

Terms and Conditions

Introduction

This policy also applies to individuals serviced by all subsidiaries of Falcore Australia Pty Ltd (Falcore, Us, We, Our) including but not limited to Falcore Investments Pty Ltd and ChannelCo.

We retain the right to vary the terms of the Policy at our discretion, the most up to date version of our policy can be found at <https://falcore.com.au/resources-terms/>. By using any Falcore Service ('services') you agree to comply with the terms of this policy.

Our agreement with you

- 1.1 This Policy together with any Master Services Agreement (MSA), Privacy Policy (PP), Acceptable Use Policy (AUP), Master Rate Schedule (MRS), Addendums to Master Rate Schedule (as required) and the necessary Service Order requests (as placed) constitute the entire agreement that governs the Services that you order from us (Agreement).
- 1.2 Where there is any inconsistency between the documents forming the Agreement, the inconsistency shall be resolved in the following order of priority (with a document higher in the list taking priority over any document lower in the list):
 - a) The Master Service Agreement (MSA)
 - b) the applicable Service Orders;
 - c) the applicable Master Rate Schedule;
- 1.3 Any MSA supersedes all prior understandings, representations, arrangements and agreements between you and us regarding its subject matter. During the Term of the Agreement, we may need to change the terms of the Agreement due to circumstances beyond our control, including changes in law, security obligations, changes by one of our third party suppliers to the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. You agree that we may make these changes on reasonable notice to you.
- 1.4 Definitions and interpretation provisions are set out in clause 18.

Ordering procedure

- 2.1 You may apply for a Service from us at any time. If we wish to provide you with the Services, we will accept your application in a Service Order by way of an order from our online ordering portal(s), an e-mail from you or in certain circumstances a specific application form constructed specifically for your order. We will only accept a service order from you where your order request contains the following mandatory data:
- a) The Initial Term of your service order. e.g. 12 months, 24 months, 36 months, 48 months.
 - b) The Monthly Recurring Charge (MRC). e.g. \$100.00+GST per month.
 - c) The Non-Recurring Charge (NRC). e.g. \$1000.00+GST once off setup fee.
 - d) Confirmation of your intent that you are wishing to proceed with a Service Order.
- 2.2 We reserve the right to reject a Service Order for any reason.
- 2.3 You may request changes to the Services specified in a Service Order by sending a change order request to us. If we agree in writing to the change order request, the Service Order will be amended as specified in the change order request.

Security deposits and credit assessment

- 3.1 We may require that you pay a Security Deposit as a precondition to:
- a) executing any Service Order; and/or
 - b) continuing to provide a Service in circumstances where you have failed to pay any undisputed Charges for that Service by the Due Date or we believe you are a credit risk, by sending a notice to you specifying the Security Deposit that we require (Security Deposit Notice).
- 3.2 If we provide you with a Security Deposit Notice, you must pay the Security Deposit within 14 Business Days of the date of the Security Deposit Notice and we will have no obligation to provide the Services referred to in the Security Deposit Notice until you have done so.

- 3.3 We may apply all or part of the Security Deposit (Deduction) at any time to any outstanding Charges that are not paid to us by the due date in accordance with the Payment Terms. You must replenish the amount of any Deduction by paying that amount to us, within 5 Business Days of request from us.
- 3.4 We may conduct a credit assessment of the Customer at any time. The Customer authorises us to make all enquiries necessary to determine the Customer's creditworthiness and will provide us with all reasonable assistance necessary for the credit assessment.

Provision of Services

- 4.1 We will use reasonable endeavours to make the Services ready for use from the service commencement date specified in a Service Order. Service commencement dates are only estimates and are not binding. Sometimes, Services cannot be activated, or their activation may be delayed due to a range of different matters. We will not be liable for any such matters. If you order a service and wish to withdraw that order once we have made further upstream supplier arrangements to have the service delivered you will be subject to order withdrawal costs and in some cases the full contract value of your entire term of your original service order dependent on how far progressed your order is with our suppliers. Please note we are an aggregation partner of multiple suppliers and have back to back agreements with our suppliers for the underlying delivery of your services.
- 4.2 Subject to clauses 4.1 and 5, we will provide the Services (the subject of a Service Order) in a professional manner in accordance the Service Schedule, and if applicable a Service Level Agreement, on and from the Commencement Date for the Initial Term, except where the Service Order is terminated in accordance with the Agreement.
- 4.3 We may modify the manner in which a Service is provided at any time (including, by modifying or adopting alternative technology or changing the underlying network topology) provided that the modification does not have a material adverse effect on the performance of the Service.

