

# Wholesale Telecommunications

## Master Services Agreement

Commercial in Confidence

### **BETWEEN:**

Move Up Internet Pty Ltd (ACN 656 762 837) of 52 Crosby Rd, Albion Qld 4010 ("MUI", "we", "us", "our")

### **AND**

[Insert RSP Details and ABN Here] ("RSP", "you", or "your")

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### **BACKGROUND**

The Retailer and the Supplier have entered into this Agreement under which the Supplier will provide wholesale telecommunications services to the Retailer.

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## **1. AGREEMENT, DURATION, AND CANCELLATION**

### **1.1 Creation and Framework of Agreement**

- (a) This Master Services Agreement for Wholesale Telecommunications outlines the standard terms and conditions under which the Supplier commits to providing wholesale telecommunications services to the Retailer.
- (b) The duties of both parties concerning a Service begin once the Retailer requests the provision of a Service at a Site and the Supplier approves this request. Such requests must be submitted through the Supplier's designated platform, which will be made available to the Retailer. The Supplier retains the discretion to either approve or reject any request.

### **1.2 Duration of Agreement**

- (a) This Agreement takes effect from the date it is signed by both parties and will remain valid until it is terminated under the terms outlined herein.

- (b) Services are delivered on a rolling month-to-month basis and may be discontinued by either party upon notification, effective at the close of the current billing period, with notice provided through the Supplier's platform.

### **1.3 Hierarchy of Documents**

In case of any contradictions, the following order of precedence shall apply to interpret the Agreement:

- (a) This Master Services Agreement for Wholesale Telecommunications;
- (b) The latest Superfast Broadband Access Service (SBAS) Final Access Determination or any other applicable ACCC ruling;
- (c) The Supplier's policies, protocols, pricing structures, and other guidelines published on its website or communicated to the Retailer.

## **2. TERMINATION**

### **2.1 Termination by the Supplier**

The Supplier retains the right to terminate this Agreement or any specific Service by providing written notice to the Retailer under the following circumstances:

- (a) The Retailer undergoes an Insolvency Event.
- (b) The Retailer fails to settle an undisputed invoice within 30 days of its due date and does not resolve the issue within 30 days after receiving a reminder.
- (c) The Retailer habitually delays payments, specifically three or more instances within any 12-month period, without resolution within 30 days of each reminder.
- (d) The Retailer breaches a fundamental clause of the Agreement that cannot be remedied.
- (e) A material breach by the Retailer that can be remedied is not rectified within 30 days of notice.
- (f) A Force Majeure Event hinders the Supplier from meeting its obligations for over 60 days.
- (g) Changes in supplier terms, inability to secure required permits or licenses, or other significant issues that remain unresolved for over 30 days.

### **2.2 Termination by the Retailer**

The Retailer may terminate this Agreement or any Service by giving written notice to the Supplier under these circumstances:

- (a) A breach by the Supplier of a fundamental clause that cannot be rectified.
- (b) A material breach that is not resolved within 30 days of notification.
- (c) A Force Majeure Event prevents the Supplier from fulfilling its obligations for over 60 days.
- (d) The Supplier experiences an Insolvency Event.
- (e) Written notice provided before the Ready-for-Service Date (RFS) covering reasonable preparation costs incurred by the Supplier.

### **2.3 Consequences of Termination**

- (a) Termination of the Agreement results in the cessation of all Services.
- (b) Terminating a Service does not automatically terminate the Agreement.
- (c) Rights accrued before termination, including payments due, remain unaffected.
- (d) Upon termination, all Confidential Information must be returned or destroyed.

## **2.4 Continuing Rights Post-Termination**

- (a) The termination or conclusion of this Agreement does not nullify any prior breaches or provisions of the Agreement, nor does it impair any accrued rights, responsibilities, or liabilities, including indemnities, up to the date of termination or expiration.
- (b) Any clauses intended to survive termination, either explicitly or by their nature, will remain enforceable after the Agreement ends.

