



## Terms and Conditions

### MedicCom Corporate Broadband

1. Definitions and interpretation
2. Terms
3. Variation to Agreement
4. Application for the supply of the Service
5. Privacy
6. Using the Service
7. Equipment
8. Network maintenance, fault reporting and rectifications
9. Fees and charges
10. Payments
11. Complaints and disputes
12. Cancelling the Service
13. Suspending the Service
14. Liability
15. Assignment and transfer
16. General
17. Special terms and conditions applicable to the Service

### 1. Definitions and interpretation

#### 1.1 Definitions

In these terms and conditions the following words have the meaning set out below unless the contrary intention clearly appears:

**Acceptable Use Policy** means MedicCom's acceptable use policy (as modified from time to time) which may be obtained from MedicCom via email.

**Accrued Charges** means all charges and fees (including access fees) incurred by the Customer, up to and including the date thirty (30) days after the Customer notifies MedicCom that the Customer wishes to cancel the Service unless MedicCom agrees otherwise, and any outstanding amounts to cover the Fibre Build Charge or Special Linkage Charge, Installation Charges and Equipment Charges.

**Agreement** means the agreement between MedicCom and the Customer for the provision of the Service, which agreement is comprised of the Application and these terms and conditions.

**Application** means the Customer's application to MedicCom for provision of the Service which sets out the Minimum Term, Service Description, pricing plan and details of any other charges such as Equipment Charges and Installation Charges.

**Business Customer** means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership), that acquires and uses the Service for business purposes other than resale, and who completes an application for an Enterprise Ethernet Service.

**Business End User** means any person:

- a) to whom a Business Customer asks MedicCom to supply the Service directly;
- b) to whom a Business Customer (with MedicCom's prior permission) re-supplies the Service or allows to distribute the Service;
- c) who a Business Customer allows to use the Service; or
- d) to whom a Business Customer supplies any goods or services which use or rely on the Service.

**Cancellation Date** means:

- a) the date thirty (30) days after the Customer notifies MedicCom that the Customer wishes to cancel the Service, unless MedicCom agrees otherwise;
- b) the date at least thirty (30) days after MedicCom notifies the Customer that MedicCom will be cancelling the Service; or
- c) as otherwise set out in the Agreement.

**Competition and Consumer Act** means the Competition and Consumer Act 2010 (Cth).

**Customer** means the person who submits an Application to MedicCom and who acquires and uses the Service from MedicCom.

**Equipment Charge** means a charge payable by the Customer to MedicCom for use of equipment.

**Fibre Build Charge** means a charge that may be imposed by nbn to build fibre to the Premises for the provision of the Service. The Customer agrees that if nbn passes on the Fibre Build Charge to MedicCom, MedicCom will pass on the Fibre Build Charge to the Customer. The Fibre Build Charge will then be payable by the Customer on a pass-through basis.

**Fixed-Term Agreement** means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

**Industry Participant** means the Communications Alliance Limited, and the Telecommunications Industry Ombudsman.

**Installation Charge** means a charge that may be imposed by MedicCom to install the Service, as stated during the Application.

**Insolvency Event** means:

- a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- b) any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- c) any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- d) any step that is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- e) the Customer suspends payment of the Customer's

- debts generally; or
- f) the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

**Intellectual Property Rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**Intervening Event** is an event outside a party's reasonable control which interferes with the operation of the network MedicCom uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

**Minimum Term** means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

**Loss** means any loss, cost, liability or damage, including reasonable legal costs.

**nbn** means NBN Co Limited (ACN: 136 533 741).

**Network** means any interconnected telecommunications equipment, facilities, or cabling.

**Party** means a party to the Agreement.

**Personal Information** means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

**Personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of MedicCom, includes the employees, agents, contractors or other representatives of any MedicCom Group Company.

**Premises** means locations:

- a) at which MedicCom supply the Service, and/or
- b) to which MedicCom and nbn, Telstra or another third party supplier needs to have access to supply the Service.

**Pricing Plan** means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

**Regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

**Related Corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).

**Renewal Term(s)** means any extension period beyond the Minimum Term which is agreed by both parties in writing.

**Service** means the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by MedicCom to the Customer in connection with that service.

