



Appendix 1 - Proposed non-price terms and conditions

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#	Standard non-price term	Rationale	Example
Technical requirements			
1.	Service description		
	A technologically neutral summary of the service should be specified, with further service descriptions covering particular fundamental aspects of the services.	<p>This is required for both parties to have a common understanding of the scope of a service or service feature in order to properly map each particular service or feature to a set charge.</p> <p>However, this must be balanced with the need for essential flexibility be built into service descriptions, to reflect that services can be provided over various types of infrastructure and take different product forms (e.g., different network interfaces) – all of which change over time and from one party to another.</p>	<p>While the need for a service description is common to MTAS, DTCS and fixed services, the details of the description would be service-specific. For example, the following components should, at a minimum, be specified for DTCS:</p> <ul style="list-style-type: none"> - service demarcation points, but with sufficient flexibility to allow for the purchase of additional features, such as aggregation services; - speeds/capacity – the actual transmission rates for a service should be specified by reference to a minimum layer 2 effective throughput; and - all available interface types that are supported now and provision for future network interfaces the might be offered over the essential bottleneck infrastructure.
2.	Standards		
	The service type should be specified with reference to appropriate industry standards.	Industry standards offer an objective baseline for the standard to service to be provided, and are accepted and	It is appropriate to specify service standards for all regulated service types. However, the applicable standards would be different for



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		adhered to by service providers in competitive markets.	each service type. Commitments to comply with industry standards for transmission services should be provided in relation to: - for PDH (E1) services – the ITU-T G.704 standard; - for SDH services – the ITU-T G.707 standard; and - for Ethernet services – the IEEE 802.3 standard.
3.	Resiliency		
	For DTCS, whether or not each service option is protected and a description of what “protected” entails should be specified.	There are different levels of protection available for a service. Given that the level of protection will be incorporated into a service provider’s pricing model, it is essential that there is a common understanding between the parties as to the scope of protection involved.	The standard level of protection included in a “protected” service option for DTCS should include a dual protection path (for service continuity purposes) and should be fully geographically diverse from demarcation point to demarcation point.
4.	Testing		
	Basic testing obligations on a service provider should apply, including an obligation to carry out testing prior to “go-live” of a service, to provide an access seeker with testing and acceptance details, and co-operate with an access seeker where an access seeker is carrying out its own testing of a service. The service provider should have a contractual obligation to conduct the testing in accordance with specified industry-wide quality standards for particular services. The timeframe for testing should be built in to the provisioning time between placing of an order and the	Testing is an integral step in ensuring that a service that a service provider is contracted to provide will achieve the required functionality prior to “go live” and the access seeker relying on the service to on-deliver services to end-users. In the absence of testing commitments, an access seeker has little assurance that the service is stable and will operate as specified.	Testing commitments should be included for all services, but greater detail will be required for DTCS. For DTCS, terms should specify that testing will be conducted in accordance with the Internet Engineering Task Force (IETF) RFC 2544 methodology, as an industry-wide standard for benchmarking Ethernet services. More specifically, an RFC 2544 test is performed to ensure an Ethernet service is performing to the required service level agreements.



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	<p>committed service start date.</p> <p>Provisions should also be included to specify a process to be followed where a service is unable to pass testing.</p>		<p>The RFC 2544 tests the bandwidth, the frame delay (latency) and the loss of frames of an ethernet service connection. In addition, jitter should also be tested (although not as part of the RFC 2544 standard).</p> <p>A process to be followed where a service is unable to pass testing could include the testing being repeated up to three times, after which the access seeker has the right to cancel the service and receive a refund of amounts already paid.</p>
5.	<p>Provisioning</p> <p>Service providers should be required to commit to completing provisioning of a service by a particular date. Rebates should apply where there is a delay to achieving a committed date.</p>	<p>Access seekers should have certainty as to when a service will be available for business planning purposes.</p>	<p>For example, liquidated damages should apply where a service provider fails to complete provisioning of a service by the committed date, except where the delay has been caused by the access seeker and the service provider has notified the access seeker of the impact in advance and used reasonable endeavours to minimise the impact of the access seeker's actions.</p> <p>Liquidated damages should be calculated as a genuine estimate of the losses an access seeker would suffer as a result of provisioning delays.</p>



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Performance management and operations			
6.	Service levels	<p>Committed services levels are essential for an access seeker to maintain a quality network and offer quality of service to end-users.</p> <p>In competitive markets for the provision of services, service levels are recognised and accepted as fundamental to quality of performance. Declared services are vital inputs to the supply of telecommunications services – VHA and other access seekers depend on minimum performance standards to ensure onward quality services to end-users. A requirement for a service provider to commit to providing updates to an access seeker on the progress of rectifying faults is also critical to allow the access seeker to keep end-users updated. It is reasonable to expect a service provider to commit to meeting such standards and provide certainty to access seekers.</p> <p>Without defined service level metrics, it may be difficult for an access seeker to establish a breach of contract and therefore a means to exit the contract where performance is sub-standard.</p> <p>In the case of vertically-integrated access providers, services levels should, at a minimum, be set at levels consistent with the quality of service the access provider sets for itself.</p>	See Attachment 1 for recommended service level metrics.



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7.	Fault monitoring		
	The service provider should be obliged to actively monitor the service to detect faults.	Service monitoring is critical to ensure faults are detected and efficiently resolved to minimise impacts on access seekers and end-users.	For example, service providers must ensure services are fitted with appropriate alarms and are monitored on a 24 x 7 x 365 basis.
8.	Fault reporting		
	<p>Each party should be obliged to report a fault as soon as it becomes aware of the occurrence of one.</p> <p>Promptly following the occurrence of a fault, a service provider should also be required to perform a root-cause analysis, report to the access seeker with details of the failure, and take appropriate measures to prevent a re-occurrence.</p>	<p>Reporting of a fault should not be the sole responsibility of an access seeker – if the service provider becomes aware of a fault, but has no obligation to report it (e.g. if this would trigger the repair service level), this puts the access seeker at a disadvantage. There should be an incentive for either party to report faults so that they can be addressed as expeditiously as possible to avoid or minimise impact on end-users.</p> <p>Care must be taken with fault reporting clauses to ensure access providers do not have a disincentive to report faults in a timely manner. Faults may have a direct impact on end-users and it is typically important for the access seeker to communicate accurate information on any network issues in a timely manner.</p> <p>Negotiated service contracts typically include obligations on a service provider to take steps to investigate and prevent the re-occurrence of service failures and this is generally not a contested issue.</p>	For example, the service level for fault repair times should begin on the earlier of an access seeker logging a fault with the service provider and the service provider becoming aware of the fault, except where it is proven that an issue lies with the access seeker, in which case the clock will not start running until the access seeker has rectified the issue at its end.
9.	Fault management		
	The service provider should be obliged to provide fault management and support in relation to each service in	Fault management is critical to ensure the service meets	For example, the service provider should make an express commitment to ensure



