

OUR CUSTOMER TERMS CLOUD SERVICES – EQUINIX DATA CENTRE SERVICES

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OUR CUSTOMER TERMS

CLOUD SERVICES – EQUINIX DATA CENTRE SERVICES

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

1 ABOUT THIS PART

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

2 SET-UP SERVICES

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

3 DATA CENTRE SERVICES

Data Centre Space

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

Our Representatives

- 3.3 You acknowledge and agree that notices given or rights exercised by us under Your Agreement may be given or exercised (as applicable) by our Representatives, including the Facility Provider. You must comply with any notice or instruction issued by our Representative or the Facility Provider as though they were notices or instructions issued by us.
- 3.4 You acknowledge that nothing in Your Agreement creates any contractual relationship between you and the Facility Provider, and that the Facility Provider has no liability to you for any damages or losses arising in connection with use of the Services.

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Use

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

Access

- 3.6 Subject to clauses 3.7, 3.12 and 3.13, you will have 24/7 access to the Data Centre Space for the purpose of exercising your rights specified in clause 3.2.
- 3.7 You must comply with, and must ensure that your Representatives comply with, the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time) relating to access to the Facilities and Data Centre Space.
- 3.8 Without limitation, the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time) may include rules relating to:
- (a) the process for arranging access to the Facility and the Data Centre Space for your Representatives, including any required advance notice for obtaining access, the provision of acceptable proof of identity, and the undertaking of induction training;
 - (b) the process for obtaining approval for on-site work and conducting on-site work, including receipt of deliveries at the Facility;
 - (c) compliance with our instructions concerning security, safety and other general procedures;
 - (d) display of identification and security passes by those authorised to access the Data Centre Space; and
- issue and return of security passes.
- 3.9 You are responsible for controlling the use of the access cards assigned to you and your personnel.
- 3.10 You must comply with our directions when accessing the Facility and Data Centre Space including, where we require, having our on-site or security staff escort your authorised personnel whilst on premise.
- 3.11 When accessing the Facility or Data Centre Space, you must ensure that your authorised personnel do not touch, interfere with or connect anything to any items of equipment (other than Your Equipment or where any relevant equipment has been approved by us in writing in advance).
- 3.12 We may suspend your access to the Data Centre Space or the provision of the Data Centre Services or may require your Representatives to leave the Data Centre Space and the Facility:
- (a) in an Emergency
 - (b) in any event or circumstance where we reasonably consider it appropriate to do so; or
 - (c) if required to do so by a government agency or any law or court order; or

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- (d) if you or Your Equipment causes Interference, potential Interference or Persistent Interference to the Facility Provider's ability to operate or manage the Data Centre Space and the Facility.

3.13 We may refuse access to the Facility or remove from the Facility any of your Representatives whose admission or presence is, or would be, in our reasonable opinion detrimental to the security of the Facility.

Power Allocation

3.14 Your maximum power allocation will be as set out in your Application Form and is subject to availability. You may request additional power by filling out the required form, and if we agree to that request, we will provide our written consent and we may require you to pay additional Fees.

3.15 Subject to clause 3.16, if Your Equipment uses more than the maximum power specified, we will automatically charge you for your excess usage in accordance with the agreed rates or if no such applicable rates are specified then in accordance with our prevailing market rates at that time for the same or similar level of usage.

3.16 Notwithstanding any excess usage charges, we may cancel your Services if you do not comply with the maximum power supply obligations.

3.17 We may monitor your power consumption.

Your Equipment

3.18 In addition to your obligations set out in Your Agreement, you must comply with the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time) in relation to your installation, use, repair and maintenance of Your Equipment.

3.19 You must ensure that the size and weight of Your Equipment does not exceed the maximum size and weight that we specify to you (unless we consent to a different size and weight in which case, you must pay an additional charge and ensure that the size and weight of Your Equipment does not exceed the agreed maximum size and weight).

3.20 You must obtain our prior written approval before you connect Your Equipment to any power outlet, network or telecommunications service connection point, or any other equipment. We may revoke this approval where we consider this necessary. If we have not provided approval of the connection, or have otherwise revoked our approval for the connection we may disconnect Your Equipment.

