; or
- (c) without prior written consent from Facility Provider, merge all or any part of ONEDC with any other software.

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User Authority

5.15 You acknowledge that your users are authorised to use and access ONEDC on your behalf for the Purpose.

ONEDC Data

5.16 Facility Provider may access your non-identifiable aggregated usage data, for the purpose of improving the services to customers of ONEDC.

Warranty

- 5.17 You acknowledge and agree that ONEDC is not error free, and that ONEDC may contain errors that cause it to malfunction. Use of ONEDC is at your own risk.
- 5.18 You acknowledge and agree that neither we nor the Facility Provider warrant the completeness or accuracy of any device templates which you may access through ONEDC.
- 5.19 You are responsible for determining if ONEDC meets your needs and is suitable for the purposes for which it is used.
- 5.20 Without limiting anything else in these terms, to avoid doubt, all express or implied guarantees, conditions or warranties are excluded in so far as is permitted by law and subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, including (without limitation) fitness for purpose, title and non-infringement.

6 SERVICE LEVEL AGREEMENT

- 6.1 The Service Level Agreement in this clause 5 (“**SLA**”) (being either a Data Centre Space SLA or the AXONVX Service SLA, as applicable) sets out:
- (a) the Service Levels, being either the Data Centre Space service levels (“DC Service Levels”) or the AXONVX Service service levels (“AXONVX Service Levels”) as applicable that we will achieve in connection with the provision of the relevant Services; and
 - (b) the remedies available to you for any failure by us to achieve the relevant Service Levels.
- 6.2 Subject to clause 6.3 (in respect of the Data Centre Space Services only) and the Australian Consumer Law provisions in the General Terms of Our Customer Terms, the remedies set forth in the SLA are your sole and exclusive remedies for any failure by us to achieve the Service Levels.

Data Centre Space SLA

- 6.3 If we fail to achieve any High Severity Service Level on more than 3 occasions in any rolling 6 month period, then the relevant failure will be deemed to be a material failure. For the avoidance of doubt, a failure (including a repeated failure) by us to achieve any one or more Medium Severity Service Level will not constitute a material breach of Your Agreement.
- 6.4 For the purposes of clause 6.3:

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- (a) “High Severity Service Level” means a DC Service Level identified in the SLA as having a “High” level of severity;
- (b) “Medium Severity Service Level” means a DC Service Level identified in the SLA as having a “Medium” level of severity; and
- (c) one occasion means one occurrence or all occurrences of a series consequent on or attributable to one source or original cause.

6.5 The Data Centre Space SLA covers the following elements of the Data Centre Space:

- (a) supply of power;
- (b) maintenance of temperature; and
- (c) maintenance of humidity levels.

6.6 The Data Centre Space SLA in clauses 6.3 to 6.7 does not apply to any feature of the Data Centre Space not specifically identified in this Data Centre Space SLA, nor to AXONVX Services. To the extent permitted by law and the Australian Consumer Law provisions in the General Terms of Our Customer Terms, the remedies set forth in this Data Centre Space SLA are your sole and exclusive remedies for any failure by us to achieve a DC Service Level in respect of the Data Centre Space features specifically identified in this Data Centre Space SLA.

6.7 We will achieve the Service Levels in this Data Centre Space SLA, as set out in the table below (each a “**DC Service Level**”). If we fail to achieve a DC Service Level (a “**DC Failure**”), you will be entitled under Your Agreement to a DC Service Credit (each a “**DC Service Credit**”) as set out in the table below, subject to the terms and conditions of Your Agreement.

No.	Severity	Dc Service Level	Dc Service Credit Payable By Us To You
1	High	<p>Supply of power</p> <p>Supply of continuous power up to and including at least one of the UPS output boards servicing the Data Centre Space for 100% of the time in any calendar month.</p>	<p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for that calendar month, increasing by an additional 10% for each 10 minutes until it has been resolved (up to a maximum of 100% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for that calendar month).</p>
2	High	<p>Maintenance of temperature</p> <p>The average and aggregate temperature measured at any two consecutive five minute intervals at the air flow point at or within 1 metre of the cold air output nominated and measured by us or the Facility Provider located in the</p>	<p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for the calendar month in which the five minute intervals occur, increasing by an additional 10% for each 10 minutes until it has been resolved (up to a maximum of 100% of the Data Centre Services Fees payable in respect</p>

