



# Southern Cross Broadband General Terms

## Definitions and Interpretation

### 1.1 Defined Terms

Within these General Terms, unless stated otherwise, the following terms have the indicated meanings:

- **Affiliate:** Concerning an entity (the first entity), it refers to another entity that either controls the first entity, is controlled by the first entity, or shares common control with the first entity.
- **Agreement:** This term is defined in clause 2.1.
- **Authorisations:** These encompass all licenses, declarations, permits, accreditations, and approvals of any type, including those required by regulatory authorities.
- **Business Day:** It signifies a day that is not a Saturday, Sunday, or a public holiday in the relevant state or country where the Service is provided.
- **Cancellation Charge:** This represents an amount equal to the monthly recurring charge for the terminated Service, multiplied by the number of months (or part thereof) between the termination date and the end of the Service Term.
- **Charges:** These are the fees (exclusive of any Taxes) for a specific Service, as detailed in the corresponding Service Order.
- **Claim:** Refers to any claim, action, suit, or demand.
- **Confidential Information of a Party:** Encompasses all confidential information provided by a party to the other party, including technology, intellectual property, industry knowledge, trade secrets, sensitive information, and financial data.
- **Consequential Loss:** Any form of indirect, special, incidental, or consequential loss, including damage to goodwill, loss of reputation, loss or corruption of data, loss of profits, revenue, opportunity, savings, or pure economic loss, whether arising in contract, tort (including negligence), or under any statute.
- **Control:** Possessing a 50% or greater interest in an entity or the right to direct the management of that entity.
- **Customer Equipment:** All equipment used by You in connection with the Services that is not provided by Southern Cross Broadband.
- **Customer Information:** All information that Southern Cross Broadband obtains as a result of Your use of a Service, which may include Personal Information of You, Your Affiliates, and End Users.
- **Data Breach:** The misuse, loss, unauthorized access, modification, and disclosure of Personal Information.
- **EEA:** The European Economic Area.
- **End User:** A person who acquires a resupplied or derived version of the Service supplied to You by Southern Cross Broadband.
- **Force Majeure Event:** A circumstance or event beyond a party's reasonable control, including acts of nature, accidents, national emergencies, insurrection, strikes, government actions, and malicious or negligent acts by third parties.
- **General Terms:** The standard terms and conditions forming part of the Agreement between Southern Cross Broadband and You, available at [www.sxbb.net.au](http://www.sxbb.net.au).
- **Intellectual Property:** All intellectual or industrial property worldwide, including copyrights, patents, trademarks, design rights, trade secrets, or Confidential Information related to the Services.
- **Insolvency Event:** Regarding a party, it includes various scenarios such as receivership, liquidation, scheme of arrangement, or a party becoming insolvent or unable to pay its debts.
- **Interest Rate:** The lower of either the cash rate published by the Reserve Bank of Australia plus 8% per annum or the highest rate permitted by local courts.

- **Loss:** Any loss, cost, expense, liability, or damage, including reasonable legal costs.
- **Network:** The telecommunications network operated by Southern Cross Broadband, its Affiliates, or third parties under arrangements with Southern Cross Broadband.
- **Personal Information:** Information or opinions, whether true or not, that can identify an individual, recorded in any form, and subject to privacy laws.
- **Privacy Laws:** All data protection and privacy legislation, guidelines, and industry standards applicable where the Services are provided.
- **Regulator:** Any government or regulatory body, department, commission, or authority, foreign or domestic.
- **Regulatory Fees:** Fees charged to Southern Cross Broadband by any Regulator.
- **Service:** A service that Southern Cross Broadband agreed to provide to You under this Agreement, as specified in a Service Order and detailed in a Service Schedule.
- **Service Levels:** The service levels defined in the Service Schedule for each Service.
- **Service Order:** Southern Cross Broadband's standard order form specifying the requested Service(s) agreed upon.
- **Service Schedule:** A schedule to these General Terms, available at [link], containing details of the Service(s), Service Levels, and relevant information.
- **Service Start Date:** The date specified in the Service Order for commencing a Service.
- **Service Term:** The minimum term for providing a Service as indicated in the relevant Service Order.
- **Southern Cross Broadband:** Refers to Southern Cross Broadband Pty Ltd (ACN 663 362 258).
- **Southern Cross Broadband Equipment:** Equipment provided by Southern Cross Broadband for use in connection with the Services.
- **Tax:** All applicable taxes, fees, charges, or surcharges imposed on or based on the provision, sale, or use of the Services, excluding taxes based on net income.
- **Telecommunications Act:** All telecommunications legislation, guidelines, and industry standards relevant to the provision of Services in the jurisdictions where Services are provided.
- **Third Party:** Any person other than Southern Cross Broadband or its Affiliates.
- **You or Your:** Refers to the customer described in the Service Order.