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	accordance with the service levels and in a manner which minimises the impact on the access seeker and end-users. A detailed description of fault management obligations and processes should be included.	fundamental quality requirements.	each fault is managed so as to minimise any adverse impact on the operation of the access seeker's network and end-users. To support this, faults should be classified based on their impact on the access seeker. See section 2 of Attachment 1 for recommended fault classifications.
10.	Service credits Service credits for failure to meet key service levels should be payable. An access seeker's entitlement to service credits should be in addition to its other rights and remedies (though in calculating any damages or other restitution for which a service provider may be liable in relation to a service level breach, the amount of any service credits paid in relation to the breach can be taken into account). Service credits should be calculated separately for each service level and for each service, whether or not they arise from the same breach. To ensure service credits act as a proper incentive for performance by the service provider, there should be no limitation on the amount of service credits a service provider is liable for.	<p>The application of service credits for failures to meet service levels is a commonly used tool in commercial services agreements in competitive markets to incentivise service providers to adhere to agreed performance standards.</p> <p>It is not appropriate for a service provider to insist on service credits being an access seeker's sole and exclusive remedy. Depending on the severity of service failures or defaults, the loss suffered by an access seeker – and the likely consequential effect on end-users – may be entirely disproportionate to any service credits that may be available. An access seeker should not be prejudiced from being able to rely on other rights or remedies it would have, either under its agreement with the service provider (e.g. termination) or at law (e.g. a damages claim).</p> <p>A service credit is, in part, designed to incentivise good performance – in order to achieve this purpose, service credits need to continue to accrue until a problem is fixed. In the calculation of service credits, therefore, it is</p>	See section 3 of Attachment 1 for recommended service credits arrangements.



#	Standard non-price term	Rationale	Example
		important to: (a) ensure there is no cap on the amount of service credits payable; and (b) assess each relevant service level separately, to ensure that an access seeker's entitlement to service credits is not unduly limited. For example, in the event of an outage where the service provider is obliged to rectify the issue, the repair time service level should be assessed separately to the update time service level – if the service provider fails to achieve both, then service credits should be payable for both.	
11.	Network maintenance and scheduled outages		
	<p>Reasonable advance notice of scheduled outages or planned maintenance should be provided to an access seeker, together with details of the expected duration of the outage or maintenance.</p> <p>A commitment should be given by a service provider to carry out such work outside peak hours, but the parties should still agree the time at which the outage or maintenance takes place.</p> <p>Major network upgrades should be managed within the scheduled outage process, as the potential for a major upgrade to impact an access seeker and end-users is similar to the potential for a scheduled outage to do the same.</p>	<p>Service providers will have planned scheduled outages and maintenance windows. Any downtime will have a consequential effect on the end-users of a service. It is reasonable to expect a commitment to provide advance notice to access seekers of the times and durations of such outages / routine maintenance work, to allow access seekers to plan and respond accordingly, e.g. to notify affected end-users of upcoming disruptions or unavailability.</p> <p>It is common industry practice for service providers generally to carry out scheduled outages or planned maintenance work outside of peak hours in order to minimise the impact on customers. Work outside these hours should be for emergencies only. However, an access seeker may still have a special event taking place during that off-peak window, so it will need to be able to provide input into decisions as to when that work will take</p>	<p>There are some variations across the industry in the minimum amount of notice that a service provider will commit to providing and what is regarded as core peak hours, however, on balance, VHA proposes that a minimum of 10 business days notice is acceptable and that work can fairly be classified outside of peak hours if it is between 11pm and 6am.</p>



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		<p>place.</p> <p>Separately, however, provided a service provider commits to a service level for availability, there is no need to specify a maximum duration of a scheduled outage or planned maintenance, as this will inherently be incorporated into the service level.</p> <p>A differentiation should be made between regular maintenance and outages and major upgrade or modernisation works, with a higher notification threshold, an opportunity for consultation and input by the access seeker being appropriate for the latter, given the potential impact on access seekers and their end-users.</p>	
12.	Standard of care		
	Services should be provided in accordance with minimum industry standards.	In a competitive market, where service providers compete on the quality of their service offering, it is standard practice to provide contractual assurances to customers about the level of care that will be applied in the provision of services.	For example, general standard of care obligations should expressly include a contractual obligation to supply the services in an efficient, professional manner, using all due care and skill and to a standard generally employed or expected in the industry of a competent person providing similar services.
13.	Changes to services		
	If a service provider wishes to change any aspect of a service, it should be required to go through change control procedures (other than minor changes which have no adverse impact on compliance with the terms of	Any changes to the service that an access seeker has signed up to receive should be processed through change control – it is unreasonable to permit unilateral changes unless they are minor alterations which are not prohibited	An example of a change control process would be for the service provider to firstly notify the access seeker of a proposed change, discuss the change with the access



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	supply or on the access seeker).	by the terms of supply and which have no adverse impact on the access seeker, whether from a operational, financial or business perspective, including its end-users.	seeker and then prepare any documentation to effect the change (such as contract variations). No change would take effect until the process had been completed and the parties had agreed to the change.
14.	Force majeure		
	A party should be excused from performing its obligations where it is prevented from doing so as a result of an act of god, war, a natural disaster or other similar event outside of the party's control. However, before being excused from its obligations, the affected party must immediately notify the other party, try to work-around the event and minimise its impact.	This provision recognises that a party should not be penalised for catastrophic events outside it's control. However, this does need to be balanced with a requirement for the impacted party to act in a way which minimises the impact on the other party.	A service provider should be excused from its obligations to provide the service where, for example, it is unable to do so as a result of a natural disaster, provided that it immediately notifies the access seeker and uses reasonable efforts to avoid a service disruption and to minimise its duration and impact on the access seeker.
15.	Right to suspend services		
	<p>A service provider should have a limited right to suspend the services – for emergencies only. A prerequisite to the exercise of a right of suspension should be the provision of advance notice (where possible) to the access seeker.</p> <p>In determining what constitutes an emergency, a balanced approach should be taken which takes into account both parties' circumstances and the impact on end-users.</p> <p>A service provider should also have an obligation to mitigate the effects of an emergency.</p>	A service provider should not be entitled to broad, unilateral rights to suspend a service that are not necessary to protect its legitimate interests and which may have a significant impact on an access seeker's business, with a consequential impact on end-users. A suspension will certainly impede the provision of downstream services – and end-users may themselves be reliant on regulated services during an emergency. For these reasons, it is critical – and recognised in open markets – that a service provider should have a right to suspend in very limited circumstances only. Other	For example, a service provider should have the right to suspend a service where the continued operation of a service is posing a threat to human safety. However, in assessing whether a suspension is an appropriate response to an emergency, it is important that the threat posed to the access seeker's end-users from a service suspension is also considered.