**Service Description** means the part of the Application which describes the Service provided or to be provided by MedicCom to the Customer.

**Service Start Date** for the Service means the date on which MedicCom starts supplying that Service to the Customer, once nbn, Telstra or another third party supplier's fibre build and installation is complete, as will be notified by MedicCom to the Customer.

**Site Survey Charge** means the charge for the Site Survey as set out in the Application and Service Description.

**Special Linkage Charge** means a charge that may be imposed by Telstra to build fibre to the Premises for the provision of the Service. The Customer agrees that if Telstra passes on the Special Linkage Charge to MedicCom, MedicCom will pass on the Special Linkage Charge to the Customer. The Special Linkage Charge will then be payable by the Customer on a pass-through basis.

**Special Offer** means a special promotion or offer made by MedicCom in connection with the Service, including in relation to a particular pricing plan.

**MedicCom** means MedicCom Pty Ltd ABN 35 665 373 651 and its Related Corporations.

**MedicCom Cancellation Fee** means the monthly access charge payable by the Customer to MedicCom multiplied by the number of months (or part of a month) in the unexpired portion of the Minimum Term.

**MedicCom Group Company** means MedicCom and each of its Related Corporations.

**Supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by MedicCom to supply the Service to the Customer.

**Supplier Cancellation Fee** means the fees which will be payable by the Customer to MedicCom, as a result of fees incurred from nbn or Telstra or another third party supplier, due to termination of the Services in accordance with section 17.2.

**Tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

**Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act.

**Telstra** means Telstra Group Limited (ABN: 56 650 620 303).

**Unusually High Use** means high usage of the Service on a short-term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

### 1.1 Interpretation

- a) The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
  - i) Carriage service;
  - ii) Carriage service provider; iii Carrier; and
  - iii) Content service.
- b) a term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- c) the singular includes the plural and vice versa.
- d) different grammatical forms of the same word(s) have the same meaning.
- e) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f) a reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

## 2. Terms

2.1 The Agreement commences when MedicCom accepts the Customer's Application.

2.2 MedicCom will commence providing the Service to the Customer under the Agreement from the Service Start Date.

2.3 The Agreement is a Fixed-Term Agreement and MedicCom will provide the Service to the Customer in accordance with the Agreement for the Minimum Term or if applicable, any subsequent Renewal Term(s), or until the Service is cancelled in accordance with the Agreement, as the case may be.

2.4 If neither Party cancels the Service at the end of the Minimum Term, MedicCom will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

## 3. Variation to Agreement

3.1 MedicCom may vary any part of the Agreement:

- a) with the Customer's consent, provided that the variation is a material change; or
- b) without the Customer's consent, provided that the variation is not a material change.

3.2 If MedicCom varies a Fixed-Term Agreement under clause

3.1:

- a) if the variation is not a change of a type listed in clause 3.3, MedicCom must give the Customer twenty (20) business days' notice in writing of the variation before the change occurs.
- b) if the variation is a material change, MedicCom must obtain the customer's written consent.

3.3 MedicCom may vary a Fixed-Term Agreement without the customer's written consent even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:

- a) required by law;
- b) in relation to a fee or charge to account for a tax imposed by law;
- c) in relation to an amendment, fee or charge for a service ancillary to the supply of the Service by an essential third-party supplier or required or suggested by a law or a regulator;
- d) as a result of another carrier or service provider varying the agreement MedicCom has with it in relation to a carriage service and as a result MedicCom needs to make changes to the Agreement.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without MedicCom's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

3.6 MedicCom may give the Customer notice in writing of any changes to the Agreement by:

- a) delivering notice of the change to the Customer by mail; or
- b) sending the notice to the Customer's email address; or
- c) by including a message or insert in an invoice sent to the Customer.

## 4. Application for the supply of the Service

MedicCom may refuse the Customer's Application at its sole discretion.

## 5. Privacy

5.1 MedicCom may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other MedicCom Group Companies.

5.2 MedicCom may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account

management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of MedicCom Group Companies and other organisations.

5.3 MedicCom may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:

- a) a credit reporting agency or credit provider;
- b) another MedicCom Company;
- c) third parties who are not related to MedicCom, including MedicCom's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
- d) suppliers who need access to the Customer's personal information to provide MedicCom with services to allow supply of the Service; and
- e) joint venture partners of MedicCom Group Companies.