## **3. COLLABORATION BETWEEN PARTIES**

Both parties commit to reasonable cooperation in fulfilling their obligations under this Agreement. Each party, including its contractors, must conduct activities at the designated Site in a way that ensures the safety of individuals and minimizes interference with the other party's operations or third parties engaged at the Site. Each party is independently responsible for the safe operation of its networks, systems, equipment, and facilities.

## **4. PAYMENT OBLIGATIONS**

- (a) Late payments will accrue interest at a rate of 2% annually above the 60-day Bank Bill Swap Reference Rate.
- (b) All fees under this Agreement are exclusive of Goods and Services Tax (GST), which the Retailer must pay in addition to the invoiced amount.
- (c) The Supplier will issue monthly invoices in advance for wholesale service fees. These invoices may also include charges from a prior billing cycle if they were not previously invoiced.
- (d) The Retailer must settle invoices within 14 days of issuance.

## **5. OWNERSHIP OF INFRASTRUCTURE**

Unless specifically stated otherwise in this Agreement, the Retailer does not gain any rights, ownership, or interest in any part of the Supplier's infrastructure, hardware, software, or network components.

## **6. SUBCONTRACTING RIGHTS**

Either party may delegate responsibilities under this Agreement to a third party but remains accountable to the other party for the performance of those duties.

## **7. WHOLESALE SERVICES**

- (a) The Supplier will provide wholesale services to carriers and service providers on a fair and impartial basis.
- (b) The Retailer is charged the wholesale service fee for these services.
- (c) The Supplier reserves the right to amend products, pricing, or terms, including introducing or adjusting a service or its pricing, with at least 40 days' notice unless shorter notice is necessary due to regulatory requirements or price reductions.
- (d) The Supplier may utilize its network to provide wholesale services to other carriers or providers offering retail services to end-users.
- (e) The Supplier ensures that wholesale services meet industry standards and are fit for their intended purposes.
- (f) The wholesale service fee is applicable from the RFS date, irrespective of whether the end-user has started using the service.
- (g) The wholesale service fee ceases upon service termination as outlined in Clause 2.
- (h) The Retailer must adhere to the Acceptable Use Policy and ensure that end-users also comply.

- (i) The Retailer is obligated to comply with all relevant laws, regulations, and directives issued by regulatory bodies such as the Australian Competition and Consumer Commission (ACCC) and the Telecommunications Industry Ombudsman.
- (j) The Supplier is required to connect premises within 14 days post-RFS date or on a mutually agreed date if before the RFS date.

## **8. SERVICE INTERRUPTIONS**

The Supplier may suspend or limit a service under the following conditions:

- (a) With one week's notice if there is a minor breach of the Acceptable Use Policy by the Retailer or end-user. For significant breaches, the suspension may occur immediately without notice.
- (b) With two weeks' notice for technical issues or maintenance requirements. For emergency maintenance, the Supplier may suspend services immediately without notice.

## **9. REPRESENTATIONS AND WARRANTIES**

Both parties represent and warrant that:

- They are legally incorporated entities in Australia.
- They have the legal capacity to enter into this Agreement and the necessary rights to fulfill their obligations.
- All actions will be performed diligently and in compliance with applicable laws.
- Equipment used will meet its intended purpose.

The Retailer warrants that if acting as a trustee, it has full indemnity rights out of the relevant trust's assets.

## **10. LIABILITY AND INDEMNIFICATION**

### **10.1 Indemnification**

- (a) Each party agrees to indemnify the other for any direct losses resulting from death, personal injury, or damage to property caused by their own actions or inactions.
- (b) The indemnified party must take reasonable steps to minimize any loss they incur.
- (c) If a third-party claim arises that may invoke indemnity, the indemnified party must:
  - (i) Promptly provide full details of the claim.
  - (ii) Avoid making any admissions, settlements, or offers without the other party's written consent.
  - (iii) Allow the other party to control negotiations and legal proceedings, bearing the associated costs.
  - (iv) Provide reasonable assistance to the indemnifying party in managing the claim.