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No.	Severity	Dc Service Level	Dc Service Credit Payable By Us To You
		<p>Data Centre Space is no greater than 35 degrees Celsius.</p> <p>This DC Service Level will not apply, and the DC Service Credit will not be available:</p> <p>(a) during any period where Your Equipment exceeds the Power Allocation; or</p> <p>during any period where you have not populated the Data Centre Space:</p> <p>(i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and</p> <p>(ii) when applicable, if your supplied racks are installed in a manner that is inconsistent with our or the Facility Provider’s airflow containment requirements.</p>	<p>of that part of the Data Centre Space affected by the DC Failure for the calendar month in which the five minute intervals occur).</p>
3	Medium	<p>Maintenance of temperature</p> <p>The average and aggregate temperature measured on any calendar day at the air flow point at or within 1 metre of the cold air output nominated and measured by us or the Facility Provider located in the Data Centre Space is no greater than 24 degrees Celsius.</p> <p>This DC Service Level will not apply, and the DC Service Credit will not be available:</p> <p>(a) during any period where Your Equipment exceeds the Power Allocation; or</p> <p>(b) during any period where you have not populated the Data Centre Space:</p>	<p>10% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for the calendar month in which the calendar day occurs.</p> <p>You will only be able to claim this DC Service Credit once in any calendar month.</p>

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No.	Severity	Dc Service Level	Dc Service Credit Payable By Us To You
		<p>(i) within the Rack, with either Your Equipment or blanking panels (or similar item as approved in writing by us or the Facility Provider on our behalf); and</p> <p>(ii) when applicable, if your supplied racks are installed in a manner that is inconsistent with our or the Facility Provider's airflow containment requirements.</p>	
4	Medium	<p>Maintenance of humidity</p> <p>The averaged and aggregated return air humidity measured at the point nominated and measured by us or the Facility Provider reasonably near to the Data Centre Space will not deviate from the acceptable humidity range of 35-65% for a continuous period of more than 60 minutes in any calendar day.</p>	<p>5% of the Data Centre Services Fees payable in respect of that part of the Data Centre Space affected by the DC Failure for the calendar month in which the calendar day occurs.</p> <p>You will only be able to claim this DC Service Credit once in any calendar month.</p>

AXONVX Service SLA

- 6.8 The SLA terms set out in clauses 6.8 to 6.11 do not apply to any feature of the AXONVX Services not specifically identified, nor to Data Centre Space. This SLA covers the AXONVX Port and AXONVX Cross Connect Services.
- 6.9 The calculation of service availability in this AXONVX Service SLA does not include times when AXONVX Services are unavailable due to factors beyond our reasonable control, including:
- Your (or your Representatives') acts or omissions;
 - the acts or omissions of a third party or a fault on any third party's network;
 - any error in the configuration, a failure or incompatibility in relation to Your Equipment or cabling; or
 - if we suspend the AXONVX Services in accordance with the terms and conditions of Your Agreement.
- 6.10 We will achieve the Service Levels set out in the table below (each an "**AXONVX Service Level**"). If we fail to achieve an AXONVX Service Level (an "**AXONVX Failure**"), we will

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provide you with the corresponding Service Credit (each an “**AXONVX Service Credit**”) set out in the table below, subject to the terms and conditions of this AXONVX Service SLA.

- (a) The AXONVX Port has a service availability target of 99.95%.

$$\text{Service availability} = \left[\frac{((T_m - T_{po}) - T_o)}{(T_m - T_{po})} \right] \times 100$$

Where: T_m = Time in the month (in minutes)

T_{po} = planned outage time in the month, including outages beyond our control (in minutes)

T_o = outage time for the relevant service in the month (in minutes)

- (b) The EXC has a Packet Loss Ratio (“PLR”) Service Level target of <0.1%. An EXC will be considered available when it meets or exceeds the PLR target for three consecutive five-minute intervals, in which case the time of availability will start from the first of these intervals (“Available”). An EXC will continue to be considered Available until it fails to meet the service target for three consecutive five-minute intervals, in which case the time of unavailability will start from the first of these intervals (“Unavailable”). An EXC will continue to be considered Unavailable until it is Available again.

- (c) The EXC has a service availability target of 99.95%.

$$\text{Service availability} = \left[\frac{(T_m - T_{po}) - T_o}{(T_p - T_{po})} \right] \times 100$$

Where: T_m = Time in the measurement period (in minutes, for the time the EXC was in continuous use* in the billing period)

T_{po} = planned outage time in the period, including outages beyond our control (in minutes)

T_o = outage time for the relevant period (in minutes)

*For the avoidance of doubt, continuous use means that at no time the service was stopped by you during the period.