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		<p>remedies are available to service providers for defaults by an access seeker which are more appropriate than the severity of suspension.</p> <p>To ensure an equitable balancing of interests and avoid the prioritisation of a service provider's interests over those of an access seeker, there should be a degree of objectiveness in determining what will constitute an emergency. A service provider should not have the ability to unilaterally determine whether an emergency exists, or to do so only with regard to its own interests. For instance, the end-users of the access seeker might be impacted by the emergency and it is important to consider their interests.</p> <p>Advance notice of a suspension is important, where possible, to allow an access seeker an opportunity to plan accordingly, e.g. to notify affected end-users, seek alternative services for business critical services or otherwise take steps to protect the interests of end-users.</p>	
16.	Payment during suspension or unavailability		
	A pro-rata reduction in fees should be applied during a period for which the services are suspended or other unavailable.	It would be unreasonable to expect an access seeker to continue paying for services it is not receiving in the event that a service provider suspends a service.	For example, the access seeker should not be required to pay for the service while it is unavailable as the result of a force majeure event.
17.	Reconnection fees		
	Service providers should absorb the costs of reconnection of a service following a period of suspension or other	Access seekers should not be expected to bear the risk of costs involved in the suspension of services and the	For example, the terms of supply could specify that no reconnection fees are



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	unavailability.	resumption of services following a period of unavailability – passing on such a cost to an access seeker generally would not be commercially palatable. Any suspension of services will, of itself, cause enough disruption to an access seeker’s business and to its end-users.	payable by the access seekers following a period of service unavailability.
Equipment			
18.	<p>Installation of equipment</p> <p>Where a service provider needs to install or locate equipment in an access seeker’s premises, it should be obliged to do having regard to certain minimum professional standards.</p> <p>The costs of any required installation should be as agreed between the parties.</p> <p>In accessing an access seeker’s premises, a service provider should be obliged to comply with the access seeker’s relevant policies and requirements.</p>	<p>It may often be necessary for a service provider to install or locate equipment in an access seeker’s facility. It is reasonable to expect the service provider to do so in a manner that does not adversely impact the access seeker or its business, and to bear the responsibility for doing so in a professional manner.</p>	<p>For example, in accessing the premises, a service provider should be obliged to do so:</p> <ul style="list-style-type: none"> - using all due care and skill; - at a mutually agreed time; - without any adverse impact on the access seeker; and - in compliance with the reasonable directions, policies and requirements of the access seeker in relation to such access, security and OH&S requirements.
19.	<p>Equipment required by access seeker</p> <p>Any equipment which an access seeker will need in order to access and use the service should be specified by a service provider.</p>	<p>A service provider is in a position to know what equipment an access seeker will need. If this information is not made available, it could result in additional, unexpected costs for the access seeker in obtaining, installing and/or maintaining that equipment.</p>	<p>For example, an access seeker could specify required equipment in an order form for a service, by referring to specifications or an operations manual.</p>



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20.	Decommissioning equipment		
	<p>A service provider should be obliged to remove its equipment from an access seeker's premises using an appropriate professional standard of care. Failure to remove equipment after a certain period of time should trigger a right for the access seeker to remove the equipment itself, or have the equipment removed, at the service provider's cost.</p>	<p>Where a service provider has equipment installed or located in an access seeker's facility, it is reasonable to expect the service provider to decommission or remove the equipment on termination in a manner that does not adversely impact the access seeker or its business, and to bear the responsibility for doing so in a professional manner.</p>	<p>In removing equipment from an access seeker's premises, a service provider should, for example, be obliged to do so:</p> <ul style="list-style-type: none">- using all due care and skill;- at its own cost;- at a mutually agreed time;- without any adverse impact on the access seeker;- within a reasonable time following termination; and- in a manner which ensures the premises are left in a fit and proper condition, and at a minimum no worse than it was prior to the installation of the equipment.
21.	Title and risk		
	<p>Title to equipment should remain unaffected by installation on the other party's premises.</p> <p>The risk of loss or damage to equipment on a party's premises should be borne by that party.</p>	<p>Ownership of equipment should not be affected by the provision of the service. As one party's equipment may be located at another party's premises for some time, it is important to specify there is no change in ownership.</p> <p>It is reasonable for the risk of loss or damage to equipment to be assumed by the party most able to mitigate the risk. This is generally the party in control of the premises at which the equipment is located.</p>	<p>Title to the service provider equipment installed at the access seeker's premises to provision a service will remain with the service provider.</p> <p>Risk in equipment will pass to an access seeker on installation of the equipment at the access seeker's premises.</p>



#	Standard non-price term	Rationale	Example
Commercial terms			
22.	Charges are exhaustive		
	The charges specified must be exhaustive with respect to charges that are levied for the supply of the declared services.	<p>Without assurance to access seekers that prices are exhaustive, there is a real risk that a service provider may add ancillary charges for services associated with the supply of declared services which could result in excessive charges or double counting of costs.</p> <p>The inclusion of such a term also provides certainty to an access seeker over the charges it can expect to incur in acquiring the services – which, in turn, is a key factor in determining appropriate and consistent charges to end-users.</p>	For example, the terms could specify that the fees described in the terms of supply constitute the only amounts payable by the access seeker to the service provider in connection with the services.
23.	Invoicing process and information		
	A service provider should invoice access seekers at regular intervals of every month. Invoices must meet certain minimum requirements.	A regular invoicing cycle provides financial certainty to both parties and a monthly interval for the raising of invoices is standard industry practice. Given the complexity of IT systems, standard baseline requirements around invoices and the process for billing are essential to allow both parties to issue and process invoices in the normal course of business and in a manner that their systems can support.	For example, invoices must be itemised, in Australian dollars, sent to the access seeker's designated address, be in an agreed format, be in a form that enables the access seeker to understand the charges on the invoice, ascertain which services the invoices relates to and the manner in which the charges have been calculated; and include applicable reductions (e.g. for any service credits).
24.	Payment		
	Correctly rendered, undisputed, invoices should be	Allowing for a period of 60 calendar days for payment of invoices is a common practice in commercial, open	The non-price terms should refer to the time for payment as 60 days beginning on



#	Standard non-price term	Rationale	Example
	payable within 60 calendar days from the date of receipt. If a bill shows that an access seeker is in credit, the access seeker should have the option of obtaining a refund, leaving the credit to offset future charges or have the credit transferred to an account for other services.	markets, to allow customers sufficient time to validate invoices and process payments. The time for payment should not begin until receipt of the invoice by the access seeker – otherwise the access seeker is placed in a position where it is prejudiced by matters outside its control (i.e. it loses some of the time available for payment while it is waiting to receive the invoice). Where an access seeker's account is found to be in credit, the access seeker should have full flexibility to decide how that credit will be dealt with.	receipt of the invoice by the access seeker. Access seekers should have the right to deal with credits at the end of a contract duration by, for example, requiring the service provider to pay the access seeker the amount of the credit.
25.	Changes in pricing		
	Changes to pricing for declared services, or agreed changes to other charges, must be implemented promptly and access seekers should be kept informed of any delays in introducing the new charges.	An access seeker should not be prevented from obtaining the benefits of declared pricing and other agreed changes because of inefficient operational processes.	For example, changes to the fees payable for a declared service made in a future FAD must be implemented promptly.
26.	GST and other taxes		
	Appropriate terms should be included to address the treatment of GST and payment of other taxes.	The inclusion of such terms allows for certainty for both parties on the terms of the engagement. The terms should conform to relevant laws, reflect standard industry practice and should not unfairly advantage the service provider or disadvantage an access seeker.	For example, the terms should specify that fee amounts are exclusive of GST and provide for the issuing of adjustment notes where required.
27.	Change in tax		
	A service provider should be responsible for any additional cost of delivering the services, including if this is as a	It is not reasonable to pass on the costs of a change in taxes (i.e. new or additional taxes) to an access seeker,	For example, the access seeker should not be required to pay additional amounts due