### **10.2 Limitation of Liability**

- (a) To the fullest extent allowed by law, the Supplier excludes all implied warranties, including those for merchantability or fitness for a specific purpose. The Supplier does not guarantee uninterrupted or error-free services.
- (b) Neither party is liable for indirect or consequential damages, including loss of revenue, profits, or data.
- (c) Except for charges explicitly owed under this Agreement, each party's total liability for all claims is capped at the amount recoverable under applicable insurance policies.

### **10.3 Proportional Responsibility**

Liability is reduced proportionally to the extent the other party contributes to the loss or damage.

## **11. INSURANCE REQUIREMENTS**

- (a) The Supplier must maintain:
  - Public liability insurance with a minimum coverage of \$10 million per claim.
  - Professional indemnity insurance covering at least \$2 million per claim.
  - Workers' compensation insurance as required by law.
- (b) The Retailer must maintain public liability insurance with a minimum coverage of \$10 million per claim.
- (c) Both parties must provide proof of insurance upon request.
- (d) The Supplier must ensure its subcontractors carry adequate insurance based on their scope of work.

## **12. FORCE MAJEURE**

Neither party shall be held accountable for delays or non-performance caused by circumstances beyond their control (Force Majeure). The affected party must take reasonable steps to overcome the issue and resume obligations as soon as possible. Payments due are not exempt under this clause.

## **13. ASSIGNMENT OF RIGHTS**

- (a) Rights under this Agreement cannot be assigned without prior written consent, except:
- (b) The Supplier may assign rights to a related corporate entity or an acquirer of its business, with prior notification to the Retailer.

## **14. RELATIONSHIP OF THE PARTIES**

The parties acknowledge that they are independent contractors. This Agreement does not create a partnership, joint venture, or employment relationship between them.

## **15. DELAY IN EXERCISING RIGHTS**

Unless otherwise stated in this Agreement, a Party's partial exercise, failure to exercise, or delay in exercising any legal right or any right under this Agreement does not constitute a waiver of that right or any other rights or remedies under this Agreement.

## **16. COST RESPONSIBILITIES**

Each party is responsible for its own expenses incurred in the preparation and execution of this Agreement.

## **17. INTELLECTUAL PROPERTY**

- (a) Neither party transfers ownership of intellectual property under this Agreement.
- (b) The Supplier grants the Retailer a limited, non-transferable license to use the Supplier's intellectual property solely for the purposes of this Agreement.
- (c) The Retailer permits the Supplier to use its intellectual property internally as needed to fulfill the Agreement and to reference the Retailer in marketing materials.

## **18. CONFIDENTIALITY**

- (a) Both parties must treat all disclosed information as confidential unless explicitly authorized or required by law.
- (b) Upon termination of the Agreement, each party must return or destroy the other's confidential information, except for data stored in backup systems or required for legal or regulatory purposes.

## 19. NOTICES

Notices are considered delivered:

- (a) Upon receipt of an automated email read receipt.
- (b) When hand-delivered during business hours.
- (c) Three business days after certified mail is sent domestically or ten business days internationally.

## 20. DISPUTE RESOLUTION

- (a) Disputes must first be addressed through written notification and negotiation between senior representatives of both parties.
- (b) If unresolved within ten business days, disputes may be referred to mediation.
- (c) Either party may seek urgent court relief for pressing matters.

## 21. GOVERNING LAW

This Agreement is governed by the laws of Queensland, Australia. Both parties submit to the jurisdiction of the courts within this state.

## 22. DEFINED TERMS AND INTERPRETATION PRINCIPLES

**Acceptable Use Policy:** The Supplier's policy, as published on its website and amended from time to time, outlining rules that the Retailer and End-Users must follow in using a Service, designed to ensure that the Service is used lawfully and that no one interferes with the Network or other people's use of Services or the internet.