6.11 AXONVX Service Credits: If we fail to meet the service availability target in the relevant calendar month then you may be eligible to claim an AXONVX Service Credit as shown in the table below:

Severity	Service Availability Target	Claimable Rebate
Medium	< 99.95% and ≥ 99.5%	25% of the monthly fees for AXONVX Service excluding the Establishment Fee (Recurrent Fee) for the month during which the AXONVX Service is affected
High	< 99.5%	50% of the Recurring Fee for the month during which the AXONVX Service is affected

Notes:

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- The PLR target does not apply to a service where a five-minute average traffic load of more than 70% of the available bandwidth is measured for either incoming or outgoing traffic.
- A traffic rate limiting feature may be provided to you for your convenience. The PLR target therefore does not apply where packet loss is due to rate limiting.

Service Credit requirements

- 6.12 We are not required to provide a Service Credit (being either a DC Service Credit or an AXONVX Service Credit as applicable) ("**Service Credit**") unless the following requirements are met:
- you give us notice of the Failure (being either a DC Failure or an AXONVX Failure as applicable) ("Failure") immediately upon becoming aware of the Failure; and
 - you request the Service Credit in respect of the Failure within 5 business days of its occurrence.
- 6.13 Any such notice or request must be made in the manner, and include the information, advised by us from time to time.

Service Credit limitations

- 6.14 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, the maximum of all Service Credits required to be provided by us to you in any calendar month is 100% of the relevant Services Fees (being Data Centre Services Fees or AXONVX Service Fees as applicable) payable in respect of that part of the Data Centre Space or AXONVX Service affected by a relevant Failure for that calendar month.
- 6.15 Service Credits will apply only to future Services provided under Your Agreement. We are not required to provide Service Credits to you under Your Agreement against any Services that are provided under any other contract between us and you, nor to provide refunds under Your Agreement. If upon termination of Your Agreement there are outstanding Service Credits, such Service Credits are forfeited.
- 6.16 Notwithstanding any provision to the contrary in this SLA, the following do not constitute Failures (and you will not be entitled to a Service Credit):
- failures to achieve Service Levels that occur while any undisputed amount that is due and payable to us remains unpaid outside of any contractual payment terms;
 - failures to achieve Service Levels caused by or in connection with Your Equipment; racks supplied by you; your (including without limitation your Representatives') acts or omissions; or any error in the configuration, a failure or incompatibility in relation to Your Equipment or cabling;
 - failures to achieve Service Levels caused by property of a third party or the acts or omissions of any third party (including without limitation a fault on any third party's network):
 - excluding the Facility Provider and its sub-contractors (if any); and
 - including our sub-contractors, unless those sub-contractors are acting under our directions or instructions; and

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- (iii) including any owner or operator of any data centre other than the Facility Provider or any network.
- (d) failures to achieve Service Levels caused by you exceeding the Power Allocation or by you failing to remedy a power imbalance pursuant to clause 3.22;
- (e) failures to achieve Service Levels caused by our exercise of our rights pursuant to clause 8.7;
- (f) a failure to achieve a Service Level that is recorded by a monitoring or reporting device, but which we or the Facility Provider can demonstrate to our reasonable satisfaction was incorrectly recorded as a Service Level Failure due to a defect in or failure of the monitoring or reporting device; and
- (g) failures to achieve Service Levels caused by Force Majeure Events.

6.17 Notwithstanding any provision to the contrary in this SLA, and in addition to the items listed in clause 6.16, failures to achieve Service Levels due to Scheduled Maintenance notified to you by us, or by the Facility Provider on our behalf, in accordance with clause 7.2, do not constitute Failures in respect of any Service Level described above as having 'Medium' criticality.

Rectification of Failures

- 6.18 You must immediately notify us of the Failure.
- 6.19 On becoming aware of a Failure (including following notification in accordance with clause (a)), we will:
- (a) where possible, specify to you an estimated time scale for rectification of the Failure or the cause of the Failure and update you as required until the Failure or the cause of the Failure is remedied; and
 - (b) use our reasonable endeavours to remedy the Failure or the cause of the Failure as soon as practicable.