5.4 MedicCom may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:

- a) the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- b) emergency services organisations; and
- c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.5 Where MedicCom will be, or will under the Privacy Act 1988 (Cth), considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:

- a) MedicCom may give information about the Customer to a credit reporting agency for the following purposes:
  - i) to obtain a consumer credit report about the Customer; and/or
  - ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- b) Such information is limited to:
  - i) identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
  - ii) the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
  - iii) the fact that MedicCom is a current credit provider to the Customer;
  - iv) loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
  - v) advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
  - vi) information that, in the opinion of MedicCom, the Customer has committed a serious credit

infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and

- vii) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- c) The Customer agrees that:
    - i) MedicCom may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
    - ii) MedicCom may obtain a credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
    - iii) MedicCom may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
      - a. to assess an application by the Customer for credit;
      - b. to notify other credit providers of a default by the Customer;
      - c. to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
      - d. to assess the Customer's credit worthiness; and
    - ci) such information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to MedicCom.

5.7 If the Customer is an individual, the Customer is entitled to:

- a) gain access to the Customer's personal information held by MedicCom, unless MedicCom is permitted or required by any applicable law to refuse such access; and correct any personal information held by MedicCom.

5.8 If the Customer does not provide part or all of the personal information requested by MedicCom, then MedicCom may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.

5.9 By providing the Customer's personal information to MedicCom and obtaining the Service, the Customer acknowledges and consents to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with MedicCom's privacy policy, a copy of which will be made available by MedicCom on request or may be viewed on MedicCom's website at:

<https://MedicCom.com.au/terms>

5.10 If the Customer has authorised MedicCom to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed MedicCom of a password to be used for MedicCom's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:

- a) to keep confidential such password;
- b) that MedicCom may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to MedicCom in connection with the Service on behalf of the Customer;
- c) that the Customer will not hold MedicCom liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to MedicCom; and
- d) that all calls made to or from MedicCom's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.

5.11 The reference to "Customer" in this clause 5 includes a reference to, and is applicable to, MedicCom's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.

## 6. Using the Service

6.1 The Customer must reasonably co-operate with MedicCom to allow MedicCom, or a supplier, to establish and supply the Service to the Customer safely and efficiently.

6.2 MedicCom will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults, MedicCom will use reasonable endeavours to ensure the Service is restored as soon as possible.

6.3 When using the Service, the Customer must comply with:

- a) all laws;
- b) all directions by a regulator;
- c) all notices issued by authorisation of or under law;
- d) the Acceptable Use Policy; and
- e) reasonable directions by MedicCom.

6.4 The Customer must not use, or attempt to use, the Service:

- a) to break any law or to infringe another person's rights;
- b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
- c) in any way that may expose MedicCom to liability; or

6.5 in any way which may damage, interfere with or interrupt the Service, the MedicCom network or a supplier's network used to supply the Service. MedicCom may require the Customer to stop doing something which MedicCom

reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which MedicCom may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.

6.6 The Customer acknowledges that, where the Service is a carriage service, MedicCom, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.

6.7 MedicCom may (but is not obliged to) contact the Customer if MedicCom becomes aware of an unusually high use of the Service by the Customer. MedicCom is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.

6.8 The Customer must comply with any rules imposed by nbn, Telstra or any third party supplier whose content or services the Customer access using the Service or whose network the Customer's data traverses.

## 7. Equipment

7.1 The Customer must ensure that they have a compatible modem to support the Service. MedicCom will not be liable for failure to access the Service, or for service performance issues if the Customer is using incompatible equipment.

7.2 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:

- a) all laws;
- b) all directions by a regulator;
- c) all notices issued by authorisation of or under law; and
- d) reasonable directions by MedicCom,

failing which MedicCom may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

7.3 In relation to equipment:

- a) any MedicCom owned equipment remains MedicCom's property;
- b) the Customer is responsible for any MedicCom owned equipment from the time when the Customer receives it; and
- c) the Customer may purchase equipment from MedicCom to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.

7.4 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

7.5 Unless otherwise agreed between the parties, the Customer must allow MedicCom's personnel (and no other person) to service, modify, repair or replace any MedicCom owned equipment.