## 1.2 Interpretation

Within this Agreement:

- Headings serve for reference only and do not affect the Agreement's meaning.
- The singular includes the plural and vice versa, and gender-specific terms include other genders.
- Grammatical forms of defined words hold corresponding meanings.
- References to clauses, paragraphs, schedules, appendices, or attachments refer to those in this Agreement, including any schedules and attachments.
- References to documents or agreements, including this Agreement, include them as novated, altered, or replaced over time.
- References to 'dollar' or '\$' indicate the lawful currency of the country where the Service is provided.
- Specific times for obligations refer to the relevant place where the obligation is to be performed.
- References to a person include successors and permitted assigns.
- "Person" includes partnerships, bodies corporate, associations, governments, and authorities.
- Mentioning anything after 'include,' 'includes,' or 'including' does not limit other inclusions.

## 2. Agreement

### 2.1 This Agreement

- The Agreement between You and Southern Cross Broadband consists of:
  - The Service Order submitted by your authorized representative.
  - The relevant Service Schedule.
  - These General Terms and any addendums.
- In case of inconsistencies among these documents, the order of priority is: Service Order, relevant Service Schedule, any addendum, and then these General Terms.

### 2.2 Ordering and Acceptance Procedures

- You can request Services from Southern Cross Broadband anytime by submitting a Service Order. By doing so, you agree to abide by this Agreement.

## 3. Affiliates

### 3.1 Affiliate Orders

- You and Your Affiliates can order Services from Southern Cross Broadband or its Affiliates by submitting a Service Order. Each Service Order creates a separate agreement to purchase the Services under this Agreement.
- You are the customer of record for all Services under this Agreement. You and Your Affiliate, if they submit a Service Order, are jointly and severally liable for all obligations herein.
- If a Southern Cross Broadband Affiliate accepts a Service Order, they are solely liable, and references to 'Customer' will refer to You and Your Affiliate.

### 3.2 Addition or Amendment of Terms by Jurisdiction

- In jurisdictions where additional terms or amendments are necessary for enforceability or compliance with local laws or practices, these terms will be included in an addendum to this Agreement.

### 3.3 Application of Indemnities and Limitations in Favor of Affiliates

- Indemnities, limitations, and exclusions of liability in favor of a party extend to each of that party's Affiliates.

## 4. Southern Cross Broadband's Obligations

### 4.1 Services

- Southern Cross Broadband will:
  - Provide the Services as per this Agreement and the relevant Service Order.
  - Make reasonable efforts to commence Service provision by the Service Start Date. Delays may occur due to factors like property access.

### 4.2 Variation to Services

- Southern Cross Broadband may, from time to time:
  - Modify a Service.
  - Change, upgrade, or enhance the Network or related technology, software, or equipment, as long as it maintains compliance with this Agreement.

### 4.3 Regulatory - General

- Southern Cross Broadband must:
  - Obtain and maintain Authorisations required for constructing the Network and providing each Service.
  - Fulfill obligations as a telecommunications provider per the Telecommunications Act.
  - Provide reasonable assistance and information upon Your request for compliance with Your obligations.
- Southern Cross Broadband may intercept communications over the Service as required by law enforcement without prior notification.

### 4.4 Service Levels

- Southern Cross Broadband will strive to provide Services in accordance with the Service Levels. Liability for failure to meet Service Levels is outlined in the relevant Service Schedule.