7 SCHEDULED MAINTENANCE

- 7.1 We will use reasonable endeavours to:
- (a) minimise the need for maintenance work (Scheduled Maintenance) that in our reasonable opinion will cause, or is likely to cause us to fail to achieve a Service Level; and
 - (b) minimise any disruption or inconvenience to you caused by the Scheduled Maintenance.
- 7.2 In the event that, in our reasonable opinion, any Scheduled Maintenance will cause, or is likely to cause, us to fail to achieve a Service Level, we will give you at least 30 days' notice of the Scheduled Maintenance, such notice to include, where possible:
- (a) details of the nature of the Scheduled Maintenance;
 - (b) the likely effect on our ability to achieve the Service Levels;

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- (c) the dates and times for carrying out the Scheduled Maintenance; and
- (d) an estimated time scale for completing the Scheduled Maintenance.

8 FEES AND INVOICING

Payment of Fees

- 8.1 Unless specified otherwise in writing, the Fees will be charged monthly in advance.
- 8.2 Fees that are not recurring will be charged monthly in arrears, except installation fees which will be charged in your first invoice.
- 8.3 Fees must be paid by the last day of the month without set-off, counterclaim, withholding or deduction.
- 8.4 We are not responsible for the payment of fees and charges for services provided by third parties contracted by you.

Fee escalation

- 8.5 On the Review Date, the Fees will increase by the greater of 3% or CPI.

Fee adjustment

- 8.6 Where the cost of supplying the Services increases due to:
 - (a) any increase in the cost of supplying the Services associated with any change in Tax Charge; or
 - (b) a material change in the cost of power to us or the Facility Provider (determined by us in our reasonable opinion),
 we may, by notice in writing to you, adjust the Fees.

Suspension

- 8.7 We may:
 - (a) suspend your access to the Facility, the Data Centre Space and any other services if an undisputed amount payable under Your Agreement is not paid within 7 days of its due date and you fail to pay the amount within 7 days of receiving an Access Suspension Notice from us; or
 - (b) suspend the provision of power to the Data Centre Space and the provision of all other services to you if an undisputed amount payable under Your Agreement is not paid within 14 days of its due date and you fail to pay the amount within 14 days of receiving a Service Suspension Notice from us.

AXONVX Services Fees

- 8.8 In respect of AXONVX Services the following fees will be invoiced after the AXONVX Connection Date and to coincide with the monthly billing date for your other Services:

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- (a) any Establishment Fee;
- (b) any AXONVX Port Fee; and
- (c) any AXONVX Services monthly advance Fee.

9 INTELLECTUAL PROPERTY

No assignment

- 9.1 Each party's Material remains the property of that party and nothing in Your Agreement grants the other party any Intellectual Property Rights in the Material or its other Intellectual Property Rights.

Your Material

- 9.2 To the extent reasonably required to allow us to perform and/or deliver the Services, you grant to us a non-exclusive, irrevocable, worldwide, royalty-free licence to exercise and sub-license the Intellectual Property Rights in any of Your Material in connection with us providing any Services to you.
- 9.3 You warrant that use of Your Material by us in accordance with clause 9.2 will not infringe the Intellectual Property Rights or other rights of any third party.

AXONVX Services

- 9.4 Only to the extent reasonably required to allow you to access and use and for us to facilitate the AXONVX Services, we grant to you a non-exclusive, revocable, global licence to exercise the Intellectual Property Rights in the relevant Material referred to in clause 9.1 above.

ONEDC Application

- 9.5 All intellectual property rights and title (including copyright) in ONEDC and any documentation relating to them, vests in and remains the property of Facility Provider.
- 9.6 Facility Provider owns the copyright and related intellectual property rights in ONEDC or has obtained the permission of the owner of the copyrights and related intellectual property rights to make it available to you for the Purpose.
- 9.7 You may not reproduce, modify, sell, distribute, or create derivative works based on ONEDC, unless Facility Provider has given you prior written consent.
- 9.8 Facility Provider (or where applicable, a third party), own all trademarks and logos displayed on ONEDC.
- 9.9 You are not permitted to use the trademarks or logos without prior written consent from Facility Provider or, where applicable, the third party owner of the trademark or logo.

10 INDEMNITY

Customer indemnity

- 10.1 You indemnify us and the Facility Provider (and our and the Facility Provider's Representatives) from and against (and must pay for) any liability, loss, damage, costs or expenses (including legal costs) (**Loss**) we or the Facility Provider incurs or suffers and that arises naturally (that is, according to the usual course of things) from or in connection with:

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- (a) any claim by a third party against us or the Facility Provider arising from your use (or attempted use) of the Services;
- (b) the personal injury or death of any person (including any of your Representatives) in connection with Your Equipment, use of the Data Centre Space or use of the Services or any act or omission of you or your Representatives;
- (c) damage to Your Equipment, the Facility, the Data Centre Space or your other property, our property or any third party's (including the Facility Provider's) property (such as without limitation the Facility Provider's Equipment) caused by or in connection with any act or omission by you or your Representatives;
- (d) any claim or allegation by a third party against us or the Facility Provider, relating to Intellectual Property Rights or privacy obligations, in connection with any act or omission by you or your Representatives; and

except to the extent the circumstances in paragraphs **Error! Reference source not found.** to (d) above are caused or contributed to by us or our Facility Provider. We will take reasonable steps to mitigate our Loss in connection with the the circumstances in paragraphs **Error! Reference source not found.** to (d) above.