4.4 Upon expiry of the Initial Term, the relevant Service Order shall automatically renew for subsequent consecutive periods each of three months (each, a **Renewal Term**) until and unless:

- a) you notify us of your decision to cancel the Service Order at least 90 days prior to the expiry of the Initial Term or Renewal Term (as applicable) in which case where such notice is given the Service Order will terminate at the end of the Initial Term or then current Renewal Term (as applicable); or
- b) the Service Order is terminated in accordance with the Agreement.

4.5 Our sole liability and your sole remedy, for any breach of a Service Level Agreement or non-availability of the Services, is the service level credits set out in the Service Level Agreement. You waive any right to any other remedies that you might otherwise have in relation to any such matters.

4.6 You are aware that we may be reliant on third party suppliers for supplying the Service to you and that circumstances beyond our control may cause faults in the Service from time to time. Subject to your rights under the Australian Consumer Law and to the maximum extent permitted by law, we are not obliged to restore any fault with a Service that is caused as a result of damage due to causes external to the facilities used by us and/or our third party suppliers to provide the Service, or interference, or a Force Majeure Event, or planned outages, including scheduled maintenance.

4.7 We will provide reasonable notice of scheduled maintenance and where possible undertake scheduled maintenance at a time that will minimise disruption to the Customer's use of the Services. If unscheduled or urgent maintenance is required, it may not be possible for us to provide notice or to schedule the maintenance at a time that is convenient to you.

4.8 We may suspend the Service if necessary because of an emergency, to comply with a law, or to protect persons, Our Equipment, facilities or our network, and third party supplier equipment or networks.

Your obligations

- 5.1 Our obligation to deliver Services under the Agreement is subject to you:
- a) providing all reasonable cooperation, assistance, information, and safe access to all relevant Personnel, premises, equipment, systems and networks, as required for us to exercise our rights or meet our obligations under the Agreement;
 - b) complying with the operational and technical specifications specified in any applicable Service Schedules and Service Order; and
 - c) otherwise complying with your obligations under the Agreement.
- 5.2 You and your End Users must not use any Service in breach of applicable law or the Acceptable Use Policy.
- 5.3 If a fault occurs you must attempt to diagnose its cause prior to contacting us to determine that the fault is not caused by your network or equipment, your or End User's software, electrical supply, content or services that are not supplied by us. You are responsible for rectifying faults relating to your equipment or network, your or End User software, electrical supply, content or services that are not supplied by us and for any costs we incur in relation to faults that arise for such a reason. You must provide all reasonable assistance to us in rectifying faults, including arranging access to your premises or End User premises.
- 5.4 If you are deemed a Channel Partner, Dealer, Reseller or Wholesale Partner You are solely responsible for dealing with your downstream customer, this includes, but is not limited to, the provision and operation of services, billing and collection of payments, dispute resolution, relationship management, technical support and fault rectification. You agree that we and our third party suppliers have no liability to you, a downstream customer, or a third party arising from the provision to or use of a Service by a downstream customer and you indemnify us for any costs we incur in relation to any related claim. You must ensure that downstream customers do not contact us or our third party suppliers. You must ensure that downstream customers consent to us and any relevant third party supplier being supplied with and being able to use their Personal Information for any purpose related to the supply of Services. You must maintain staff and facilities that are sufficient to meet your obligations to your downstream customers.

5.5 You must appoint and advise us of the name and contact details of your designated representatives who are the only persons that can contact us in regard to this Agreement and other operational issues. Your designated representatives must be sufficiently qualified and experienced to perform this role. You may change your designated representatives upon giving us notice.

5.6 You must not make any representation or warranty with regards to a Service unless it is entirely consistent with documents provided by us for that purpose.

5.7 If under this Agreement we have a right to terminate the Agreement, a Service Schedule or a Service Order, we may contact downstream customers to explain how termination of the Service may affect them and/or transfer the downstream customers to us or another wholesale customer.