3.21 You must ensure that Your Equipment is stored within the cabinets that are allocated to you, and unless we agree to install Your Equipment as a part of providing the Services you are responsible for installing Your Equipment..

3.22 We may require you to remove any of Your Equipment from the Data Centre Space and the Facility that does not comply with Your Agreement or the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time).

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- 3.23 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, you are responsible for all loss or damage to Your Equipment however caused, except to the extent caused by our (or the Facility Provider's) recklessness, unlawful conduct or negligence.
- 3.24 If you or Your Equipment causes Interference or has the potential to cause Interference (as reasonably determined by the Facility Provider), you within a reasonable time, not to exceed four (4) hours (or such shorter time as necessary in the event of an emergency which threatens the life or physical safety of any person(s) in the Facility) after being notified by email, phone or in writing:
- (a) remove the Interference;
 - (b) provide a plan acceptable to remove the Interference; or
 - (c) authorise the Facility Provider to take action to remove the Interference.
- 3.25 If you or Your Equipment has the potential to cause Interference, you must within a reasonable period of time, not to exceed forty-eight (48) hours after being notified by email, phone or in writing:
- (a) remove the potential Interference;
 - (b) provide a plan acceptable to remove or resolve the potential Interference; or
 - (c) authorise the Facility Provider to take action to remove the interference.

PPSA

- 3.26 You acknowledge and agree that you have no interest or rights in any property or equipment which is not owned by you or right to retain any such equipment.

Repair and maintenance

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

Allocation of Data Centre Space

- 3.28 We will allocate the Data Centre Space in our sole discretion.

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- 3.29 We will provide you with notice of any modification, substitution, replacement or change to the Data Centre Space as is reasonable in the circumstances.
- 3.30 We will use reasonable endeavours to minimise any disruption or inconvenience to you during any modification, substitution, replacement or change to the Data Centre Space.

Your general obligations

- 3.31 You must comply with, and must ensure that your Representatives comply with, the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time) at all times whenever using or accessing a Facility in connection with Your Agreement.
- 3.32 You must comply with all applicable laws and must ensure that your Representatives comply with all applicable laws and that you and your Representatives have obtained all relevant consents, permits, approvals, authorities and licences required.
- 3.33 You must:
- (a) only use the Service for its intended purpose;
 - (b) comply with all relevant technical standards and requirements in the overall operational design, installation, configuration and support of the Customer Equipment; and
 - (c) not use the Service to commit any offence or allow anyone else to do so.
- 3.34 You can specify up to 10 personnel to be to be your authorised personnel who will be granted access to the Facility and your Data Centre Space, unless we agree otherwise. You must confirm to us in writing the status of your authorised personnel every time there is a change in the authorised personnel list and otherwise every three months.
- 3.35 You must not do any act or thing (including in connection with the installation, inspection, operation, repair, maintenance or replacement of Your Equipment):
- (a) in the Facility or the Data Centre Space that is fraudulent or illegal or that, in our reasonable opinion, is dangerous, annoying, offensive or immoral;
 - (b) that interferes with, obstructs access to, damages or overloads the Facility, the Data Centre Space or any property of the Facility Provider;
 - (c) that causes nuisance to or Interference with the use of the Facility or any part of the Facility by us, the Facility Provider or any of our other customers or customers of the Facility Provider (or their customers) and, for the purposes of this clause, Interference shall include technical interference; or
 - (d) that may cause us or the Facility Provider to be in contravention of any applicable law or any approval, licence, consent, authority or permit held or required to be held by us or the Facility Provider.
- 3.36 You warrant that you are:
- (a) compliant with Sanction Laws that are applicable to you;

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- (b) are not listed, or owned or controlled by an entity or person, on the U.S. Department of Treasury list of Specially Designated Nationals, or located in or organised under the laws of a country subject to U.S. or E.U. embargo; and
- (c) will not use the Data Centre Space, or allow them to be used, for any purposes prohibited by applicable Sanction Laws, including nuclear, chemical, or biological weapons proliferation or development of missile technology.