Continuing obligation

10.2 Each indemnity contained in Your Agreement is a continuing obligation notwithstanding:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and it is not necessary for us to incur expense or make payment before enforcing or making a claim under an indemnity.

11 LIABILITY

Our liability to you

11.1 Subject to clauses 11.2 and 11.3 and the Australian Consumer Law Provisions in the General Terms of Our Customer Terms, our aggregate liability for any loss or damage, however caused (including by our negligence), suffered by you in connection with Your Agreement is limited to:

- (a) where you suffer loss or damage as a result of a failure by us to meet any Service Level, the relevant Service Credit specified in the SLA;
- (b) where you suffer loss or damage in connection with use of ONEDC, \$100; or
- (c) in every other case, an amount equal to the Data Centre Services Fees or AXONVX Service Fees (as relevant in respect of the claimed liability) paid by you to us under Your Agreement in the 12 months prior to you first suffering loss or damage in connection with Your Agreement.

11.2 Subject to clauses (a) and 11.3 and the Australian Consumer Law Provisions in the General Terms of Our Customer Terms, neither party is liable for any Consequential Loss, however caused (including by negligence), suffered or incurred by the other party in connection with Your Agreement.

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- 11.3 Nothing in Your Agreement operates to limit or exclude liability that cannot by law be limited or excluded. Our liability to you for breach of any statutory guarantee or term imposed by statute which cannot be excluded is (to the extent permitted to by law) limited to, at our discretion:
- (a) in the case of goods, the replacement, repair or supply of equivalent goods or paying the cost of doing so; and
 - (b) in the case of services, resupply of the services or payment of the cost of having the services resupplied.

12 PPSA

- 12.1 You acknowledge and agree that you have no interest or rights in any property or equipment not owned by you or right to retain any such equipment, and that we may register our property or equipment and the Facility Provider may register its property or equipment, in accordance with the PPSA. You must not register or attempt to register any interest under the PPSA against any of our property or equipment or that of any third party (including the Facility Provider) situated within the Facility.
- 12.2 You must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by section 275(7) of the PPSA.
- 12.3 To the extent that it is not inconsistent with clause 12.2 constituting a “confidentiality agreement” for the purposes of section 275(6)(a) of the PPSA, you agree that we or the Facility Provider may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that you are not doing so in response to a request made by an “interested person” (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

13 INSURANCE

- 13.1 You must effect and maintain from a reputable insurance company:
- (a) all insurances required by law, including workers’ compensation insurance in accordance with relevant legislation; and
 - (b) public liability insurance for an amount of not less than \$20 million per claim.
- 13.2 If we request, you must provide us with evidence of the currency of the policies referred to in clause 13.1.

14 SUBCONTRACTING

- 14.1 We may subcontract the performance of any Service, in whole or in part, to any person.
- 14.2 Notwithstanding any such subcontract, we remain fully liable for all of our obligations under Your Agreement.

15 ASSIGNMENT

- 15.1 You must not assign, in whole or in part, or novate your rights and obligations under Your Agreement without our prior written consent.

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15.2 We may assign, in whole or in part, or novate our rights and obligations under Your Agreement to a third party with sufficient resources and financial capacity and that agrees to be bound by our obligations under Your Agreement.

16 TERM

Term of Your Agreement

16.1 Your Agreement commences on Your Agreement Commencement Date, and continues until termination or expiry of the Service Term for Data Centre Services ("**Your Agreement Term**").

16.2 The terms applicable to ONEDC apply from the date you download ONEDC and continue until terminated.

Service Term

16.3 Each Service commences on the Service Commencement Date, and continues for the Minimum Term.

16.4 After expiry of the Minimum Term, the Service automatically extends on a month to month basis on the existing terms (including price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Service to extend automatically.