5.8 Except where we agree otherwise in writing:

- a) You are solely responsible for network security, data backups and the installation and maintenance of cabling beyond the Network Demarcation Point, the electrical supply at the premises specified in a Service Order and the maintenance of your networks;
- b) We have no responsibility for anything that occurs on the customer side of the Network Demarcation Point;
- c) You must ensure that no Network Data is transmitted via the Services by you or any downstream customer unless all relevant consents, authorisations and licences have been obtained by you for us to lawfully collect, hold and disclose the Network Data in accordance with all applicable laws, as discussed in clause 10.4.

Payment of the Charges

6.1 We will invoice you for the Services, regardless of whether you use, or have commenced use of, the Services. We will issue our invoices for the Services:

- a) at the times specified in the applicable Service Schedules and/or Service Orders;
- b) or where no time is specified in a Service Schedule and/or Service Order, on and from the Service Completion Advice (**SCA**) or Ready-for-Service (**RFS**) Date for each applicable Service.

6.2 Subject to clause 7, you must pay all Charges in the manner specified in our invoices by the Due Date, without setoff, counterclaim or deduction.

6.3 Subject to clause 7, if you fail to pay any Charges by the Due Date for any Service (**Overdue Amount**), we may:

- a) charge you interest on the Overdue Amount at a rate of 2% above the current overdraft rate that we have with our principal banker from time to time; and/or
- b) upon 7 days' notice to you, suspend the provision of the Service to you, which suspension will remain in effect until we receive full payment of the Overdue Amount (and any interest that has accrued pursuant to clause 6.3(a)) or the applicable Service Order is terminated (whichever occurs earlier).

6.4 Except as otherwise agreed in writing, all amounts and Charges specified in the Agreement:

- a) are payable in Australian dollars;
- b) are exclusive of GST;
- c) must be paid by the Due Date; and
- d) are non-refundable, to the extent possible by Law.

6.5 If GST is applicable with respect to any taxable supply (as defined under the GST Law) made by us under this Agreement, we will issue a tax invoice to you with respect to that taxable supply and you must pay the GST at the same time as the payment for the relevant taxable supply.

6.6 We may at our discretion apply an annual CPI increase in July each year to your billing for services that are deemed to be infrastructure in nature. For example, but not limited to Colocation, Datacentre Services, Infrastructure Hosting Services, etc.

6.7 Should you require a service upgrade or service replacement of an existing service, you must explicitly advise us to cancel the service being replaced upon cutover. Services that are not explicitly cancelled in writing to us will continue to be charged and will not be liable for credit at any point in time irrespective of whether the service has been used or not.

6.8 In most cases and by default, all of our services will be invoiced monthly in advance on the 1st day of each month. Your first invoice will be pro-rata from your completion date to the

end of that month and for the subsequent month. Services that are consumption in nature may be invoiced monthly in arrears. For example software licensing where we undertake a end of month reconciliation of your usage or call charges that are summarized at end of month.

Charges disputes

- 7.1 You must notify us in writing, within 7 days of receipt of an invoice from us, of any amounts set out in an invoice that you wish to dispute together with a description of the disputed amounts and the basis of the dispute (**Disputed Charges Notice**) and pay the non-disputed Charges by the Due Date.
- 7.2 You must not dispute an amount set out in any invoice unless you genuinely believe that the amount is not payable.
- 7.3 You must not dispute an amount set out in any invoice other than in accordance with clauses 7.1 and 7.2.
- 7.4 If we receive a Disputed Charges Notice, it will be governed by the dispute resolution procedure set out in clause 16.
- 7.5 We will continue to supply the Services the subject of a Disputed Charges Notice, unless the dispute remains unresolved after the 1 month period set out in clause 16.3, in which case we may terminate the applicable Service Order on 7 days' written notice to you.
- 7.6 If a dispute the subject of a Disputed Charges Notice is resolved in our favour, you must pay us interest on that amount at a rate of 2% above the current overdraft rate that we have with our principal banker from time to time, from the Due Date until the actual date of payment (together with the disputed amount).

Risk and title to our equipment

- 8.1 Title in Our Equipment will remain with us at all times.