Our right to enter

- 3.37 We may enter the Data Centre Space in order to provide you the Services and otherwise for the purpose of inspecting and maintaining the Facility and Data Centre Space.
- 3.38 We may enter the Data Centre Space to exercise our rights set out in Your Agreement and the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time), or as required to comply with applicable laws or in the event of an Emergency.

4 ADD-ON SERVICES

General

- 4.1 You may from time to time request us to provide Add-On Services, which may include:
 - (a) Cross Connect Services;
 - (b) Remote Hands Services; or
 - (c) other services that we may agree to provide from time to time.
- 4.2 Any such request must be made:
 - (a) on the Application Form if you request the Add-On Services at the same time as the Data Centre Services; or
 - (b) if you request Add-On Services after you have submitted the Application Form for the Data Centre Services, on a MAC (Move Add Change) Form, which we will provide to you on request.
- 4.3 If we agree to provide the Add-On Services, we will advise you in writing that we accept your request. We are under no obligation to agree to your request.
- 4.4 The terms of Your Agreement shall apply to any Add-On Services that we agree to provide.
- 4.5 We are not obliged to provide any Add-On Services requested by you unless and until we advise you in writing that we accept your request, and we may refuse to provide any Add-On Services to you in our sole discretion.
- 4.6 You must comply with all of our policies, procedures and requirements applicable to the Add-On Services, including the Facility Rules (being the rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time).

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Cross Connects

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

5 SERVICE LEVEL AGREEMENT

- 5.1 The Service Level Agreement (SLA) in this clause 5 sets out:
 - (a) the Service Levels that we will achieve in connection with the provision of the Services; and
 - (b) the remedies available to you for any failure by us to achieve the Service Levels.
- 5.2 Subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, the remedies set forth in the SLA are your sole and exclusive remedies for any failure by us to achieve the Service Levels.
- 5.3 This SLA covers the following elements of the Data Centre Space:
 - (a) supply of power;
 - (b) maintenance of temperature;
 - (c) maintenance of humidity levels; and
 - (d) Cross Connect.
- 5.4 This SLA does not apply to any feature of the Data Centre Space not specifically identified in this SLA. To the extent permitted by law and subject to the Australian Consumer Law provisions in the General Terms of Our Customer Terms, the remedies set forth in this SLA are your sole and exclusive remedies for any failure by us to achieve a Service Level.

Service Levels

- 5.5 We will achieve the Service Levels in this SLA, as set out in the table below (each a "**Service Level**"). If we fail to achieve a Service Level (a "**Failure**"), you will be entitled under Your Agreement to a Service Credit (each a "**Service Credit**") as set out in the table below, subject to the terms and conditions of Your Agreement.

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SERVICE LEVEL	TARGET AVAILABILITY	DESCRIPTION
POWER SERVICES		
Redundant Power	99.999%	<p>This SLA is met by achieving less than five (5) minutes of Unavailability over a twelve (12) month period ("Redundant Power SLA Threshold") per cabinet.</p> <p>A Redundant Power Service is considered Unavailable when a functioning cabinet that includes Customer provided automatic failover capability is powered by two (2) power circuits from different power busses, and both power circuits experience a simultaneous interruption in electrical power such that the cabinet experiences an interruption in electrical power.</p> <p>Subject to clauses 5.6 to 5.9 below, if Unavailability exceeds the Redundant Power SLA Threshold, you will be entitled to a Service Credit equal to 1/30th of the monthly Data Centre Services Fees for the cabinet attached thereto ("Loaded Cabinet Fees").</p> <p>Further, you will be entitled to an additional Service Credit equal to 1/30th of the Loaded Cabinet Fees for the affected Loaded Cabinet for every full hour of Unavailability beyond the Redundant Power SLA Threshold.</p>
Non-redundant Power	99.99%	<p>This SLA is met by achieving less than fifty two (52) minutes of Unavailability over a twelve (12) month period ("Non-Redundant Power SLA Threshold") per cabinet.</p> <p>A Non-Redundant Power Service is considered Unavailable when a functioning cabinet is powered by one (1) power circuit, and the power circuit experiences an interruption in electrical power such that the cabinet experiences an interruption in electrical power.</p> <p>Subject to clauses 5.6 to 5.9 below, if Unavailability exceeds the Non-Redundant Power SLA Threshold, you will be entitled to a Service Credit equal to 1/30th of the Loaded Cabinet Fees for the affected Loaded Cabinet. Further, you will be entitled to an additional Service Credit equal to 1/30th of Loaded Cabinet Fees for the affected Loaded Cabinet for every full hour of Unavailability beyond the Non-Redundant Power SLA Threshold.</p>
ENVIRONMENTAL SERVICES		
Temperature	99.99%	<p>This SLA is met by achieving less than fifty two (52) minutes of Unavailability over a twelve (12) month period ("Temperature SLA Threshold") per cabinet.</p>