## 5. Your Obligations

### 5.1 General Obligations

- You must:
  - Comply with reasonable requests from Southern Cross Broadband regarding Services or the Network.
  - Relinquish a Service when required for testing and maintenance.
  - Secure all necessary Authorisations for using the Services and performing obligations.
  - Provide assistance and information needed by Southern Cross Broadband.
  - Comply with all laws and the Telecommunications Act.
  - Report unlawful Service or Network use promptly.
  - Obtain approvals for Southern Cross Broadband's access to premises.
- You must ensure that Your use of Services and Customer Equipment does not interfere with the Network, facilities, or privacy of communications.

### 5.2 Equipment

- You are responsible for installing and maintaining relevant Customer Equipment at Your expense.
- Ensure Customer Equipment meets regulatory standards and is compatible with Services without damaging the Network.
- Southern Cross Broadband may require the discontinuation of Customer Equipment causing interference.

### 5.3 End Users

- You are responsible for all aspects of services provided to End Users, including complaints, billing, and compliance with laws.
- You may not make unauthorized representations on behalf of Southern Cross Broadband to End Users.
- You are not authorized to act on Southern Cross Broadband's behalf or incur liability on its behalf.

### 5.4 Software

- Software provided by Southern Cross Broadband remains its property.
- You may only use the software for the purposes outlined in this Agreement.
- You cannot change or interfere with the software.
- Compliance with additional requirements imposed by Southern Cross Broadband or software owners is required.
- Southern Cross Broadband may install upgrades or new versions of the software.

### 5.5 Network and Southern Cross Broadband Equipment

- You do not acquire ownership or property rights in the Network or Southern Cross Broadband Equipment.

### 5.6 Intellectual Property

- Each party retains ownership of Intellectual Property it owned before this Agreement or developed independently.
- Southern Cross Broadband owns the Intellectual Property in the Service provided, and You cannot use it outside this Agreement.
- Improvements or changes to Services belong to Southern Cross Broadband.

### 5.7 Modern Slavery

- You warrant that Modern Slavery practices do not exist within your businesses, your Affiliates' businesses, or your suppliers' businesses.
- You must promptly disclose the existence of Modern Slavery practices within your businesses or supply chains.  
**General Information:** It begins with general information, such as the date of the agreement and the parties involved.

**Definitions:** It provides definitions for key terms used throughout the agreement.

**Parties to the Agreement:** This section elaborates on who is bound by the agreement, including affiliates.

**Southern Cross Broadband's Obligations:** It outlines the obligations of Southern Cross Broadband, including providing services, regulatory compliance, and service levels.

**Your Obligations:** This section lists your responsibilities, including complying with requests, equipment maintenance, and user management.

**Charges and Payment:** It explains how charges are calculated, payment terms, and interest on unpaid amounts. It also covers the handling of disputed invoices.

**Variation of Charges:** It states that Southern Cross Broadband can vary charges with proper notice.

**Taxes:** This section addresses charges exclusive of taxes and the procedure for deductions or withholding tax.

**Insurance:** Parties are required to maintain public liability and workers' compensation insurance.

**No Reliance on Warranties and Representations:** Both parties acknowledge that they rely on their own judgment and not on any warranties or representations outside the agreement.

**Liability:** This section outlines limitations of liability, excluding indirect losses, and how non-excludable conditions are dealt with.

**Indemnity:** Parties agree to indemnify each other for specific situations, such as breaches of the agreement or negligence.

**Confidentiality:** It outlines how confidential information must be handled and exceptions to this rule.

**Customer Information:** It addresses the handling of personal information and data breaches.

**Publicity:** Parties agree to mutual publicity rights with certain limitations.

**Dispute Resolution:** It outlines the dispute resolution process before legal proceedings can be initiated.

**Relationship Between Parties:** The agreement clarifies that it does not create an employment, agency, or partnership relationship.

**Sub-contracting:** Southern Cross Broadband can use subcontractors without limiting its liability.

**Assignment:** It discusses the assignment of rights and obligations under the agreement.

**Waiver:** It clarifies that the failure to enforce any obligation does not constitute a waiver.

**Governing Law and Jurisdiction:** The governing law is specified, and the parties submit to the jurisdiction of specific courts.

**Notice:** It provides details on how notices and communications should be made.

**Amendment:** The agreement can be amended under certain conditions.

**Entire Agreement:** The agreement is deemed the entire agreement between the parties.

**Severability:** It addresses the handling of invalid or unenforceable provisions.

It's important to note that this is a legally binding document, and parties should carefully review and understand its terms before entering into the agreement. Legal advice may be necessary to ensure compliance and protect each party's interests.