- 8.2 Title in Purchased Equipment will remain with us and will only pass upon full payment of the Charges for the Purchased Equipment to us as set out in the relevant Service Order (**Purchased Equipment Charges**).
- 8.3 The risk of loss or damage to Our Equipment or any Purchased Equipment passes to you upon delivery of the equipment to you.
- 8.4 You may only use Our Equipment to connect to a Service.
- 8.5 You must only use Our Equipment or any other equipment in connection with any Service in accordance with applicable industry standards, the Documentation and our reasonable directions.
- 8.6 You must keep Our Equipment, including Unpaid Equipment, in good repair and condition (fair wear and tear excepted) and must not sell, assign or permit any security interest, charge, lien, mortgage or encumbrance to be created with respect to Our Equipment or Unpaid Equipment at any time (other than a security interest approved in writing by us).
- 8.7 You must insure Our Equipment including Unpaid Equipment that we deliver to you, for its full replacement value for the Term of any relevant Service Order and 12 months thereafter. You must promptly notify us if Our Equipment including Unpaid Equipment that we deliver to you is lost, defective, stolen or damaged. You must pay us the full replacement value of Our Equipment including Unpaid Equipment if and when such incidents occur.
- 8.8 You must allow us to access, service, modify, maintain, repair, remove and/or replace Our Equipment including Unpaid Equipment in your possession or control at any time, in our absolute discretion, on reasonable notice.
- 8.9 You are responsible for any Customer Equipment and any other equipment not supplied by us, that you use in connection with any Service. You must only use equipment in connection with any Service that complies with all applicable standards.

Personal Properties Securities

- 9.1 You must keep Our Equipment and Unpaid Equipment in good repair, free from any encumbrance and must not register any interest in Our Equipment and Unpaid Equipment under the PPSA. You agree that we may register an interest in Our Equipment and Unpaid Equipment under the PPSA without complying with any provision of the PPSA or *Personal Property Securities regulations 2010* (Cth) that may be contracted out of.
- 9.2 We may repossess any of Our Equipment and Unpaid Equipment on termination or expiry of any Service Order. You must do everything required to provide us with full, unrestricted and safe access to Our Equipment in order to repossess Our Equipment and Unpaid Equipment under this provision. If we ask you to remove and deliver any of Our Equipment and Unpaid Equipment to us, then you must do so at your risk and expense.

Confidentiality

- 10.1 Each party (Recipient) may receive Confidential Information of the other party during the Term of the Agreement.
- 10.2 A Recipient must not disclose to any third party any Confidential Information that it receives from the other party, except to that party's Personnel who are bound by obligations of confidence and who have a need to know such information for the purposes of the Agreement.
- 10.3 Notwithstanding clause 10.2 and except as otherwise agreed between the parties, the Recipient may disclose Confidential Information:
- a) if it is required to do so by Law, government authority or any court order;
 - b) to its lawyers, accountants and professional advisors on a confidential basis.
- 10.4 You agree that we may need to intercept, retain and disclose Network Data, data about Services and Personal Information in accordance with applicable laws and that we may monitor your usage of a Service for billing, support and operational reasons.

10.5 You agree that we may need to disclose Confidential Information to our third party suppliers to provide the Service and to meet our obligations under the Agreement.

10.6 You agree that this document and any other documents including but not limited to any documents with commercially sensitive information may not be disclosed at any time to any third party whatsoever without our prior written consent.

Intellectual Property Rights

11.1 You agree and acknowledge that the Agreement does not transfer or assign any IPR to you and:

- a) we own all IPR in the Services, Documentation and in any software underlying the Services;
- b) you must not take any step to invalidate or prejudice our IPR.

11.2 As between you and us, you own all IPR in the Network Data

Liability and warranties

12.1 Neither party is liable to the other party for Consequential Loss howsoever arising.

12.2 To the extent not already otherwise excluded, we are only liable pursuant to an indemnity in your favour or for loss or damage incurred by you as a result of our breach of the Agreement, in the aggregate, for one or more breaches, up to a capped amount equivalent to the Charges paid by you in the 3 months preceding the last breach, and which cap is reduced to the extent you or your Personnel caused or were responsible for such loss or the loss was caused by a Force Majeure Event.