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SERVICE LEVEL	TARGET AVAILABILITY	DESCRIPTION
		<p>Temperature is considered Unavailable when the temperature drops below 64.4 F (18 C) or exceeds 80.6 F (27 C).</p> <p>Subject to clauses 5.6 to 5.9 below, if Unavailability exceeds the Temperature SLA Threshold, you will be entitled to a Service Credit equal to 1/30th of the Loaded Cabinet Fees for the affected Loaded Cabinet. Further, you will be entitled to an additional Service Credit equal to 1/30th of Loaded Cabinet Fees for the affected Loaded Cabinet for every full hour of Unavailability beyond the Temperature SLA Threshold.</p>
Humidity	99.99%	<p>This SLA is met by achieving less than fifty two (52) minutes of Unavailability over a twelve (12) month period ("Humidity SLA Threshold") per cabinet.</p> <p>Humidity is considered Unavailable when the humidity drops below twenty five percent (25%) or exceeds sixty-five percent (65%).</p> <p>Subject to clauses 5.6 to 5.9 below, if Humidity Unavailability exceeds the Humidity SLA Threshold, you will be entitled to a Service Credit equal to 1/30th of the Loaded Cabinet Fees for the affected Loaded Cabinet. Further, you will be entitled to an additional Service Credit equal to 1/30th of Loaded Cabinet Fees for the affected Loaded Cabinet for every full hour of Unavailability beyond the Humidity SLA Threshold.</p>
CROSS CONNECT		
Cross Connect	99.99%	<p>This SLA is met by achieving less than fifty two (52) minutes of Unavailability over a twelve (12) month period ("Cross-Connect SLA Threshold") per Cross-Connect.</p> <p>A Cross-Connect is considered Unavailable when the passive physical media that the Facility Provider uses for the Cross-Connects fails and the endpoints of the Cross-Connect are not able to maintain a communication connection due to the failure of the physical media.</p> <p>Subject to clauses 5.6 to 5.9 below, if Cross-Connect Unavailability exceeds the Cross-Connect SLA Threshold, you will be entitled to a Service Credit equal to the monthly fees for the affected Cross-Connect.</p>

Service Credit requirements

- 5.6 In any calendar month, the maximum Service Credit to which you will be entitled for any Service will not exceed the monthly fees for such Service.

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- 5.7 All periods of Unavailability must be verified by the Facility Provider, and approved Service Credits will be applied to the invoice for the month following the month in which the Service Credit was approved.
- 5.8 The period of Unavailability is measured from when you notify us and the Facility Provider via the service desk of the incident to the time the Unavailability has been remedied as confirmed by us. For avoidance of doubt, Temperature and Humidity Unavailability is measured between three (3) and five (5) feet from the floor and no closer than twelve (12) inches from the cool air intake side of a cabinet.
- 5.9 You are not entitled to a Service Credit if:
- (a) the event or condition that would have otherwise given rise to the Service Credit was caused by any of the following: acts of God, war or acts of terrorism, labour strikes or other labour action, fire, flood, earthquake, landslide, earth movement, hurricane, typhoon, tsunami, volcanic eruption or other natural disaster, riot or civil unrest, official orders from judicial, law or civil authorities, scheduled maintenance windows, Your Equipment, your actions or inactions or your Representatives, actions or inactions outside of the Facility Provider's reasonable control; or
 - (b) if you do not request a Service Credit from us in writing within thirty (30) days after the end of the month in which the incident entitling you to a Service Credit has been remedied.