## 6. Charges and payment

### 6.1 Credit approval and security

Southern Cross Broadband may conduct a credit check on You at any time. If Southern Cross Broadband, acting reasonably, is not satisfied with Your credit rating, Southern Cross Broadband may request that You:

- (a) pre-pay and maintain Your account in advance one month or more;
- (b) provide a deposit as security for payment (excluding Government entities); and/or
- (c) put in place any other reasonable credit or security arrangements.

### 6.2 Charges and payment

You must pay the Charges in each invoice issued by Southern Cross Broadband by the due date on the relevant invoice or, if no due date is specified, within 20 Business Days of the invoice date. Payments must be made by electronic transfer to an account nominated by Southern Cross Broadband.

### 6.3 Interest on unpaid amounts

Any amount payable by You under this Agreement (including interest) which is not paid when due (other than an amount withheld in accordance with clause 6.4(b)) will bear interest from (and including) the due date until (but excluding) the date of actual payment calculated on a daily basis at the Interest Rate. Interest is payable on demand.

### 6.4 Disputed invoices

- (a) If You wish to dispute the whole or any part of an amount stated to be payable by You in an invoice provided under clause 6.2, You must, prior to the due date of the invoice, notify Southern Cross Broadband that a dispute has arisen.
- (b) You may withhold payment of any amount that You dispute in good faith under clause 6.4(a), until such dispute has been resolved, but must pay the balance of any amount which is not in dispute when due.
- (c) The due date for payment of any amount withheld by You under this clause 6.4 shall be the Business Day following the resolution of the dispute.
- (d) The provisions of clause 13.1 apply to disputed invoices.

## 6.5 Variation of Charges

Southern Cross Broadband may vary the Charges on 20 Business Days' notice to You if Southern Cross Broadband continues to provide a Service to You after the expiry of the Service Term in accordance with clause 11.1(a).

- (a) make that deduction or withholding (or both);
- (b) pay the full amount deducted or withheld as required by the relevant law;
- (c) give the other party a receipt for each payment; and
- (d) increase its payment to the other party to an amount which will result in that other party receiving the full amount which would have been received if no deduction or withholding had been required.

## 7. Taxes

### 7.1 Charges exclusive of Taxes

All charges for the Services are exclusive of applicable Taxes and Regulatory Fees. Southern Cross Broadband is entitled to add to the amount otherwise payable an additional amount for the applicable Taxes and Regulatory Fees.

### 7.2 No deductions for withholding Tax

If a party must deduct or withhold Tax from a payment to the other under this Agreement, it must:

- (a) make that deduction or withholding (or both);
- (b) pay the full amount deducted or withheld as required by the relevant law;
- (c) give the other party a receipt for each payment; and
- (d) increase its payment to the other party to an amount which will result in that other party receiving the full amount which would have been received if no deduction or withholding had been required.

## 8. Insurance

### 8.1 Public liability cover

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable public and product liability insurance policy for an insured amount of at least \$10,000,000 per occurrence.

### 8.2 Workers' compensation cover

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable workers' compensation insurance policy which provides cover for its employees and contractors and complies with legislated requirements as to amount and type of cover in each jurisdiction in which the relevant employees and contractors are carrying out their employment for the time being.

### 8.3 Co-operation

Each party must cooperate with the other party and render to it any assistance it may reasonably request from time to time (including the provision of information which, having exercised reasonable efforts to obtain any necessary consent of a third person, the other party is permitted to provide) in order to effect and maintain any insurance policy as required by this clause 8.

Each party must, if required by the other party, produce evidence satisfactory to the other party of the existence, currency and contents of the insurance specified in this clause 8.

## 9. No reliance on warranties and representations

9.1 Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and

(b) any conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law, and each party releases the other party from all Claims and liability (whether or not known) which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Agreement.

## 10. Liability

### 10.1 No indirect loss

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any Consequential Loss however caused in connection with or related to this Agreement or otherwise in respect of the Services.