12.3 If the goods or services we supply to you are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law or any other applicable law and the goods or services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to section 64A of the Australian Consumer Law, we limit our liability for breach of any such non-excludable warranty, guarantee, right or

remedy (where possible), in respect of each of the goods and services, at our option, to one or more of the following:

- a) if the breach relates to goods:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of such goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. the payment of the cost of having the goods repaired; and
- b) if the breach relates to services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

12.4 Other than with respect to any non-excludable warranty, guarantee, right or remedy implied by the Australian Consumer Law or any other applicable law, all representations, warranties, guarantees and conditions that are not expressly set out in the Agreement are excluded from the Agreement.

Mutual indemnity

13.1 You must indemnify us and our Personnel (if applicable) from and against all liability to the extent that such liability arises out of or in connection with:

- a) Network Data;
- b) any claim brought against us or our suppliers by any of your End Users or downstream customers;
- c) your use or misuse of Customer Equipment or Our Equipment;
- d) your breach of the Agreement;
- e) any act or omission by your Personnel and/or any End User or downstream customers, which, if committed by you, would constitute a breach of the Agreement by you; and
- f) a breach of a law by you or an End User or downstream customer.

13.2 We will indemnify you and your Personnel from and against all Liability to the extent that such Liability is a result of:

- a) our breach of the Agreement;
- b) any act or omission by our Personnel, which, if committed by us, would constitute a breach of the Agreement by us.

Termination

14.1 We may terminate a Service Order or the Agreement (at our option) if:

- a) you breach the Agreement and the breach is incapable of remedy;
- b) you breach the Agreement, the breach is remediable and you fail to remedy the breach within 14 days of notice from us;
- c) you suffer an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth) or any other applicable Law;
- d) a Force Majeure Event lasts for more than 10 consecutive days that prevents us from being able to supply a Service; or
- e) we need to do so in order to comply with any applicable Law or direction of a government authority.
- f) you have a change-in-control event occur within your organization.

14.2 You

- a) you breach the Agreement and the breach is incapable of remedy;
- b) we breach the Agreement, the breach is remediable and we fail to remedy the breach within 14 days of notice from you;
- c) we suffer an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth) or any other applicable Law; and
- d) a Force Majeure Event lasts for more than 60 consecutive days.

14.3 All Service Orders will terminate if the Agreement is terminated.

14.4 If a Service Order is terminated or expires:

- a) we will cease to provide you with the applicable Service;
- b) we will return the Security Deposit (if any) less any overdue or outstanding Charges or amounts;
- c) if we supplied you with Our Equipment or Unpaid Equipment:

- i. you must return Our Equipment and any Unpaid Equipment to us within 7 days; or
- ii. upon providing you with prior notice, we will arrange to collect Our Equipment and any Unpaid Equipment from you, at your cost; and
- iii. if you fail to return or fail to allow and pay for the collection of Our Equipment and any Unpaid Equipment, you will be liable for the full replacement cost of the relevant equipment, as determined by us acting reasonably.

14.5 If the Agreement is terminated prior to the expiry of the Initial Term or any then current Renewal Term for any reason (other than due to our breach of the Agreement), you will pay all amounts (collectively, the "Early Termination Charges") which would have been payable by you. You may terminate a Service Order or this Agreement if: under the Agreement for the remainder of the Initial Term (or then current Renewal Term, if applicable) had the Agreement not been terminated. We will send you a tax invoice in respect of the Early Termination Charges and you will pay this invoice within 30 days. You agree that payment under this clause is not intended to be, and will not be punitive and is intended to compensate us for reasonable losses that we will suffer resulting from the early termination of this Agreement. You agree that you will not challenge the validity of this clause 14.5. For the avoidance of doubt, unless agreed to explicitly in writing by us, a termination fee of a Service Order within the initial term (and post delivery of the order) will be the Total Commercial Value (TCV) of the Service Order. e.g. \$1,000.00 per month x 34 (remaining) months - \$34,000.00+GST.

14.6 Upon termination of this Agreement, the Recipient must return or destroy (at the other party's option), all Confidential Information of the other party.

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

Notices

15.1 A notice under the Agreement shall be sent by hand delivery, post or email using the addresses specified in the Service Order, or as notified to a party from time to time.

15.2 Any notice issued by hand shall be deemed delivered upon the notice being left at the other party's premises.

15.3 Any notice issued by post shall be deemed delivered 6 Business Days after posting if posted domestically, or 10 Business Days after posting, if posted internationally.