6 FEES AND INVOICING

Payment of Fees

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

Fee escalation

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

Fee adjustment

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

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Suspension

6.7 We may:

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

7 INTELLECTUAL PROPERTY

No assignment

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

Your Material

- 7.2 To the extent reasonably required to allow us to perform and/or deliver the Services, you grant to us a non-exclusive, irrevocable, worldwide, royalty-free licence to exercise and sublicense the Intellectual Property Rights in any of Your Material in connection with us providing any Services to you.
- 7.3 You warrant that use of Your Material by us in accordance with clause 7.2 will not infringe the Intellectual Property Rights or other rights of any third party.

8 INDEMNITY

Customer indemnity

- 8.1 You indemnify us from and against (and must pay for) any claims, liability, loss, damage, costs or expenses (including legal costs) we incur or suffer arising naturally (that is, according to the usual course of things) from or in connection with:
 - (a) any claim by a third party against us arising from your use (or attempted use) of the Services;
 - (b) the personal injury or death of any person (including any of your Representatives) in connection with Your Equipment, use of the Data Centre Space or use of the Services or any act or omission by you or your Representatives;
 - (c) damage to Your Equipment, the Facility, the Data Centre Space or your other property, our property or any third party's (including the Facility Provider's) property caused by or in connection with any act or omission by you or your Representatives,

except to the extent a claim as a result of the circumstances in paragraphs **Error!**
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take reasonable steps to mitigate our Loss incurred or suffered as a result of the circumstances contemplated in **Error! Reference source not found.** to (c) above.

Continuing obligation

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

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

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

9 LIABILITY

Our liability to you

- 9.1 Subject to clauses 9.2 and 9.3 and the Australian Consumer Law provisions if the General Terms of Our Customer Terms, our aggregate liability for any loss or damage, however caused (including by our negligence), suffered by you in connection with Your Agreement is limited to:
- (a) where you suffer loss or damage as a result of a failure by us to meet any Service Level, the relevant Service Credit specified in the SLA; or
 - (b) in every other case, an amount equal to the Data Centre Services Fees paid by you to us under Your Agreement in the 12 months prior to you first suffering loss or damage in connection with Your Agreement.
- 9.2 Subject to clauses 9.1(a) and 9.3 and the Australian Consumer Law provisions if the General Terms of Our Customer Terms, we are not liable for any Consequential Loss, however caused (including by our negligence), suffered or incurred by you in connection with Your Agreement.
- 9.3 Nothing in Your Agreement operates to limit or exclude liability that cannot by law be limited or excluded. Our liability to you for breach of any statutory guarantee or term imposed by statute which cannot be excluded is (to the extent permitted to by law) limited to, at our discretion:
- (a) in the case of goods, the replacement, repair or supply of equivalent goods or paying the cost of doing so; and
 - (b) in the case of services, resupply of the services or payment of the cost of having the services resupplied.

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10 INSURANCE

- 10.1 You must effect and maintain from a reputable insurance company:
- (a) all insurances required by law, including workers' compensation insurance in accordance with relevant legislation; and
 - (b) public liability insurance with a limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate (or the local currency equivalent), provided these limits may be achieved through a combination of primary and excess policies. Such insurance will include coverage for bodily injury and property damage; and
 - (c) all risk property insurance on a replacement cost basis with limits adequate to cover the value of Your Equipment.
- 10.2 If we request, you must provide us with evidence of the currency of the policies referred to in clause 10.1.

11 SUBCONTRACTING AND LICENSING

- 11.1 We may subcontract the performance of any Service, in whole or in part, to any person.
- 11.2 You must not sub-license any Data Centre Space.