17 TERMINATION

Termination by us

17.1 We may terminate Your Agreement by written notice to you if:

- (a) you fail to pay any undisputed amount payable under Your Agreement within 30 days of its due date;
- (b) you fail to pay any undisputed amount payable under Your Agreement on or before its due date on more than 3 occasions in any rolling 12 month period;
- (c) you commit a material breach of Your Agreement which is incapable of remedy, or you commit a material breach of Your Agreement which is capable of remedy and you fail to remedy the breach within 30 days of receiving a notice from us requiring you to do so;
- (d) an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due;
- (e) you undergo a change in Control without our prior written approval;
- (f) a Force Majeure Event prevents us from performing all or substantially all of our obligations under Your Agreement for a period exceeding 60 days;

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- (g) a Change in Law makes it commercially unviable (in our reasonable opinion), or illegal, for us to continue to provide the Services; or
- (h) we or the Facility Provider cease to have the right to use the Facility, in which case, subject to clauses 17.1 to 17.5, upon request by you we will use reasonable endeavours to assist you to transfer Your Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of the Facility.

ONEDC Application

- 17.2 We or the Facility Provider may revoke or suspend your access to ONEDC at any time, including if:
- (a) Facility Provider suspects you of breaching these terms or Your Agreement under which ONEDC is ordered;
 - (b) you become bankrupt or insolvent;
 - (c) if required by law.
- 17.3 You must immediately cease using ONEDC following revocation or suspension of access.
- 17.4 Clauses 5.14, 9.5 to 9.9, 5.17 to 5.20, and 17.2 survive the expiry or termination of your right to use ONEDC.

Migration

- 17.5 If the Facility is sold or otherwise disposed of by the Facility Provider, on your request we will use reasonable endeavours to assist you to transfer Your Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of the Facility.

Early Termination Charge

- 17.6 If during the Minimum Term a Service is cancelled or terminated for any reason other than for our material breach, we may charge you any waived Fee(s) for the cancelled or terminated Service(s) and an amount calculated as follows:
- (a) In respect of all Services other than AXONVX Services:

$A \times B \times 25\%$

"A" = the average Fees paid or payable each month by you for the Service(s) up to the date of cancellation.

"B" = the number of months (or part of a month) remaining in the Minimum Term for the relevant Service(s).
 - (b) In respect of AXONVX Services:

You must pay all the remaining unpaid Fees under Your Agreement in respect of AXONVX Services.

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17.7 You acknowledge that this amount is a genuine pre-estimate of the loss we are likely to suffer.

Consequences of termination

17.8 Termination of Your Agreement does not affect any accrued rights or remedies of a party.

18 OBLIGATIONS AT END OF YOUR AGREEMENT TERM

18.1 On or before the Exit Date you must:

- (a) remove Your Equipment (including without limitation cabling or connection to Facility Provider's Equipment) from the Data Centre Space and the Facility;
- (b) repair any damage to the Data Centre Space or the Facility caused by the removal of Your Equipment;
- (c) if and to the extent requested by us, remove any works carried out on the Data Centre Space and make good the Data Centre Space to the condition it was in prior to the works being carried out (and in carrying out any such works, you must comply with clauses 3.27 to 3.30);
- (d) deliver up the Data Centre Space in a condition that is consistent with you having complied with your obligations under Your Agreement;
- (e) deliver any of our confidential information to us; and
- (f) return our and the Facility Provider's property, including but not limited to IDACs, power rails and structured cabling.

18.2 If you do not remove Your Equipment in accordance with clause (a), we may treat it as abandoned and deal with it in any way we see fit, including removing it at your cost (with such costs to be paid by you within 30 days of the invoice date).

18.3 For the purposes of this clause 18, the Exit Date is:

- (a) if Your Agreement expires – the date of expiry;
- (b) if Your Agreement is terminated under clause 17 – the date of termination.

18.4 In complying with your obligations under this clause 18, you must not disturb or cause interruption to us, the Facility Provider or other users of the Facility.

19 FORCE MAJEURE

19.1 Neither party will be:

- (a) in breach of Your Agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of its obligations under Your Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force

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Majeure Event. This clause does not relieve you from making any payment as required under Your Agreement.

20 DISPUTE RESOLUTION

- 20.1 The parties agree to use best endeavours to resolve in good faith any dispute concerning Your Agreement. Each party must follow the procedures in this clause 20 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).
- 20.2 If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.
- 20.3 If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.
- 20.4 The parties will continue performing their respective obligations under Your Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with Your Agreement.
- 20.5 Each party must bear its own costs of complying with this clause.

21 NO LEASE

- 21.1 Your Agreement is a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in the Facility or the Data Centre Space and you have no rights as a tenant or otherwise under any real property or landlord/tenant laws.