15.4 Any notice issued via email shall be deemed to be delivered upon the sender receiving a read receipt, delivery receipt, reply to the original email, or four hours after the email was sent (as recorded on the sender's device) unless the sender receives an automated message that the email was not delivered or that the recipient is 'out of office' or equivalent.

Dispute Resolution

16.1 If a dispute arises between the parties out of, or relating to, the Agreement (Dispute), each party must seek to resolve it strictly in accordance with this clause 16. Compliance with the provisions of this clause is a condition precedent to seeking relief in any court in respect of the Dispute, except as otherwise provided in this clause.

16.2 A party seeking to resolve a Dispute must notify the existence and nature of the Dispute to the other party (Notification). Upon receipt of a Notification, each party must refer resolution of the Dispute to its chief executives (or nominees).

16.3 If the Dispute has not been resolved within 2 calendar months of the Notification, then each party will be entitled to pursue such course of action as it determines.

16.4 Nothing in this clause shall limit either party's right to seek urgent interlocutory relief from any court of competent jurisdiction at any time.

General

17.1 Amendment: Except as permitted under this Agreement, the Agreement may only be amended by a written document signed by both parties.

- 17.2 Assignment: (a) Subject to subclauses 17.2(b) and (c) a party must not assign or novate its rights or obligations under the Agreement without the prior written consent of the other party. (b) You agree that we may assign or novate our rights and obligations (along with your Service Orders and any other contracts) under the Agreement to a Related Body Corporate in our group or a purchaser of our business at any time in the future without notice. (c) We may subcontract any of our obligations under the Agreement.
- 17.3 Severability: If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.
- 17.4 Relationship: The parties are independent contracting entities, and the Agreement does not create any relationship of partnership, joint venture, or employer and employee or otherwise.
- 17.5 Jurisdiction: The Agreement (will be interpreted in accordance with the laws in force in South Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts situated in South Australia.
- 17.6 Counterparts and electronic exchange of Agreement: The Agreement, Service Schedules and Service Orders may be executed in counterparts and exchanged electronically.
- 17.7 Survival: Any provision of the Agreement which by its nature is intended to survive termination or expiry of the Agreement (including without limitation any exclusion or limitation of liability or indemnity in the Agreement) will survive termination or expiry of the Agreement for any reason.
- 17.8 Declared Service: if the Service is a Declared Service, the Agreement prevails over an ACCC access determination or binding rule of conduct made pursuant to Part XIC of the *Competition and Consumer Act 2010* (Cth).

Definitions and Interpretation

- 18.1 Unless otherwise specified in this Policy, a Service Order, or any applicable Service Schedules, the following words have the following meanings:

Master Rate Schedule (MRS) means the accompanying document containing the rates for the service(s) you may decide to procure from us by way of a Service Order.

Acceptable Use Policy (AUP) means the document entitled "Acceptable Use Policy", which is available from our website (www.falcore.com.au) or on request.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Privacy Policy (PP) means our **Privacy Policy document**, which is available from our website (www.falcore.com.au) or on request.

Business Day means any day that is not a weekend or public holiday in South Australia.

Commencement Date means:

- a) the estimated service commencement date specified in a Service Order; or
- b) where the Service is only ready for use from a later date, that later date.

Charges means the charges, rates and fees that are payable by you to us under the Agreement as set out in a Service Schedule and/or Service Order.

CPI means Consumer Price Index as published by the Australian Bureau of Statistics.

Confidential Information means any information disclosed by a party to the other party that has the quality of confidential information. For the avoidance of doubt, Confidential Information includes the terms of the Agreement, Documentation, Service Orders, and any Service pricing and Service information that we supply to you.

Consequential Loss mean loss of revenue, loss or reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, loss of opportunities, loss of data or a special, punitive or exemplary loss or damage (including without limitation, any penalty or fine imposed).

Customer Equipment means any and all of your equipment and tools which you use in connection with the Services, excluding Our Equipment. For the avoidance of doubt, Purchased Equipment will form part of Customer Equipment (upon your payment for it). Declared Service is defined in Part XIC of the *Competition and Consumer Act 2010* (Cth).

Documentation means any information, files, correspondence, materials or documents (whether in electronic form or not) referring to or describing Our Equipment and/or Services that we provide to you, from time to time.