**Agreement:** This document (the Wholesale Telecommunications Master Services Agreement), including any Supplier protocols, price lists, rules, and policies that are published on the Supplier's website or communicated to the Retailer, as amended from time to time.

**Access Agreement:** bears the meaning assigned to it under 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:** refers to Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Business Day:** denotes any day that is not a Saturday, Sunday, or public holiday in the state or territory where the Service is being provided.

**Carriage Service Provider:** As defined in the Telecommunications Act 1997 (Cth).

**Carrier:** As defined in the Telecommunications Act 1997 (Cth).

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

**Confidential Information:** All information, regardless of its form or when the other Party (Recipient) becomes aware of it, that:

- Is treated by the Discloser as confidential, including but not limited to information regarding

strategy, personnel, Intellectual Property, and any industrial, marketing, or commercial information related to or developed in connection with the Discloser's business;

- Is disclosed by the Discloser to the Recipient or becomes known to the Recipient; except information that the Recipient creates independently, is public knowledge (except as a result of a breach of confidentiality), or is acquired from a third party entitled to disclose it.

**Consequential Loss:** Loss of revenue, profits, anticipated savings, business, economic loss, data, value of equipment (other than the cost of repair), opportunities, or any other consequential, special, indirect, punitive, or exemplary damages.

**Control:** As defined in the Corporations Act 2001 (Cth).

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

**CPI:** The 12-month change in the All Groups Consumer Price Index published by the Australian Bureau of Statistics for the previous four quarters.

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

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

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

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

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

**Fair Use Policy:** means the policy available on our website.

**Force Majeure Event:** An unforeseeable event or circumstance beyond the reasonable control of the party claiming force majeure, which prevents that party, in whole or in part, from fulfilling its obligations under this Agreement, including:

- (a) An act of God, lightning, meteor strike, earthquake, storm, flood, landslide, explosion, or fire;
- (b) General strikes or other industrial action (excluding industrial action involving some or all of that party's employees or contractors);
- (c) Acts of a public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, or civil commotion.

**GST:** As defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

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

**Insolvency Event:** means in respect of a party: (a) the party ceases to carry on business or is unable to pay its debts as and when they fall due; (b) a receiver, liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or



compulsory) or reduction of capital of that party; (c) the party enters into a creditors' arrangement (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts, or the party takes the benefit of any Law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the Law of any applicable jurisdiction.

**Intellectual Property:** All industrial and intellectual property rights, including registered or unregistered trademarks, patents, copyrights, rights in circuit layouts, trade secrets, confidential know-how and information, and any application or right to apply for registration of any of those rights.

**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:** The telecommunications network(s) operated by the Supplier where a Service is provided to the Retailer.

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

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

**Parties:** Both the Supplier and the Retailer.

**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.

**POI:** Point of Interconnect.

**POP:** Point of Presence.

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

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

**Retail Services:** Services provided to End-Users.

**RFS Date:** The ready-for-service date, which is the earlier of the date that the Supplier notifies the Retailer via the Supplier platform that a Service is operational and ready for use, or when the End-User begins using the Service.

**Service Area:** means the parts of our fibre network in respect of which a declaration made by us under





section 360H of the Telecommunications Act or a declaration made by the Minister that specifies us as the statutory infrastructure provider under section 360L of the Telecommunications Act is in force. Telecommunications Act means the Telecommunications Act 1997 (Cth).

**Service:** A telecommunications service provided over the Network at a Site.

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

**Site:** Any building(s) or locations where a Service is or will be provided.

**Supplier:** A third party that provides goods or services to the Supplier, which are used in the Supplier's provision of Services to the Retailer.