### 10.2 No warranty

Southern Cross Broadband excludes all conditions and warranties implied into this Agreement and limits its liability for any non-excludable conditions and warranties, where permitted to do so by law, to (at Southern Cross Broadband's option):

- (a) repairing or replacing the relevant goods;
- (b) resupplying the relevant or equivalent services; or
- (c) in either case, paying You the cost of doing so.

### 10.3 Limitation of Southern Cross Broadband's liability

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, Southern Cross Broadband:

- (a) excludes liability for any and all Loss suffered or incurred by You in connection with a Force Majeure Event; and
- (b) limits its maximum, aggregate liability for Loss for all Claims in connection with a Service (except under, or in respect of its liability for Loss in connection with its indemnity obligations under clause 10.6) to an amount calculated by multiplying the amount Southern Cross Broadband charges You each month for that Service by 12.

### 10.4 Limitation of Your liability

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, You:

- (a) exclude liability for any and all Loss suffered or incurred by Southern Cross Broadband in connection with a Force Majeure Event; and
- (b) limit Your maximum, aggregate liability for Loss for all Claims in connection with a Service (except under, or in respect of Your liability for Loss in connection with Your indemnity obligations under clause 10.5 or 10.6 or Your obligation to pay a Cancellation Charge under clause 11.3(b)) to an amount calculated by multiplying the amount Southern Cross Broadband charges You each month for that Service by 12.

### 10.5 Indemnity for Southern Cross Broadband

(a) Subject to clause 10.5(b), You indemnify Southern Cross Broadband from and against any Loss suffered or incurred by Southern Cross Broadband in connection with a Claim, including in connection with the termination of any Service, by an End User.

(b) You will not be liable to Southern Cross Broadband under clause 10.5(a) to the extent that the Loss that gives rise to the Claim referred to in clause 10.5(a) could not lawfully have been excluded or reduced (regardless of whether such liability actually was excluded or reduced) by the party from whom the End User acquired the service.

(c) You are responsible for the content of any transmission using the Service and You indemnify Southern Cross Broadband from and against any Loss suffered or incurred by Southern Cross Broadband in connection with a Claim relating to any content, data or other signal transmitted using the Service (including any transmission made by an End User), subject to Southern Cross Broadband:

- (i) notifying You of the Claim (or threatened Claim) promptly upon becoming aware of it;
- (ii) allowing You sole control of the defence of the Claim, including the right to settle the Claim;

- (iii) not settling the Claim without Your prior written consent; and
- (iv) giving You reasonable assistance in relation to Your defence of the Claim.

This clause 10.5(c) does not apply to any transmission made by Southern Cross Broadband or its employees or subcontractors (for example, when testing the Service).

(d) Your liability to indemnify Southern Cross Broadband under this clause 10.5 shall be reduced proportionately to the extent that any act or omission of Southern Cross Broadband contributed to the Loss.

## 10.6 Mutual Indemnities

(a) Each party (the Indemnifying Party) indemnifies the other party and its officers, employees, agents and contractors (the Indemnified Party) against any Loss incurred or sustained by any of those Indemnified in connection with a Claim for:

- (i) a breach of clause 13;
- (ii) personal injury to or death of any person;
- (iii) damage to any real or tangible property of any person; or
- (iv) any infringement or alleged infringement of any person's Intellectual Property rights, arising out of a negligent or wilful act or omission of the Indemnifying Party or any of its officers, employees, agents or contractors.

(b) The Indemnifying Party's liability to indemnify the Indemnified Party under Clause 10.6(a) shall be proportionately to the extent that any act or omission of the Indemnified Party contributed to the Loss.

## 10.7 Mitigation

Southern Cross Broadband (in the case of clause 10.5) and the Indemnified Party (in the case of clause 10.6) must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under that clause.

# 11. Term and termination

## 11.1 Term

- (a) This Agreement begins on the date the Service Order is accepted by Southern Cross Broadband and continues until terminated in accordance with this clause 11.
- (b) Other than where terminated in accordance with this Agreement, a Service Order remains in force for the Service Term.
- (c) On expiry of the Service Term, the Service Order will continue on a month-to-month basis until terminated by either party giving the other not less than 20 Business Days' written notice of termination.

## 11.2 Termination

A Service will be terminated if either party notifies the other party of termination under clauses 11.1(c) or 11.3 to 11.4. To the extent permitted by law, the parties waive any rights to terminate a Service that are not expressly provided for in this Agreement.