22 GENERAL

- 22.1 The laws of Queensland, Australia govern Your Agreement.
- 22.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- 22.3 Each provision of Your Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason, that provision will be severed and the remainder of the provision will be read and construed as if the severable provision had never existed.
- 22.4 A right under Your Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 22.5 All terms of Your Agreement which by their nature should survive expiry or termination shall survive expiry or termination (as the case may be).

23 SPECIAL MEANINGS

23.1 Definitions

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The following words have the meaning set out below:

Access Suspension Notice means a notice given by us for the purposes of clause (a).

Add-On Services means Cross Connect Services; Remote Hands Services; and any other services that we may agree to provide from time to time.

Add-On Services Fees means the fees for Add-On Services specified in the Application Form or the Move Add Change (MAC) Form (as applicable), or as otherwise agreed by the parties.

Application Form means the application form submitted by you to order Services.

AXONVX Connection Date means the date on which you successfully become connected to the AXONVX Port, EXC or other such services being provided to you in respect of AXONVX Services and are advised by us that such connection is available for use.

AXONVX Port means the interface that allows you to interconnect with your own or other users' AXONVX Ports in the same or other AXONVX enabled data centres over high-speed Ethernet to access network and services offered under the terms and conditions of those providers and as described in the Application Form or the MAC form.

AXONVX Port Fee means the fee described as the "AXONVX Port Fee" in the Application Form or the MAC form.

AXONVX Services means the services in respect of AXONVX as may be described in the Application Form and / or other information that we may provide to you from time to time.

AXONVX Service Fees means the Fees in respect of AXONVX Services as set out in the Application Form and / or other information that we may provide to you from time to time.

Blocks means an agreed number of Racks, the specifics of which are outlined in the applicable Application Form.

Caged Area means a caged area which may include Blocks or Racks, the specifics of which are outlined in the applicable Application Form.

Change in Law means any present or future law, regulation, treaty, order or official directive or request (which, if not having the force of law, would be complied with by a responsible provider of services similar to the Services) that commences, is introduced, or changes, after the date of Your Agreement.

Consequential Loss means (a) loss of revenue; (b) loss of reputation; (c) loss of profits; (d) indirect or consequential loss; (e) loss of bargain; (f) loss of actual or anticipated savings; (g) economic loss; (h) lost opportunities, including opportunities to enter into arrangements with third parties; (i) loss, corruption or interception of data; and (j) interruption to business.

Control has the meaning given to it in the Corporations Act.

Corporations Act means Corporations Act 2001 (Cth).

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CPI means the Consumer Price Index (Weighted Average Eight Capital Cities) published by the Australian Bureau of Statistics and calculated as the percentage increase between the CPI for the Quarter ending 31 March that most recently precedes the previous Review Date and the CPI for the Quarter ending 31 March that most recently precedes the current Review Date.

Cross Connect means a cross connection between the Data Centre Space and any other space in the Facility (whether or not that space is provided by us or the Facility Provider to you or to a third party (including to a carrier)).

Cross Connect Service means the installation and ongoing provision of a Cross Connect that you request us to provide, and that we agree to provide, to you in accordance with clause 4.

Data Centre Services has the meaning given to it in clause 3.1.

Data Centre Services Fees means the Fees for Data Centre Services described in the Application Form.

Data Centre Space means, in respect of Your Agreement, the Data Centre Space in the Facility allocated by us in accordance with clauses 3.31 to 3.34, which may include:

- (a) Racks;
- (b) Blocks;
- (c) Suites; and/or
- (d) a Caged Area.

Early Termination Charge means a fee that we are entitled to charge in accordance with clause 17.6.

Emergency means any event or circumstance which in our reasonable opinion endangers or threatens to endanger the safety or health of any person or destroys or damages or threatens to destroy or damage the Facility or any part of the Facility, or the property of any other party.

Establishment Fees means any set-up fees in respect of AXONVX Services specified in the relevant Application Form.

EXC (Elastic Cross Connect) means an Ethernet virtual circuit between two or more AXONVX Ports within a single metropolitan area. Elastic cross connect is offered as part of the AXONVX Services and as may be described more fully in the Application Form.

Exit Date has the meaning given to it in clause 18.3.

Facility means the data centre facility specified in the Application Form (as changed in accordance with clauses 3.32 or 3.33) and includes all fixtures, fittings, plant, machinery, equipment or other property of us or the Facility Provider in or on the Facility.

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Facility Provider means NEXTDC Limited, ABN 35 143 582 521.