**Wholesale Service:** A Service provided by the Supplier to the Retailer, a Carriage Service Provider, or a Carrier.

**Wholesale Service Charge:** The fee for Wholesale Services payable by the Retailer to the Supplier, which includes both recurring and non-recurring costs such as new development charges and labor services.

## 22.1 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation, and unless the contrary intention appears:

- (a) A reference to a person includes a reference to a corporation, trust, partnership, association, or other entity and vice versa;
- (b) The singular includes the plural and vice versa;
- (c) If an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) A word defined in this document and used but not defined in other parts of the Agreement has the meaning given to it in this document;
- (e) A provision of this Agreement must not be construed adversely to a Party solely because that Party drafted this Agreement or any part of it;
- (f) The meaning of general words is not limited by specific examples introduced by "including," "for example," or similar expressions;
- (g) Reference to a clause or schedule is a reference to a clause of or schedule to this Agreement;
- (h) Reference to a Party includes its successors and assigns and any Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth));
- (i) Reference to a Party's act, omission, or negligence is also a reference to the act, omission, or negligence of any person who is under that Party's control;
- (j) Reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments, or replacements of any of them.

## 23. ENTIRE AGREEMENT AND VARIATION

### 23.1 Complete Agreement

This Agreement, together with any documents referred to in it, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.



### 23.2 Reliance And Representations

Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement.

### 23.3 Variations and Amendments

No variation, amendment, or modification of this Agreement shall be effective unless:

- (a) it is in writing and signed by authorized representatives of both parties; or
- (b) it is made in accordance with the variation mechanisms expressly provided for in this Agreement.

## 24. COUNTERPARTS AND EXECUTION

### 24.1 Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG, or similar format) shall take effect as delivery of an executed counterpart of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the parties on the date first written above.

For and on behalf of Move Up Internet Pty Ltd (ACN 656 762 837):

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of [Insert RSP Name] (ACN [Insert ACN]):

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_



## WHOLESALE PRICE LIST

### Premises Charges

Recurring monthly charges for Layer 2 services are as follows:

Plan Name	Speed Tier (Mbps)	Monthly Charge (ex. GST)
Essential Plan	100/50	\$52
Ultra Plan	1,000/500	\$70

### Notes

- Availability of speeds may vary by location. Confirm availability through the Supplier's platform.
- All Layer 2 services are offered as bit-stream connections between the Customer Access Circuit Port on the Network Termination Device (NTD) and the Supplier's Network-to-Network Interface at designated Points of Interconnection (PoI).
- Network Services permit **one MAC address per connection**.
- Maximum Transmission Unit (MTU) is capped at **1500 bytes**.
- Layer 2 services are prohibited from use for:
  - Network aggregation or backhaul.

### Non-Recurring Charges

Service Type	Charge (ex. GST)
New Development Charge	\$272.72
Service Adds/Moves/Changes	\$0.00

### Notes:

Standard call-out does not include complex installations, replacement equipment (where appropriate), or consulting; a minimum of 1 hour is charged.

### Call-Out Charges

Type	Standard Hours (ex. GST)	After Hours/Emergency (ex. GST)
No Fault Found Call-Out	\$150.00/hour	\$250.00/hour
Complex Installations or Consulting	\$200.00/hour	\$300.00/hour

### Network Interface Pricing

Product	Setup Fee (ex. GST)	Monthly Charge (ex. GST)
1000BASE-LX	\$0.00	\$50.00
10GBASE-LR	\$0.00	\$100.00

#### Notes:

- Cross Connect Port services are provided on S-LAN as C-LAN at Supplier PoI closest to Network Service connection.
- The Retailer will require a cross-connect to PoI to connect to Port and receive S-LAN/C-LANs for any Layer 2 products. LOA will be provided at the facility of interconnect.

### PoI Location

State	Location	Available Network Interfaces
QLD	NextDC B2, 454 St Pauls Terrace, Fortitude Valley QLD	1000BASE-LX, 10GBASE-LR