## 11.3 Termination by Southern Cross Broadband

- (a) Southern Cross Broadband may terminate a Service with immediate effect by giving notice to You if You fail to pay an amount when due under this Agreement and do not, within 20 Business Days of being requested to do so by notice from Southern Cross Broadband, remedy that failure, provided that Southern Cross Broadband has, to that date, complied with its obligations under this Agreement.
- (b) If: (i) You terminate a Service other than under clause 11.4; or (ii) Southern Cross Broadband terminates a service under clauses 11.3(a) or 11.4, before the end of the Service Term, without limiting Southern Cross Broadband's legal rights and remedies, You will be required to pay the Cancellation Charge. You acknowledge and agree that the Cancellation Charge represents a genuine pre-estimate of the loss Southern Cross Broadband will suffer if any Service is terminated prior to the end of its Service Term.



(c) No termination under clause 11.3(b)(i) will be effective or be processed by Southern Cross Broadband until Southern Cross Broadband receives full payment of the Cancellation Charge, such that the relevant Service(s) will remain active and payable.

#### **11.4 Termination by either party**

Either party may terminate a Service with immediate effect by giving notice to the other party if:

- (a) the other party breaches a material provision of this Agreement and does not, within 20 Business Days of being requested to do so by notice, remedy that breach; or
- (b) an Insolvency Event occurs in relation to the other party and the other party's financiers do not, within 1 Business Day of being requested to do so by notice, cause that other party's obligations to continue to be performed.

#### **11.5 Suspension**

(a) Southern Cross Broadband may immediately cease supplying a Service if: (i) You are overdue with any amount payable to Southern Cross Broadband and do not, within 5 Business Days of being requested to do so by notice from Southern Cross Broadband, bring Your account up to date;

(ii) You do not, within 10 Business Days of being requested to do so by notice from Southern Cross Broadband, comply with a request for security made by Southern Cross Broadband under clause 6.1;

(iii) You use or allow End Users to use a Service in breach of clause 5.1(a)(ix);

(iv) You breach any other material provision of this Agreement and do not, within 20 Business Days of being requested to do so by notice from Southern Cross Broadband, remedy that breach;

(v) an Insolvency Event occurs in relation to You and Your financiers do not, within 1 Business Day of being requested to do so by Southern Cross Broadband, cause Your obligations to continue to be performed;

(vi) Southern Cross Broadband reasonably believes it is necessary to do so:

(A) for Southern Cross Broadband to comply with any law, regulatory standard, or mandatory code or instrument; or

(B) to prevent You contravening any law, regulatory standard or mandatory code or instrument, infringing another person's rights, defaming another person, or impairing the privacy of communications over a Service other than to comply with Your statutory obligations; or

(vii) to protect any person, equipment, facility or the normal operation or integrity of the Network, other parts of Southern Cross Broadband's network, or all or part of any Service.

(b) Without limiting Southern Cross Broadband's rights under clause 11.5, Southern Cross Broadband will, wherever reasonably practical in the circumstances, give You at least 5 Business Days prior notice of a suspension proposed under clause 11.5(a)(vi) or 11.5(a)(vii) (Proposed Suspension) and will consider any reasonable representations and requests by You in respect of a Proposed Suspension.

(c) You acknowledge that such prior notice will not always be reasonably practicable, given the urgent nature of the matters referred to in clause 11.5 and that Your requests in respect of a Proposed Suspension may not be acted on.

(d) Southern Cross Broadband must, as soon as practicable, recommence the supply of a Service which has been suspended under this clause upon the matter which has given rise to the suspension under this clause being rectified.

(e) Where a Service was suspended under clause 11.5(a)(i) to 11.5(a)(v), You agree to pay the costs of suspending and recommencing supply of the Service.

#### **11.6 Without prejudice**

Termination of a Service will be without prejudice to any accrued rights or remedies of either party.

#### **11.7 Continuing obligations**

The obligations imposed on the parties under clauses 4.3, 5.5, 9.1, 10.1, 14, 19 and 20 are continuing obligations and survive termination of any Service.