7.6 The Customer is responsible for any lost, stolen or damaged MedicCom owned equipment, except where this is caused by MedicCom or MedicCom's personnel.

7.7 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from MedicCom, even when that equipment is lost, stolen or damaged.

## 8. Network maintenance, fault reporting and rectification

8.1 MedicCom may conduct maintenance on the MedicCom network and maintenance may be conducted on the nbn, Telstra or another third party supplier's network used to supply the Service.

8.2 MedicCom will endeavour to provide a 24-hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to MedicCom, the Customer must take all reasonable steps to ensure that the fault is not caused by any customer network or customer equipment.

8.3 The Customer must provide all reasonable assistance to enable MedicCom or MedicCom personnel and nbn, Telstra or another third party supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises.

8.4 MedicCom will repair faults within the MedicCom network used to supply the Service. Unless the Service Description expressly provides otherwise, MedicCom is not responsible for repairing any fault in the Service where the fault arises in, or is caused by:

- a) a supplier's network;
- b) equipment that is not MedicCom owned equipment; or
- c) facilities outside the MedicCom network.

8.5 Where a fault arises in, or is caused by, a supplier's network MedicCom will notify the supplier of the fault and request that the fault be corrected promptly, but MedicCom will not bear any further liability or responsibility.

8.6 Where a fault arises in, or is caused by, equipment that is not MedicCom owned equipment, MedicCom is not responsible for the repair of that fault.

8.7 If MedicCom investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel, or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by MedicCom in investigating.

## 9. Fees and charges

9.1 The Customer must pay:

- a) the fees and charges for the Service which are set out in the Agreement; and
- b) any additional fees and charges noted in the Agreement (including in the Application) or notified by MedicCom in accordance with the Agreement from time to time.

9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.

9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable, or if the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.

9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including a Fibre Build Charge or Special Linkage Charge and Installation Charge, where applicable), MedicCom may charge the Customer administration fees and other similar charges including suspension fees, MedicCom Cancellation Fees, Accrued Charges, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.

9.5 MedicCom may also ask the Customer to make a pre-payment charge or request that the Customer make an interim payment (including, for example, if there is a Fibre Build Charge or Special Linkage Charge).

9.6 MedicCom will calculate fees based on billing information generated or received by MedicCom which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

9.7 MedicCom may offer the Customer a Special Offer from time to time. In such event, MedicCom will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the Minimum Term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.

## 10. Payments

10.1 MedicCom will invoice the Customer on a regular basis in advance, unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request MedicCom to send a copy of the invoice electronically.

10.2 MedicCom may invoice the Customer using a billing agent (which may be another MedicCom Group Company).

10.3 The Customer may pay by one of the payment methods as set out in the payment notification, on the back of the invoice or on MedicCom's website.

10.4 If the Customer makes a request to MedicCom to pay by direct debit from its nominated bank or credit card account and MedicCom agrees, the Customer must comply with all terms and conditions imposed by MedicCom for the direct debit arrangement. In such event, the Customer acknowledges that the direct debit arrangement may take up to thirty (30) days from the date of the Customer's request to put in place.

10.5 If the Customer's payment is not honoured for any reason, MedicCom may charge the Customer a fee.

10.6 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by MedicCom.

10.7 If the Customer does not pay the invoice by the date the payment is due, MedicCom may:

- a) charge the Customer a late fee which is payable until all outstanding amounts are paid;
- b) require the Customer to provide reasonable security to MedicCom to secure the payment of future amounts due under the Agreement;
- c) suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If MedicCom suspends or cancels the Service, MedicCom may charge the Customer a suspension fee, MedicCom Cancellation Fee, Accrued Charges and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
- d) engage a mercantile agent to recover the money the Customer owes MedicCom and charge the Customer a recovery fee;
- e) institute legal proceedings against the Customer to recover the money the Customer owes MedicCom and recover from the Customer its legal costs; and/or
- f) on-sell any unpaid amounts to a third party.

10.8 If the Customer has overpaid, as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or MedicCom will use reasonable endeavours to notify the Customer and refund the over payment.