12 ASSIGNMENT

- 12.1 You must not assign, in whole or in part, or novate your rights and obligations under Your Agreement without our prior written consent.
- 12.2 We may assign, in whole or in part, or novate our rights and obligations under Your Agreement to a third party with sufficient resources and financial capacity and that agrees to be bound by our obligations under Your Agreement.

13 TERM

Term of Your Agreement

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

Service Term

- 13.2 Each Service commences on the Service Commencement Date, and continues for the Minimum Term.
- 13.3 After expiry of the Minimum Term, the Service automatically extends on a month to month basis on the existing terms (including price), unless either party notifies the other (at least 30 days before any automatic extension) that it does not wish the Service to extend automatically.

14 TERMINATION

Termination by us

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- 14.1. We may terminate Your Agreement by written notice to you if:
- (a) you fail to pay any undisputed amount payable under Your Agreement within 30 days of its due date;
 - (b) you fail to pay any undisputed amount payable under Your Agreement on or before its due date on more than 3 occasions in any rolling 12 month period;
 - (c) you commit a material breach of Your Agreement which is incapable of remedy, or you commit a material breach of Your Agreement which is capable of remedy and you fail to remedy the breach within 30 days of receiving a notice from us requiring you to do so;
 - (d) an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due;
 - (e) a Force Majeure Event prevents us from performing all or substantially all of our obligations under Your Agreement for a period exceeding 60 days;
 - (f) a Change in Law makes it commercially unviable (in our reasonable opinion), or illegal, for us to continue to provide the Services;
 - (g) we or the Facility Provider cease to have the right to use the Facility; or
 - (h) you are not in compliance with the Sanction Laws that are applicable to you.

Migration

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

Early Termination Charge

- 14.3. If during the Minimum Term a Service is cancelled or terminated for any reason other than for our material breach, we may charge you any waived Fee(s) for the cancelled or terminated Service(s) and an amount equal to the actual costs and expenses that we have incurred or committed to in anticipation of providing the service to you and that cannot be reasonably avoided by us as a result of the cancellation, which will not exceed an amount calculated as follows:
- (a) in the event the cancellation or termination of the Licensed Space or Data Centre Services occurs during the first twelve (12) months of the Minimum Term on an existing Your Agreement, you shall pay an early termination charge equal to the sum of one hundred percent (100%) x A x B for the remainder of the first twelve (12) months plus twenty five percent (25%) x A x B for the remainder of the Minimum Term.
 - (b) in the event the cancellation or termination of the Licensed Space or Services occurs after the first twelve (12) months of the Minimum Term on an existing Your Agreement, you shall pay an early termination charge equal to twenty five percent (25%) x A x B for the remainder of the Minimum Term as set out in the Order of Your Agreement.

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

"B" = the number of months (or part of a month) remaining in the Minimum Term for the relevant Service(s).

14.4. You acknowledge that the amount in clause 14.3 is a genuine pre-estimate of the loss we are likely to suffer.

Consequences of termination

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

15 OBLIGATIONS AT END OF YOUR AGREEMENT TERM

15.1 On or before the Exit Date you must:

- (a) remove Your Equipment from the Data Centre Space and the Facility and bear all costs incurred by you associated with such removal;
- (b) repair any damage to the Data Centre Space or the Facility caused by the removal of Your Equipment;
- (c) if and to the extent requested by us, remove any works carried out on the Data Centre Space and make good the Data Centre Space to the condition it was in prior to the works being carried out (and in carrying out any such works, you must comply with the terms of Your Agreement);
- (d) deliver up the Data Centre Space in a condition that is consistent with you having complied with your obligations under Your Agreement;
- (e) deliver any of our confidential information to us; and
- (f) return our and the Facility Provider's property, including but not limited to IDACs, power rails and structured cabling.

15.2 If you do not remove Your Equipment in accordance with clause (a), we may treat it as abandoned and deal with it in any way we see fit.

15.3 For the purposes of this clause 15, the Exit Date is:

- (a) if Your Agreement expires –the date of expiry;
- (b) if Your Agreement is terminated under clause 14 – the date of termination.

15.4 In complying with your obligations under this clause 15, you must not disturb or cause interruption to us, the Facility Provider or other users of the Facility.