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	<p>result of new or additional taxes being imposed in relation to a service. An acceptable exception to this is where the service provider would not have to comply with the change other than as a result of having engaged in the provision of services to the access seeker and the change is not applicable to the service provider's own business, including the business of designing, implementing, operating, and managing telecommunications networks.</p> <p>A service provider should be obliged to mitigate the impact of any such change on the access seeker.</p>	<p>unless the change is directly applicable to the access seeker only or the supply of services specifically to the access seeker, and the service provider would not otherwise be liable for it. Any risk in the costs of delivering a service is most appropriately borne by a service provider as part of doing business.</p>	<p>to access provider's staff salary increases.</p>
28.	<p>Set-off</p> <p>The parties should have the right to set-off amounts owing between them for services in the same service category (ie within DTCS., MTAS or fixed services).</p> <p>A right of set-off should also be available to each party where the other party is in liquidation.</p>	<p>A mutual right of set-off is a useful business tool when it is limited to appropriate situations. In the normal course of business, a failure or delay in paying an amount due can be addressed through other contractual mechanism and/or normal channels of redress.</p>	<p>For example, an access seeker should have the right to set-off the amount of service credits received from the access provider for a DTCS service, against the monthly access fees for that service.</p>
29.	<p>Retrospective billing</p> <p>It is reasonable to impose a time limitation on the issuing of aged invoices by service providers, to apply in all circumstances.</p>	<p>Most access seekers operate in a corporate environment with budgeting and other financial systems and revenue recognition policies present difficulties recognising or processing aged invoices. It is not commercially reasonable for a service provider to be able to issue old invoices indefinitely – the ability to back bill should be limited.</p>	<p>VHA proposes a maximum timeframe of 180 days from the date on which the relevant fees were incurred for the issuing of invoices.</p>
30.	<p>Overdue amounts</p>		



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	<p>Any right of a service provider to impose interest on overdue payments should have a grace period and notifications built in before the right is triggered. In each case, the invoice in question should not be the subject of a bona fide dispute.</p>	<p>VHA recognises that payment obligations are fundamental and that service providers need to be able to rely on a regular payment stream for recurring charges.</p> <p>Given the financial consequences of the exercise of a right to charge interest for late payments, it is reasonable to build in some minimal safeguards to protect an access seeker (for example, in the event of an inadvertent failure to pay on time).</p> <p>If a service provider already has contractual rights to incentivise payments on time and protect itself in the event of payment delays or failures, it is reasonable to require the service provider to pursue redress through these mechanisms, before an added threat of imminent legal proceedings is instigated.</p>	<p>The kinds of safeguards that VHA commonly sees in negotiated contracts include:</p> <ul style="list-style-type: none">- a grace period;- a requirement for the service provider to provide a reminder of late payment; and- a written notification from the service provider to alert the access seeker that interest may be charged if the access seeker does not rectify the late payment within the time specified.
31.	<p>Billing and payment disputes</p>		
	<p>Payment obligations should apply only in respect of invoices (or parts of invoices) that are not the subject of a bona fide dispute.</p> <p>Access seekers should be offered processes to allow them to query bills, verify bills, and to do so without undue time constraints.</p> <p>A service provider should not be permitted to reject a billing dispute notification except in very limited circumstances, namely, if the notification is incomplete or inaccurate. If a notification is rejected, this should not give rise to a right for the service provider to proceed to</p>	<p>Given an access seeker's reliance on the accuracy of bills issued by a service provider and the potential financial implications of incorrect invoices, it is reasonable to expect a service provider to offer basic rights of assurance around an access seeker's ability to raise a billing query or dispute and to provide it with sufficient time and information to do so.</p> <p>There are many reasons why a billing issue or error may not come to light within a certain limited timeframe after a particular invoice was due to be paid, e.g. an annual or ad hoc audit may reveal an issue at a later date. In addition, each access seeker's internal billing and payment systems</p>	<p>For example, access providers should be required to promptly reply to an access seeker's query in relation to a bill, including by providing an explanation or background data to substantiate the calculations.</p>



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	<p>demand payment. An access seeker should also have the ability to dispute the basis or reasons for rejection of a billing dispute notification.</p> <p>The timeframe for any payment or refund found to be due following the resolution of a billing dispute should be reasonable.</p> <p>Disputes that cannot be resolved through the billing and payment dispute process should be referred to the general escalation and dispute resolution process before legal proceedings can be implemented.</p>	<p>and procedures will differ and should not prejudice the rights an access seeker would otherwise have at law to raise an issue or bring a claim.</p>	
Term, termination and suspension			
32.	Duration of term and termination for convenience		
	<p>No minimum term is necessary in the context of the regulated services and no early termination fees should apply. An access seeker should have a right of termination for convenience, which can be exercised at any time, on 30 days notice. Such termination should be without liability, other than an obligation to pay the balance of any special linkage charges (or other once-off charges) which were payable in instalments across a period of time.</p>	<p>Commercial arguments commonly used by service providers to justify a requirement for a customer to commit to a minimum term, with the application of early termination fees on exiting before the expiry of that minimum term, include that the service provider must recover committed profits or will incur certain 'contract break costs' as a result of the termination, e.g. unamortised establishment costs, committed third party costs, wind-down costs, and costs of re-deploying personnel or other stranded costs. These considerations are most relevant in a commercial, open market where private enterprises have relied on a commitment by a customer to generate a certain profit – they do not have the same relevance in the context of declared services where a monopoly, and often vertically integrated, service</p>	<p>The terms of supply should commence on a set date and continue until terminated by the access seeker.</p>



#	Standard non-price term	Rationale	Example
		provider is not investing resources or capital costs in reliance on a contract being entered into with an access seeker.	
33.	Other access seeker termination rights		
	Access seekers should be able to terminate without liability for insolvency, material breach or other poor performance.	It is reasonable to provide termination rights to a customer for explicit performance-based breaches, in addition to more general rights to terminate for breach or material breach. They allow an access seeker a practical and equitable means of exiting the arrangement in the event of significant poor performance, or circumstances rendering the services unavailable or unsatisfactory.	Proposed rights of termination include a right to terminate for material breach and insolvency, as well as the following more specific termination rights: <ul style="list-style-type: none">- if service availability falls below designated threshold in any particular month (or other timeframe for monitoring performance);- repeated service level failures (e.g. failure to meet the same service level in 3 consecutive months or 4 times in any 12 month period);- failure to achieve provisioning by the committed due date;- failure to comply with the service specification, resulting in an adverse impact on the operator which is not promptly remedied; and- continued force majeure event (e.g. for more than 14 days) which results in the non-supply or material degradation of