## **12. Force Majeure**

### **12.1 Suspected Force Majeure Event**

If either party reasonably suspects that a Force Majeure Event may arise and prevent or hinder the performance of that party's contractual obligation, it must notify the other party immediately. The parties must then work together in good faith to resolve the issues, with the aim of avoiding the occurrence of the Force Majeure Event.

## **12.2 Occurrence of a Force Majeure Event**

(a) If a Force Majeure Event prevents or hinders performance of a party's contractual obligations (Affected Party), then the Affected Party must notify the other party within 5 Business Days of becoming aware of the Force Majeure Event, giving full details of:

- (i) the Force Majeure Event;
  - (ii) the obligations that are affected and the extent to which the Affected Party is reasonably unable to perform those obligations;
  - (iii) the expected duration of any delay arising directly out of the Force Majeure Event; and
    - (iv) where possible, a proposal for avoiding the impact of the Force Majeure Event.
- (b) To the extent possible, the Affected Party must use its best endeavours to rectify or alleviate the effect of the Force Majeure Event.
- (c) For the duration of any Force Majeure Event, the parties will use and will continue to use their best endeavours to minimise the impact of any Force Majeure Event.
- (d) Upon the cessation of the delay or failure resulting from the Force Majeure Event the Affected Party must promptly notify the other party of the cessation.
- (e) Any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that such fulfilment is no longer possible or is not required by the party to whom the obligations are owed.

## **13. Confidentiality**

### **13.1 Confidential Information**

Each party agrees in relation to the Confidential Information of the other party:

- (a) to keep confidential the Confidential Information;
- (b) to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
- (c) to disclose the Confidential Information only to those of its employees, advisors, related entities and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.

### **13.2 Exceptions**

The obligations of confidentiality under this Agreement do not extend to information which (whether before or after this Agreement comes into force):

- (a) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under clause 13.1; or
- (c) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required.

### **13.3 Existing confidentiality obligations**

The obligations of confidentiality under this Agreement are in addition to, and not in substitution for the confidentiality obligations of the parties under any specific non-disclosure agreements between the parties relating to the subject-matter of this Agreement.

### **13.4 Customer Information**

(a) Each party agrees to handle Personal Information obtained from the other party in accordance with the Privacy Laws. Where You appoint Southern Cross Broadband as a processor of Personal Data and transfer Personal Data to Southern Cross Broadband from the EEA, the parties will enter into an addendum to this Agreement as provided for in clause 3.2.

(b) Save with Your consent, Southern Cross Broadband will not use Customer Information for any purpose other than the purposes permitted under applicable law. Without limitation, these purposes include: (i) planning requirements in relation to Network operations or Network maintenance for any Service;

(ii) facilitating interconnection and inter-operability between telecommunications providers for the provision of any Service;

(iii) providing assistance to law enforcement, judicial or other government agencies;

(iv) compliance with any requirement imposed by a Regulator; and

(v) managing bad debt and preventing fraud related to the provision of any Service.

(c) By entering into this Agreement, You expressly consent to the use of Customer Information for the purposes of: administering, billing, providing and provisioning for any Service; Network and Service enhancement, security and risk management; to respond to any emergency which threatens life or property; or otherwise in accordance with Southern Cross Broadband's privacy policy (see <https://Sxbb.net.au/legal/>).

(d) You may give Your consent to the use of Customer Information for other purposes by any form of writing or by Your acceptance of any relevant terms and conditions which refer to such consent. You may withdraw Your consent to the use of Customer Information by giving us written notice.

### **13.5 Data Breach**

(a) If a party becomes aware of a Data Breach, that party will immediately inform the other party and disclose to it all information relating to the Data Breach.

(b) After notification of a Data Breach, You will provide all reasonable assistance to Southern Cross Broadband to:

(i) remedy the Data Breach and prevent further Data Breaches;

(ii) determine whether the Data Breach is an "eligible data breach" for the purposes of the Privacy Laws; and

(iii) in the event the parties agree that there has been an eligible data breach, prepare any statements and/or notifications within the applicable timeframes required under the Privacy Laws.

(c) Southern Cross Broadband will provide You with any notices it prepares under clause 13.5(b)(iii) for final approval, which must not be unreasonably withheld or delayed. Each party will not publicly use or mention the other's name without that party's prior written approval.