16 FORCE MAJEURE

16.1 Neither party will be:

- (a) in breach of Your Agreement as a result of; or

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(b) liable for,

any failure or delay in the performance of its obligations under Your Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event. This clause does not relieve you from making any payment as required under Your Agreement.

17 NO LEASE

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

18 DISPUTE RESOLUTION

18.1. The parties agree to use best endeavours to resolve in good faith any dispute concerning Your Agreement. Each party must follow the procedures in this clause 18 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief).

18.2. If a dispute arises between the parties that cannot be resolved promptly between our contact person and your contact person, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 7 days of the notice (or another agreed period) to try and resolve the dispute.

18.3. If the dispute remains unresolved, the parties must try to resolve it by mediation administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines.

18.4. The parties will continue performing their respective obligations under Your Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with Your Agreement.

18.5. Each party must bear its own costs of complying with this clause.

19 DEFINITIONS AND INTERPRETATION

Definitions

19.1. The following words have the meanings set out below:

Access Suspension Notice	means a notice given by us for the purposes of clause (a).
Add-On Services	means Cross Connect Services; Remote Hands Services; and any other services that we may agree to provide from time to time.
Add-On Services Fees	means the fees for Add-On Services specified in the Application Form or the Move Add Change (MAC) Form (as applicable), or as otherwise agreed by the parties.

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Application Form	means the application form submitted by you to order Services.
Blocks	means an agreed number of Racks, the specifics of which are outlined in the applicable Application Form.
Caged Area	means a caged area which may include Blocks or Racks, the specifics of which are outlined in the applicable Application Form.
Change in Law	means any present or future law, regulation, treaty, order or official directive or request (which, if not having the force of law, would be complied with by a responsible provider of services similar to the Services) that commences, is introduced, or changes, after the date of Your Agreement.
Consequential Loss	means (a) loss of revenue; (b) loss of reputation; (c) loss of profits; (d) indirect or consequential loss; (e) loss of bargain; (f) loss of actual or anticipated savings; (g) economic loss; (h) lost opportunities, including opportunities to enter into arrangements with third parties; (i) loss, corruption or interception of data; and (j) any indirect or consequential loss or damage.
Control	has the meaning given to it in the Corporations Act.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
CPI	means the Consumer Price Index (Weighted Average Eight Capital Cities) published by the Australian Bureau of Statistics and calculated as the percentage increase between the CPI for the Quarter ending 31 March that most recently precedes the previous Review Date and the CPI for the Quarter ending 31 March that most recently precedes the current Review Date.
Cross Connect	means a cross connection between the Data Centre Space and any other space in the Facility (whether or not that space is provided by us or the Facility Provider to you or to a third party (including to a carrier)).
Cross Connect Service	means the installation and ongoing provision of a Cross Connect that you request us to provide, and that we agree to provide, to you in accordance with clause 4.
Data Centre Services	has the meaning given to it in clause 3.1.
Data Centre Services Fees	means the Fees for Data Centre Services described in the Application Form.

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Data Centre Space	means, in respect of Your Agreement, the exact location in the Facility made available to you to access and use as identified in your Application Form.
Early Termination Charge	means a fee that we are entitled to charge in accordance with clause 14.3.
Emergency	means any event or circumstance which in our reasonable opinion endangers or threatens to endanger the safety or health of any person or destroys or damages or threatens to destroy or damage the Facility or any part of the Facility, or the property of any other party.
Exit Date	has the meaning given to it in clause 15.3.
Facility	means the data centre facility specified in the Application Form (as changed in accordance with clauses 3.29 or 3.30) and includes all fixtures, fittings, plant, machinery, equipment or other property of us or the Facility Provider in or on the Facility.
Facility Provider	means Equinix Australia Pty Ltd, ACN 25 092 807 264.
Facility Rules	means rules relating to the operation and management of the Facility as available at www.equinix.com/ibxpolicies as amended or replaced by us from time to time.
Fees	means: <ul style="list-style-type: none"> (a) the Set-Up Fees; (b) the Data Centre Services Fees; (c) the Add-On Services Fees; and (d) any other fees as agreed between the parties.
Force Majeure Event	means any occurrence or omission outside a party's control and: <ul style="list-style-type: none"> (a) an Emergency; (b) a physical natural disaster including fire, flood, lightning or earthquake; (c) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (d) epidemic or quarantine restriction; (e) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;