#	Standard non-price term	Rationale	Example
			the service.
34.	<p>Service provider termination rights</p> <p>A service provider should have the right to terminate for an access seeker's insolvency.</p> <p>A service provider should also be entitled to terminate for an access seeker's failure to pay amounts due, provided a grace period and reminders are built in before the right is triggered. In this case, the invoice in question should not be the subject of a bona fide dispute.</p>	<p>VHA recognises that a service provider should not be required to provide services to an access seeker that is insolvent.</p> <p>Whilst VHA recognises that payment obligations are fundamental, it typically finds that service providers in competitive markets are willing to agree to allow opportunities for rectification of a payment default before invoking a far-reaching right of termination.</p> <p>Given the potential significant consequences of the exercise of a right of termination by a service provider, it is reasonable to build in some minimal safeguards to protect an access seeker (for example, in the event of an inadvertent failure to pay on time). These include: a grace period, a requirement for the service provider to provide a reminder of late payment and a written notification from the service provider to alert the access seeker to termination as a possible consequence of continued failure to pay.</p>	<p>For example, a service provider should have the right to terminate where the access seeker fails to pay an amount this is due and payable in accordance with the terms of supply, is not subject to a bona fide dispute and for which the access provider has made a written demand for payment, indicating its intention to terminate if the payment is not made within 60 days.</p>
35.	<p>Withdrawal of services</p> <p>The right for a service provider to be able to withdraw a declared service should be limited to instances where the service ceases to be declared or where a vertically integrated service provider ceases supplying the service to itself. In either case, reasonable notice to access</p>	<p>The provision of declared services by a service provider is critical to promoting competition in the relevant market. It is essential, therefore, to limit the ability of a service provider to decide to withdraw a declared service at its discretion. Access seekers will be dependent on receiving</p>	<p>For example, a vertically integrated service provider should have the right to withdraw a service on 6 months' notice to an access seeker, where the service provider wishes to cease supplying the service to itself.</p>



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	seekers should be given.	declared services and the very nature of a declared service means that there may not be any viable alternative options available to access seekers, at least in the short term.	
Liability			
36.	Consequential or indirect loss		
	An exclusion of liability for consequential or indirect loss should be mutual, reasonable, limited in scope and should contain sufficient certainty on the types of losses that will fall within the exclusion.	In order to appropriately allocate risk between the parties, it is reasonable to expect that each party's responsibility for various types of losses be sufficiently clear. In most cases, a lack of certainty or a broad exclusion of liability for consequential loss will prejudice an access seeker more than a service provider. Losses of this nature, that is, losses which should not be automatically excluded upfront, include: loss of data, loss of profits and the cost of repairs or alternative / replacement services.	For example, consequential and indirect loss should be excluded and defined as "any loss, not arising naturally, that is according to the usual course of things, from the relevant breach, whether or not such loss may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the relevant breach".
37.	Limitation of liability		
	A cap on a service provider's liability should be linked to the aggregate fees paid or payable by an access seeker for the declared services. The liability of a party should be unlimited for personal injury or death, claims for intellectual property infringement, breach of confidentiality, breach of law, wilful breach of the terms and other liability which cannot be limited by law.	A commonly accepted limitation on a party's general liability is to calculate the cap by reference to the aggregate fees paid or payable by the customer under an agreement, usually in a particular period of time, e.g. 12 months. However, to ensure that a customer is not unfairly disadvantaged in the event that a claim arises during the early stages of a service, where the amount of fees paid by that time may not be proportionate to the loss suffered, a minimum cap should be included.	For the first 12 months, the liability cap should equate to the total amount of fees paid for all of the declared services, together with a reasonable estimate of the total fees payable for the remaining part of that 12 month period. For any subsequent 12 month period, the liability cap should equal the fees paid or payable in the immediately preceding 12 months. A 12



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		In markets which display natural monopoly characteristics, parties generally agree liability caps should not apply to certain categories of liability on the basis that the party suffering the loss is not in a position to reduce its loss such that it is within the liability cap, or that certain liabilities cannot be limited by law.	month period should run from the date immediately preceding the date on which the cause of action arose.
38.	Warranties		
	Appropriate warranties regarding the supply of the services should be given by a service provider.	It is standard practice in a contested market for service providers to provide warranties to customers – and a reasonable expectation of access seekers that a service provider can stand behind the service it offers.	Warranties would typically be provided in relation to no infringement of third party rights (including intellectual property rights) and a service provider having in place all required licences, approvals etc required to provide the service.
39.	Indemnities		
	<p>A service provider should indemnify an access seeker in connection with third party claims that the supply or use of the services infringes the third party's rights (including intellectual property rights).</p> <p>The exclusion of consequential loss should not apply to the indemnities.</p> <p>In the event of an intellectual property claim that affects the supply of the services, the service provider should be obliged to procure a right to continue using the relevant intellectual property or to replace or modify the affected service in a manner acceptable to the access seeker (acting reasonably), ensuring that there is no adverse</p>	<p>An access seeker is reliant on a service provider to ensure that it has all appropriate rights required to be able to offer and supply the declared services, and that the access seeker can procure those services without being exposed to third party claims for matters outside its control and within the responsibility of the service provider.</p> <p>It is the responsibility of a service provider to ensure that it has appropriate rights to be able to supply the services and to promptly and adequately address any deficiencies in those rights in order to continue to provide a declared service. It is not appropriate for any such responsibility – or related cost – to be passed on to an access seeker.</p>	For example, the service provider should indemnify the access seeker against loss suffered by it in connection with a claim that the supply or use of the services infringes the intellectual property rights or other rights of any person.