### **13.6 Publicity**

You consent to Southern Cross Broadband listing You as a customer of Southern Cross Broadband and use Your logo (in accordance with Your reasonable guidelines provided by You to Southern Cross Broadband) in any press release, marketing, sales or securities exchange reporting materials. Any other reference to You by Southern Cross Broadband requires Your prior written consent.

## **14. Dispute resolution**

### **14.1 No arbitration or court proceedings**

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), a party must comply with this clause 14 before commencing legal proceedings (except proceedings for interlocutory relief).

### **14.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### **14.3 Parties to resolve Dispute**

(a) During the 10 Business Days after a notice is given under clause 14.2 (or longer period if the parties to the Dispute agree in writing) (Period), each party to the Dispute must use its reasonable efforts to resolve the Dispute or to agree that the Dispute will be submitted to mediation.

(b) If the parties cannot resolve the Dispute or agree to mediation within that Period, or if there is a submission to mediation, but there is no resolution within 20 Business Days of the submission, or such extended time as the

parties may agree in writing before the expiration of the 20 Business Days, either party may commence legal proceedings.

## 15. Relationship between parties

This Agreement does not create a relationship of employment, agency or partnership between the parties.

## 16. Sub-contracting

Southern Cross Broadband may perform its obligations under this Agreement by procuring a third party to perform them. Southern Cross Broadband will inform You of the identity of the principal sub-contractors it retains in connection with the performance of this Agreement. Arrangements which Southern Cross Broadband may have with a third party will not limit Southern Cross Broadband's liability to You for performance of Southern Cross Broadband's obligations under this Agreement.

## 17. Assignment

(a) Subject to clause 17(b), neither party (Assignor) may assign or otherwise deal with (or purport to do so) any right or obligation under this Agreement to a third party (Assignee), including without limitation to an Affiliate without the prior written consent of the other party, with such consent not to be unreasonably withheld or delayed.

(b) Southern Cross Broadband may assign, novate or transfer any of its rights or obligations under this Agreement to any of its Affiliates without Your consent or to a purchaser of the whole or any part of the Southern Cross Broadband business.

## 18. Waiver

The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Agreement.

## 19. Governing law and jurisdiction

### 19.1 Governing law

This Agreement and any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes) shall be governed by and construed in accordance with the laws of Western Australia, Australia.

### 19.2 Submission to jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of Western Australia, Australia.

## 20. Notice

### 20.1 Method of service

A notice, consent or communication under this Agreement is only effective if it is:

- (a) in writing in English;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows: (i) delivered by hand to the recipient's address as specified in the Service Order, as varied by any notice;
- (ii) sent to the recipient's address by professional courier if that address is overseas; or
- (iii) sent by email to the recipient's email address as specified in Service Order where the sender receives an email receipt or written confirmation of receipt or does not receive an automated message that the email was not delivered within four hours of being sent, from the recipient to the sender.

A party may from time to time by notice to the other party vary its address for service of notices under this clause.

## 20.2 Time of service

A notice given in accordance with clause 20.1 is taken to be received (at the local time in the place of receipt):

- (a) if hand delivered, on delivery during business hours of the recipient;
- (b) if sent by professional courier to an address within the same country, 3 Business Days after the date of sending;
- (c) if sent by professional courier to an address within another country, 7 Business Days after the date of sending;
- (d) if delivered by email, that day if delivered by 5:00 pm on a Business Day; or the next Business Day, in any other case.

## 21. Amendment

Southern Cross Broadband may amend the terms of this Agreement at any time by giving You 20 Business Days written notice (**Notice Period**) but only if such amendments do not materially reduce Your rights or increase Your obligations (excludes amendments required or suggested by a law or a Regulator or a pass through of amendments made by an essential third-party supplier to Southern Cross Broadband to provide the Services). If You dispute the validity of an amendment made under this clause 21 acting reasonably, You must provide written notice of your objection within the Notice Period. If Southern Cross Broadband does not accept your objection, the amendment will be effective, but you can engage the Dispute Resolution mechanism in clause 14. If You do not provide notice of an objection within the Notice Period, You will be deemed to have accepted the amendment.

## 22. Entire agreement

This Agreement including its schedules and any appendices, annexures or attachments:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party, whether orally or in writing.

## 23. Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.