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- (f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (g) law taking effect after the date of Your Agreement; and
- (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

GST	has the meaning it has in the GST Act.
GST Act	means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
IDAC	means an access card issued by us or the Facility Provider to enable access to the Data Centre Space.
Intellectual Property Rights	means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trade marks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.
Interference	means any act or omission that materially interferes with the Facility Provider's ability to operate or maintain the Facility or with the Facility Provider's other customers' ability to use the Facility.
Material	includes documents, software, object code, source code, configurations, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
Minimum Term	in respect of a Service, means the minimum term for that Service specified in the Application Form.
Move Add Change (MAC) Form	means the form by which you request us to provide Add-On Services after the date of submitting the Application Form.
Our Material	means any Material provided or to which access is given by us to you for the purposes of Your Agreement.
Persistent Interference	means Interference which continues for at least 10 business days or occurs more than three (3) times in any twelve (12) month period.
Power Allocation	means, in respect of the Data Centre Space, the Power Allocation for that Data Centre Space specified in the Application Form.

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Power Rate	means the per kWh rate specified in the Application Form.
Quarter	means the three month period ending 31 March, 30 June, 30 September or 31 December.
Rack	means a physical rack with an agreed Power Allocation, the specific details of which are outlined in the applicable Application Form.
Remote Hands Services	means minor technical services that you request us to provide, and that we agree to provide, as set out in the Facility Provider's Remote Hands Services description document as amended from time to time. It does not include services or work that requires a greater level of skill than the services described in that document.
Representative	of a party means an employee, agent, officer, director, auditor, adviser, partner, associate, consultant, joint venturer or sub-contractor of that party or of a related body corporate (as defined in the Corporations Act) of that party.
Review Date	means 1 July in each year of Your Agreement Term.
Sanction Laws	mean all applicable United States sanction or embargo laws and regulations from time to time, including trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control (OFAC) and any other enabling legislation or executive order relating thereto.
Service Commencement Date	means, in respect of Your Agreement, the date which is calculated by reference to Your Agreement Commencement Date plus the applicable timeframe for delivery of the Set-Up Services as set out in the Service Delivery Table, or such other later date as agreed between the parties.
Service Delivery Table	means the timeframe for performance of the Set-Up Services by us, as amended from time to time.
Service Level Agreement or SLA	means the Service Level Agreement in clause 5.
Service Levels	has the meaning given to it in the Service Level Agreement.
Service Suspension Notice	means a notice given by us for the purposes of clause (b).
Service Term	means, in respect of a Service, the Minimum Term and any extension of the term in accordance with clause 13.3.

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Services	means Data Centre Services and Add-On Services.
Set Up Fees	means the Set Up Fees specified in the Application Form.
Set Up Services	means the preparation, establishment and provisioning of the Data Centre Space by us.
Suite	means a separately enclosed area within a data hall comprised of Racks and/or Blocks or as fitted out by you (as the case may be), the specific details of which are outlined in the applicable Application Form.
Tax Charge	means any tax, duty or governmental charge relating to carbon, emissions, trading scheme, pollution, electricity, carbon dioxide, greenhouse gas or similar emissions or other regulatory charges or schemes.
Taxes	means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty or fine, including in respect of GST, but excluding income tax.
Your Agreement	means the contract formed between you and us when we accept your Application Form.
Your Agreement Commencement Date	means the date we accept your Application Form.
Your Agreement Term	has the meaning given to it in clause 13.1.
Your Equipment	means all hardware, software, accessories, tools and other information technology and telecommunications equipment owned, leased, licensed, controlled or otherwise used by or in the possession of you or your Representatives from time to time which is located in the Facility, including the Data Centre Space.
Your Material	means any Material provided or to which access is given by the you to us for the purposes of Your Agreement.