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	effect on the functionality or performance of the relevant service and the modified or replaced service does not have an adverse effect on the information systems or networks of the access seeker and complies with the relevant specifications.		
Creditworthiness and security			
40.	Creditworthiness and security requirements should apply only to access seekers who fall within a certain financial category, defined by objective standards which reflect the degree of financial risk for a service provider.	It is reasonable that a service provider, who has limited discretion as to whom it engages with, can impose some financial requirements as a condition of providing services. However, a blanket set of requirements does not take into account the variance across the access seeker market in terms of an access seeker's financial standing. It is not necessary, to protect a service provider's interests, to impose onerous obligations and scrutiny to the same degree on each access seeker without any differentiation. Neither does this reflect the varying levels of risk involved for a service provider. Such an approach would not be viable in open, competitive markets.	For example, creditworthiness and security requirements should apply only to access seekers with a Standard and Poor rating of less than "A".
Insurance			
41.	A service provider should be required to effect and maintain appropriate levels and types of insurance cover, for the duration of the provision of services and for an appropriate time thereafter.	Negotiated service contracts typically contain obligations on a service provider in relation to insurance, on the basis that it is the service provider, in carrying out the services, that is most likely to be the party in the position to perform an act or omission for which insurance is available.	For example, the service provider should effect and maintain professional indemnity and public liability insurance policies and other policies required by law.
Network use			



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42.	Without prejudice to any requirement to perform its obligations, both a service provider and access seeker should be responsible for the safe and lawful operation and management of their own networks.	A clear delineation in the party's responsibilities for their respective networks is useful, but this should not derogate from a party's performance obligations in relation to the service.	For example, the service provider should be responsible for its own carrier licence conditions.
Governance			
43.	Compliance with policies and manuals		
	If a service provider proposes to amend its policies or operational documents during the term of the engagement, it should be required to give notice to the access seeker and the access seeker's obligation to continue to comply with those policies should be conditional on the amendments being reasonable, non-discriminatory, consistent with other existing terms and conditions and having no material adverse effect on the access seeker. If any amendment does not satisfy all of these criteria, the service provider should have consultation obligations and the amendment should only be made with the access seeker's agreement. If the parties are unable to agree, the matter could be referred to the ACCC in accordance with the disputes resolution mechanism.	Allowing a service provider to unilaterally amend its policies, whilst still obliging an access seeker to comply with them, takes no account of the potential adverse implications for an access seeker – such as the costs or efforts of compliance. In the absence of a right to terminate for convenience without incurring termination fees or other costs, this position is an even further inappropriate use of market power. A consultation process is an important tool used in a regulated environment and is important to ensure a balancing of interests.	VHA proposes that a process for consultation with access seekers should be modelled on the consultation process set out in NBN Co's Wholesale Broadband Agreement, which provides for notice to be given, allows for feedback and requires feedback to be considered.
44.	Compliance with law		
	Each party should be required to comply with all laws applicable to its obligations under these terms. A service provider must have in place and maintain all relevant government or regulatory approvals required for	Whilst a party has obligations at law, it is standard practice to expressly include in a contract a mutual obligation in relation to compliance with applicable law. A service provider should also be subject to a positive	For example, each party should be required to comply with laws relevant to the performance of its obligations under the terms of supply.



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	it to perform the services.	contractual obligation to have all required approvals in place – this is part of the basis on which it is offering the services.	
45.	Regulatory review		
	In the event of a defined regulatory event occurring, either party should have the ability to initiate discussions with the other to determine the consequential effect on the parties' rights and obligations and any changes to the terms required to address this. Both parties should be obliged to negotiate any consequential changes to the terms in good faith. Any dispute as to how the terms should be changed to reflect the regulatory event should be managed in accordance with the dispute resolution process, including referral to the ACCC for arbitration if required by either party.	A regulatory event is a critical industry benchmark for regulated services and should be reflected in the terms which govern a service provider's provision of such services. Given that it may significantly affect the rights and/or obligations of either a service provider or an access seeker, it is appropriate to have a mutual right for either party to request changes to the terms to address the event.	Regulatory events should be defined to include (without limitation) ACCC declarations and determinations, undertakings, the issue, registration, making, promulgation, amendment or replacement of any code or standard by the ACCC, the ACMA or a Court of law and the amendment of the <i>Competition and Consumer Act</i> .
46.	Reporting		
	A service provider should be obliged to issue monthly reports to the access seeker in relation to the services.	Such reporting is critical to allow the access seeker to accurately communicate with its end-user customers, and is a standard practice in a contested market.	Reports should include, for example, the status of provisioning of new services, compliance with the service levels and root causes of significant faults or other service-impacting incidents.
47.	Order of precedence		
	In the event of any inconsistency between the head terms of an agreement or Final Access Determination and the access provider's operational manuals (as amended from time to time), the head terms of the agreement / FAD	This is necessary where an access provider has any unilateral rights to amend the operational manuals, to prevent an access provider using such a mechanism to override an agreed term or a term of the FAD.	For example, fault repair service levels set out in the head terms should apply rather than service levels set out in any maintenance manual.



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	should prevail to the extent of the inconsistency.		
Confidentiality, privacy and use of information			
48.	Confidential information		
	A mutual obligation to maintain the other's party confidential information should be included.	Service providers and access seekers are often competitors in retail markets, so information exchanged in relation to services should be treated confidentially.	Confidential information should extend to all information which is provided by or on behalf of one party to the other party of any nature and in any form for or in connection with the supply of the services.
49.	Exclusions		
	The obligation of confidentiality should not apply in certain circumstances – these should be specified and include:	Clarifying the circumstances in which confidentiality obligations will not apply to information is important to reflect practical considerations and to avoid any information being inadvertently caught by the confidentiality obligation.	For example, the obligation of confidentiality should not apply <ul style="list-style-type: none">- where disclosure is required by law (but only to the extent required and provided advance notice is given to the other party where possible) or to comply with the listing rules of a stock exchange where the parent company is listed or quoted);- where the information is in the public domain other than by way of a breach of confidentiality;- information that is independently developed by the other party or already known independently of the parties' engagement or relationship; or



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			<ul style="list-style-type: none">- aggregated and non-identifiable information about services supplied by the service provider.
50.	<p>Permitted disclosures</p> <p>Each party should be permitted to disclose confidential information of the other party on a confidential and "need-to-know" basis in certain limited circumstances. In relation to disclosures to the ACCC, this should be permitted on a broader level.</p> <p>Any disclosure on this basis should be accompanied by an obligation to ensure that the party to whom confidential information is disclosed is subject to confidentiality obligations.</p>	<p>A party will always need to disclose confidential information for legitimate business purposes and day-to-day operations, but clear restrictions on such disclosure is important to maintain the integrity of the confidentiality obligation.</p> <p>The ability of a party to disclose information to the ACCC is essential in light of the critical role that the ACCC plays in relation to declared services and regulation of the market.</p>	<p>Permitted disclosures should include:</p> <ul style="list-style-type: none">- related bodies corporate or otherwise to members of a party's corporate group;- its personnel and advisors;- third parties in connection with a prospective sale of any business or assets of a party's group or any shares in or debt by a party;- third party service providers for the purposes of providing services to a party; or- a bank or other financial institution as reasonably necessary to secure or maintain funding.
51.	<p>Publicity</p> <p>Subject to the terms relevant to communications in relation to service issues below, a party should not be allowed to use the other party's name, trademarks or service marks directly or indirectly in media releases, public announcements or public disclosures without the</p>	<p>It is reasonable for each party to be able to control its own media exposure.</p>	<p>For example, a service provider should not be able to include the access seeker on its customer lists without the access seeker's consent.</p>