Due Date means the date specified on an invoice issued by us for payment of the Charges that reflects the payment terms set out in a Service Schedule and/or Service Order.

End User means your staff, users or any person who accesses the Services that we make available to you.

Downstream Customer means any customer you resell our services to.

Force Majeure Event means any circumstances beyond our reasonable control.

MSA means this document.

GST has the meaning given in the GST Law.

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

Initial Term means the minimum term for a Service specified in an applicable Service Order.

MRC means Monthly Recurring Charge (the fee we charge to you each month for your Service(s)).

NRC means Non-Recurring Charge (the once off fee e.g. setup fee we charge you to provision your Service(s)).

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 or a 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 an arrangement with its creditors; (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 to the other party, or the party takes the benefit of any Law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the Law of any applicable jurisdiction.

Intellectual Property Rights or IPR means all current and future intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, and other rights of a similar nature and all other rights to intellectual property as defined under Article 2 of the convention establishing the World Intellectual Property Organization, whether registrable, registered or not, and any applications for registration or rights to make such an application, anywhere in the World.

Network Data means any data transmitted via any Service by you, your Personnel or your Downstream Customers and/or End Users.

Network Demarcation Point is the point where our network ends and is connected to your or End User equipment and may be defined further in an applicable Service Schedule and/or Service Order.

Our Equipment means any of our equipment that we supply to you and includes, in connection with the Services, racks, antennas, hardware, equipment, wires, cables, switches, routers and ports.

Party means you or us (as the context dictates) and **parties** means you and us.

Payment Terms means the payment terms and conditions as specified in the applicable Service Schedules and/or Service Orders.

Personal Information means any personal information within the meaning given in section 6 of the *Privacy Act 1988* (Cth) and section 187LA of the *Telecommunications (Interception and Access Act) 1979* (Cth)

Personnel means any employees, officers, directors, agents and subcontractors of a party.

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

Purchased Equipment means equipment purchased from us, under a Service Order.

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

Renewal Term has the meaning given to it in clause 4.4.

RFS Date (Ready-for-Service) or **SCA** (Service Completion Advice) means the earlier of the following dates in relation to a Service:

- (a) the date notified to you by us;
- (b) the date which a Service is first made available to you by us; or
- (c) the date which you first used the Service.

Security Deposit means a security deposit amount specified in the applicable Service Schedules and/or Service Orders.

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

Service Order means an order requested by you, entitled "Service Order".

Service Schedule means the terms and conditions for the relevant Service executed by the parties entitled "Service Schedule". Service(s) means the service(s) that we will provide to you described in a Service Order.

Term means the Initial Term and any Renewal Terms.

Unpaid Equipment means Purchased Equipment that has not been fully paid for.

You and your means the entity specified as the customer in the Agreement.

We, our and us means Falcore Australia Pty Ltd of 90 Rundle Street, Kent Town, S.A. 5067 and any of its Related Bodies Corporate and subsidiaries.

Wholesale Customer means a carrier, content service provider, carriage service provider or reseller.

18.2 Interpretation

- a) Unless the context requires otherwise:
- b) Headings and underlining's are for convenience only and do not affect the construction of the Agreement;
- c) a provision of the Agreement will not be interpreted against a party because the party or the party's legal representative prepared or was responsible for the preparation of the provision;
- d) currency or "\$" refers to Australian dollars;
- e) a reference to a statute or regulation includes amendments and replacements thereto;
- f) a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of the Agreement and a reference to a subclause or paragraph is a reference to the subclause or paragraph in the clause in which the reference is made;
- g) a reference to time is to time in South Australia;
- h) if an obligation must be performed by two or more persons, it binds them jointly and individually;
- i) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity; and
- j) the words "includes", "including" and similar expressions are not words of limitation and shall be interpreted as if the words "but not limited to" followed them.

Pandemic Clause

- 20.1 During any future pandemics, we may be subject to supply chain shortages and/or potential reduced efficiency of our operations due to potential lockdowns of staff and access to equipment. We also may be subject to delays in service delivery from our upstream carrier partners and vendors. We reserve our right to adjust our Service Level Agreements accordingly.
- 20.2 We may provide commercial relief to you at our discretion if we can achieve commercial relief with our supply partners. This may not be immediate and your obligation to settle all amounts per your agreement with us applies until we notify you in writing of a structured commercial relief plan.