Facility Provider Equipment means AXONVX Port, any software, site, network or other equipment used by Facility Provider to provide the Services.

Facility Rules means rules relating to the operation and management of the Facility and the provision of the Services as available on the Facility Provider's ONEDC® portal or at www.nextdc.com.au, and as amended or replaced from time to time.

Fees means:

- (a) the Set-Up Fees;
- (b) the Data Centre Services Fees;
- (c) the Power Fees (if applicable);
- (d) the Add-On Services Fees (including without limitation AXONVX Service Fees); and
- (e) any other fees as agreed between the parties.

Force Majeure Event means any occurrence or omission outside a party's control and:

- (a) an Emergency;
- (b) a physical natural disaster including fire, flood, lightning or earthquake;
- (c) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (d) epidemic or quarantine restriction;
- (e) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (g) law taking effect after the date of Your Agreement; and
- (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors,

but excluding a flood that is determined to be less than a 1 in 100 year flood event.

GST has the meaning it has in the GST Act.

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

High Severity Service Level has the meaning given to it in clause (a).

IDAC means an access card issued by us or the Facility Provider to enable access to the Data Centre Space.

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Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trade marks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.

Material includes documents, software, object code, source code, configurations, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

Medium Severity Service Level has the meaning given to it in clause (b) .

Minimum Term in respect of a Service, means the minimum term for that Service specified in the Application Form.

Move Add Change (MAC) Form means the form by which you request us to provide Add-On Services after the date of submitting the Application Form.

Our Material means any Material provided or to which access is given by us to you for the purposes of Your Agreement.

Power Allocation means, in respect of the Data Centre Space, the Power Allocation for that Data Centre Space specified in the Application Form.

Power Fees means, in respect of a month, the power consumed by you during that month (measured in kWh at the power distribution unit located in the Data Centre Space) multiplied by the Power Rate.

Power Rate means the per kWh rate specified in the Application Form.

PPSA means the Personal Property Securities Act 2009 (Cth).

Quarter means the three month period ending 31 March, 30 June, 30 September or 31 December.

Rack means a physical rack with an agreed Power Allocation, the specific details of which are outlined in the applicable Application Form.

Remote Hands Services means minor technical services that you request us to provide, and that we agree to provide, as set out in the Facility Provider's Remote Hands Services description document as amended from time to time. It does not include services or work that requires a greater level of skill than the services described in that document.

Representative of an entity means an employee, agent, officer, director, auditor, adviser, partner, associate, invitee, licensee, consultant, joint venturer or sub-contractor of that entity or of a related body corporate (as defined in the Corporations Act) of that entity.

Review Date means 1 July in each year of Your Agreement Term.

Scheduled Maintenance has the meaning given to it in clause 7.1.

Service Commencement Date means, in respect of Your Agreement, the date which is calculated by reference to Your Agreement Commencement Date plus the applicable

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timeframe for delivery of the Set-Up Services as set out in the Service Delivery Table, or such other later date as agreed between the parties.

Service Delivery Table means the timeframe for performance of the Set-Up Services by us, as amended from time to time. A copy of the Service Delivery Table as at the date of acceptance of the relevant Application Form is available on the Facility Provider's ONEDC® portal.

Service Level Agreement or **SLA** means the Service Level Agreement in clause 5.

Service Levels has the meaning given to it in the Service Level Agreement.

Service Suspension Notice means a notice given by us for the purposes of clause (b).

Service Term means, in respect of a Service, the Minimum Term and any extension of the term in accordance with clause 16.4.

Services means Data Centre Services and Add-On Services.

Set Up Fees means the Set Up Fees specified in the Application Form.

Set Up Services means the preparation, establishment and provisioning of the Data Centre Space by us.

Suite means a separately enclosed area within a data hall comprised of Racks and/or Blocks or as fitted out by you (as the case may be), the specific details of which are outlined in the applicable Application Form.

Tax Charge means any tax, duty or governmental charge relating to carbon, emissions, trading scheme, pollution, electricity, carbon dioxide, greenhouse gas or similar emissions or other regulatory charges or schemes.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.

Your Agreement Commencement Date means the date we accept your Application Form.

Your Agreement Term has the meaning given to it in clause 16.1.

Your Equipment means all hardware, software, accessories, tools and other information technology and telecommunications equipment owned, leased, licensed, controlled or otherwise used by or in the possession of you or your Representatives from time to time which is located in the Facility, including the Data Centre Space, or which is used to access the Services.

Your Material means any Material provided or to which access is given by you to us for the purposes of Your Agreement.