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	other party's prior written consent.		
52.	Communications in relation to service issues		
	Neither party should publicly attribute blame for a fault, maintenance or outage to the other party unless the parties have investigated the matter and agreed that it is properly attributable to the other party. However, this should not prejudice a party's right to freely communicate information to end-users where appropriate.	Where a default or service failure has an impact on end-users, an access seeker should be in a position where it can communicate appropriately with its end-users and provide explanatory information. Any unnecessary restriction on an access seeker's rights to do so could adversely affect end-users and cause undue irreparable damage to an access seeker's reputation.	For example, an access seeker should not issue communications to its end-users claiming an outage has been caused by a failure in the service provider's network without the matter being investigated and the parties agreeing which network the failure is attributable to.
53.	Privacy		
	<p>A service provider should be obliged to ensure that any collection, processing, use, storage, handling, disclosure or transfer of personal information provided by an access seeker complies with the <i>Privacy Act 1988</i>(Cth) and any other applicable law.</p> <p>A service provider should also be obliged to notify the access seeker of any complaints or requests for access by individuals and any unauthorised access or disclosure and to comply with all reasonable directions of the access seeker in connection with any such matter.</p>	Entities which handle personal information are under increasing obligations in relation to the protection of that information. It is essential that any service provider which may have access to such information through its role as a service provider gives a commitment to comply with privacy laws where relevant.	For example, any information about an access seeker's end-users which a service provider may obtain in the course of providing the service (eg in the course of fixing a fault) must be treated in accordance with the <i>Privacy Act 1988</i> (Cth).
Audits and records			
54.	A service provider should be obliged to keep records of the transactions for 7 years (or longer if required by law), and to make them available to the access seeker or an independent auditor upon the access seeker's request.	Access to records in relation to the provision of the service is critical to enable the access seeker to confirm compliance with the terms, and to allow it to investigate suspected issues.	For example, a service provider should be required to permit the access seeker, or an independent auditor appointed by the access seeker, to audit and inspect any premises, systems, documents, records,



#	Standard non-price term	Rationale	Example
	<p>The service provider should also be required to cooperate and provide reasonable assistance to an auditor.</p> <p>Each party should bear the costs of an audit, unless the audit reveals the service provider has overcharged the access seeker, in which case the service provider should pay the access seeker's audit costs.</p>		<p>data and other matters that relate to the provision of the services. The access seeker must provide at least 5 days notice to the service provider and must conduct the audit during normal business hours.</p>
Branding and intellectual property			
55.	<p>A party's intellectual property rights should remain unaffected unless expressly agreed otherwise in writing by both parties. Similarly, a party should be prohibited from using the name, logo or trademark of the other party without express consent.</p>	<p>A party's intellectual property rights are a key asset in many company's portfolios and should be protected from any unilateral or automatic dealing in such rights – any granting of rights or transfer of ownership should be subject to the express agreement of the relevant party. In addition, it is not appropriate for a service provider to assert ownership in agreements entered into between the parties or in any determination.</p>	<p>For example, intellectual property rights in the service provider's network designs should remain with the service provider and not be transferred to the access seeker by virtue of it using the service.</p>
General disputes			
56.	<p>Dispute resolution procedures</p> <p>A right for either party to refer a dispute to the ACCC for arbitration should be incorporated into a dispute resolution procedure.</p> <p>In any case, the rights of an access seeker to refer disputes to the ACCC for arbitration should arise only after the parties have attempted to resolve the dispute themselves through escalation within their respective companies. Any regulatory or legal right to refer a dispute to the ACCC should not be restricted by any contractual</p>	<p>Given the critical role the ACCC plays in regulating declared services, an access seeker should be able to rely on the ACCC's involvement in resolving disputes without the fear of a service provider blocking ACCC intervention.</p> <p>An access seeker should not have any of its legal entitlements to seek ACCC arbitration restricted by a service provider supplying declared services. Any right to invoke regulatory or legal proceedings should operate</p>	<p>For example, either party should have the right to refer a dispute to the ACCC if the parties are unable to resolve the dispute between them after completion of the escalation process described below.</p>



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	requirement to first exhaust a contractual dispute resolution mechanism requiring mediation or other mechanism beyond escalation.	alongside contractual dispute resolution procedures.	
57.	Escalation		
	A tiered escalation procedure should be in place for resolving general disputes, but with a total timeframe not to exceed 20 business days.	It is common for parties negotiating a commercial agreement to establish a tiered escalation process for resolving disputes, with a view to maximising the chances of a resolution.	For example, disputes should initially be escalated to a management representative of each party for resolution and, if the dispute is still not resolved in 10 business days, be escalated to a member of each party's senior management team.
58.	Alternative dispute resolution		
	If a dispute is not resolved through escalation, and is not referred to the ACCC for arbitration, the parties may agree to participate in an alternative dispute resolution process, such as mediation.	Alternative dispute resolution processes are often a faster and more cost-effective way to resolve a dispute than formal legal proceedings.	For example, the parties may agree to engage in a confidential mediation process.
59.	Communications during dispute		
	Communications between the parties made during the course of attempting to resolve a dispute should be on a "without prejudice" basis.	To maximise the potential for the parties to resolve a dispute under the contractual dispute resolution procedures, it is important that each party is free to conduct discussions and negotiations in an open manner, without conceding their rights if the matter proceeds to litigation.	For example, offers of compromise or settlement should be without prejudice and not admissible in any subsequent legal proceedings.
60.	Continued performance during disputes		
	There should be a mutual obligation on the parties to continue to perform all obligations unaffected by a	A party should not be able to rely on the existence of a particular dispute as a reason for stepping back from its	For example, the supply of the service and payment for the service should continue



#	Standard non-price term	Rationale	Example
	dispute, while a resolution is pending.	other obligations. This is particularly important in the context of declared services if the service provider stops supplying services, where an 'innocent' party – the end-user – would be likely to be the party most affected.	except to the extent they are specifically affected by the dispute.
Legal boilerplate			
61.	Governing law		
	The governing law should be specified as either that of the State of Victoria or New South Wales.	The inclusion of such a term allows for certainty for both parties on the terms of the engagement.	-
62.	How variations are affected		
	A variation to any term should be required to be in writing and signed by both parties.	This is standard commercial practice, supports good governance practices and provides certainty to both parties as to the contracting terms.	For example, a variation to the terms of supply should not be made by the parties informally via email.
63.	Waivers		
	No waiver of a right or remedy should be effective unless it is in writing and signed by the party granting it. A failure or delay in exercise, or partial exercise, of a right arising from a breach should not result in a waiver of that right.	Such terms should not be contentious but their inclusion allows for certainty for both parties on the terms of the engagement.	For example, a party's delay in exercising a right to service credits, should not be taken as a waiver of that right, unless the right has been waived in writing and signed.
64.	Severability		
	Any term that is prohibited or unenforceable in any jurisdiction should be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability, and this should not invalidate the remaining terms nor affect the validity or enforceability of that term in any other	Such a term should not be contentious but its inclusion allows for certainty for both parties on the terms of the engagement.	For example, any terms that are prohibited by a binding rule of conduct issued by the ACCC should be excluded from the contract.



#	Standard non-price term	Rationale	Example
	jurisdiction.		
65.	Cumulative rights		
	The rights, powers, authorities, discretions and remedies arising out of or under an agreement should be cumulative and not exclude any other right, power, authority, discretion or remedy of either party.	Such a term should not be contentious but its inclusion allows for certainty for both parties on the terms of the engagement.	For example, the service provider's right to change interest for late payable should be in addition to its right to terminate for non payment.
66.	Exercise of discretion		
	Except where a term expressly provides otherwise, a party should be free to exercise a right or give or withhold consent or approval in its absolute discretion, without any requirement to act reasonably or give reasons, and conditionally or unconditionally.	Such a term should not be contentious but its inclusion allows for certainty for both parties on the terms of the engagement.	For example, a party should have complete freedom of discretion in deciding whether to consent to disclosure of its confidential information.
67.	Assignment		
	Any assignment, novation or other transfer of rights or obligations should be subject to the other party's prior written consent, but with certain exceptions.	It is reasonable to allow a party an ability to freely assign or otherwise transfer rights or obligations – to a limited extent – to reflect corporate environments and not unduly restrain a party in how it structures or operates its business (e.g. to allow for group re-structures).	For example, assignment without consent should be permitted to: <ul style="list-style-type: none">- a related body corporate, joint venture partner or other member of a party's corporate group;- a purchaser of the whole or part of a party's business; and- a third party appointed by a party to operate and maintain its network.
68.	Survival		
	Any rights or obligations of the parties which by their	Such a term should not be contentious but its inclusion	For example, the liability caps set out in the



#	Standard non-price term	Rationale	Example
	nature survive expiry or termination of the arrangement should not be affected by expiry or termination. In addition, certain terms should be identified as surviving the expiry or termination of the arrangement between the parties, including confidentiality, liability and termination.	allows for certainty for both parties on the terms of the engagement.	terms should continue to limit the parties' liability even if the breach of the terms is not discovered until after the terms have expired.
69.	Notices		
	Notices should be required to be in writing, addressed to a party's nominated addresses, delivered by hand, pre-paid ordinary post or fax, and be deemed to take effect once received unless a later time is specified.	Such a term should not be contentious but its inclusion allows for certainty for both parties on an operational matter.	This provision should specify that, for the purposes of determining when a notice is deemed to be received, this should be: <ul style="list-style-type: none">- 3 business days after posting (within Australia) and 10 business days if overseas; or- on production of a fax report from the sender's machine confirming the fax was sent. Communications given after 5pm should be taken to be given at 9am the following business day.
70.	Interpretation		
	Key interpretation principles should be specifically included.	Whilst contract law interpretation principles will apply in the absence of prescribed interpretation terms, VHA considers it prudent - and in all parties' interests - to include certain interpretation terms for certainty, in particular given that different interpretations may be given by a court in certain circumstances.	Commercial contracts typically contain the following interpretation principles at a minimum: <ul style="list-style-type: none">- "includes" means includes without limitation;- a reference to an act, statute, regulation, proclamation, ordinance or by-law



#	Standard non-price term	Rationale	Example
			<p>includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to an act or statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;</p> <ul style="list-style-type: none">- a reference to a document includes all amendments or supplements to, or replacements or novations of, that document; and- the words "including", "such as", "for example" and "particularly" and similar expressions do not imply any limitations.
71.	Defined terms		
	A list of defined terms should be agreed and included.	The inclusion of such a provision allows for certainty for both parties on the interpretation of the terms of the engagement.	



Attachment 1 – Service Level Metrics

1 Service availability

- (a) **Service Availability:** 99.99% for each service.

In order to comply with the above service availability service level, any Planned Outage may only apply to 1 service at any time.

- (b) Service Availability means a measure to calculate the availability of a service supplied. It will be calculated every month based on the performance achieved in the prior month period as follows:

$$\text{Service Availability} = \frac{[\text{Total number of minutes in the last month}] - [\text{Total number of minutes of Unscheduled Downtime for a Service + Planned Outage}]}{[\text{Total number of minutes in the last month}]} \times 100\%$$

Total number of minutes in the last month

2 Response and repair times

2.1 Defined terms

Target time	Definition
Response	Total time taken for the service provider's fault management staff to respond to the access seeker's fault management team and commence corrective action
Repair	Total time for the fault to be corrected
Update	Interval of time that fault status information or updates will be exchanged between the service provider and access seeker's fault management teams



2.2 Response, repair and update times

The following table sets out the committed service levels for fault correction by the service provider based on priority:

Committed Times			
Note: All times are determined with reference to the earlier of the time that the fault was initially logged by the access seeker or the time the service provider first became aware of the fault			
Fault	Response	Repair	Update
Critical	30 minutes	3 hours	1 hour or as mutually agreed
Major	30 minutes	4 hours	2 hours or as mutually agreed
High	30 minutes	5 hours	n/a
Low	30 minutes	12 hours	n/a

2.3 Categorisation of faults

The following table sets out basis on which a fault will be categorised.

The service provider will propose the categorisation of a fault to the access seeker in its Response to the fault. The access seeker may confirm the categorisation or require the access provider to correct the categorisation so that it is in accordance with the following table.

Fault Priority	Fault Description	Update Method
Critical	<ul style="list-style-type: none">• Complete outage of the service• A significant number of the access seeker's end-users are impacted or potentially impacted by the fault	Phone and email
Major	<ul style="list-style-type: none">• There is a service-affecting interruption and there is a risk of recurrence• Service is only partially available• Service fails to comply with the service specification in a major way	Phone and email
High	<ul style="list-style-type: none">• Adverse affect to the access seeker operational integrity if fix is not forthcoming in target time• Service fails to comply with the service specification in a minor way	Phone and email



Fault Priority	Fault Description	Update Method
	<ul style="list-style-type: none">Recurring incidents	
Low	<ul style="list-style-type: none">Fault has no measurable or perceivable business impact on the access seekerAn acceptable workaround may exist, but permanent fix cannot be deferred beyond a target time and immediate attention is deemed not required by the access seeker	Phone and email

3 Service credits

3.1 Availability service levels

Service credits for failure to achieve service availability service levels are as follows:

Monthly unavailability	Service credit
0-2 hours	0% of monthly service charge for affected service
2-4 hours	10% of monthly service charge for affected service
4-6 hours	15% of monthly service charge for affected service
More than 6 hours	30% of monthly service charge for affected service

3.2 Repair service levels

If the service provider fails to comply with the Repair times specified above, the applicable service credit is 10% of the monthly service charge for the affected service for every hour or part thereof the Repair time is not achieved.

3.3 Update service levels

If the service provider fails to comply with the Update times specified above, the applicable service credit is 5% of the monthly service charge for the affected service for every hour or part thereof the Update time is not achieved.