10.9 Unless otherwise indicated, the fees and charges set out in the Agreement exclude tax, unless otherwise stated.

10.10 If the Customer requires a copy of any invoice sent by MedicCom in relation to the Service after cancellation of the Service or termination of the Agreement, and a copy of such invoice remains retrievable from MedicCom's records, the Customer must pay MedicCom's reasonable administration fee for such retrieval.

## 11. Complaints and disputes

11.1 If the Customer has any complaints in connection with the Service, the Customer may complain in writing or by calling MedicCom.

11.2 MedicCom will handle all complaints in accordance with its complaints procedure which is available from MedicCom on request or on MedicCom's website at:

<https://MedicCom.com.au/terms>

11.3 MedicCom will use its best endeavours to resolve all complaints, however if MedicCom is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, MedicCom may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non-MedicCom owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

## 12. Cancelling the Service

12.1 The Customer may cancel the Service at any time by:

- a) giving MedicCom thirty (30) days' written notice (including if the Customer does not wish to continue to use the Service after the end of the Minimum Term of a Fixed-Term Agreement); or
- b) giving MedicCom notice, if MedicCom breaches a material term of the Agreement and MedicCom either:
  - i) cannot remedy that breach; or
  - ii) fails to remedy that breach within thirty (30) days after the Customer gives MedicCom notice requiring MedicCom to do so.

12.2 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service due to a breach of clause 3.2(b).

12.3 MedicCom may cancel the Service at any time, without liability, if:

- a) there is an emergency;
- b) MedicCom reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- c) any amount owing to MedicCom in respect of the Service is not paid by its due date and the Customer fails to pay

that amount in full within ten (10) business days after MedicCom gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;

- d) MedicCom reasonably considers the Customer a credit risk because the Customer has not paid amounts owing to MedicCom or any MedicCom Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- e) the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days' after MedicCom gives the Customer notice requiring the Customer to do so;
- f) MedicCom is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
- g) the Customer suffers an insolvency event and MedicCom reasonably believes MedicCom is unlikely to receive payment for amounts due;
- h) the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and MedicCom reasonably believes MedicCom is unlikely to receive payment for amounts due;
- i) the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
- j) if MedicCom reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;
- k) any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
- l) MedicCom is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.4 MedicCom may cancel the Service under clause 12.3 upon notice, unless otherwise set out in the Agreement. However, MedicCom may cancel the Service immediately if there is an emergency.

12.5 If the Service is cancelled:

- a) The Customer is liable for any charges incurred (including the MedicCom Cancellation Fee and Accrued Charges) up to, and including, the Cancellation Date;
- b) the Customer authorises MedicCom to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the MedicCom Cancellation Fee and Accrued Charges);

- c) subject to clause 12.7(b) and unless otherwise set out in the Service Description, MedicCom will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer;
- d) if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises MedicCom to debit any undisputed outstanding charges (including any MedicCom Cancellation Fee and Accrued Charges) from the Customer's nominated bank or credit card account.

12.6 No MedicCom Cancellation Fee shall be payable by the Customer if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the Minimum Term and the Customer has not entered into another Fixed-Term Agreement.

12.7 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises):

- a) before the Service Start Date, the Customer must pay MedicCom all infrastructure and installation costs incurred by MedicCom in connection with preparations for supplying the Service to the Customer as set out in clause 17.2;
- b) during the Minimum Term, the Customer must pay MedicCom a MedicCom Cancellation Fee and Accrued Charges or such higher amount as may be provided in clause 17;
- c) the Customer must pay MedicCom all costs incurred to rectify the Customer's breach of the Agreement.

12.8 If the Customer elects to enter into a Service at any time after Cancellation Date, the Customer may be required to order a new Service.

12.9 If the Customer is able to use the Service after the Cancellation Date, the Customer may be liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

## 13. Suspending the Service

13.1 MedicCom may suspend the Service at any time, without liability:

- a) in any of the circumstances described in clause 12.3(a) to (h) and (l);
- b) if it is necessary to allow MedicCom or a supplier to repair, maintain or service any part of the MedicCom network or a supplier's network used to supply the Service;
- c) if MedicCom reasonably believes there has been an unusually high use of the Service; or
- d) problems are experienced interconnecting the MedicCom network with any supplier's network used to supply the Service.

13.2 MedicCom may suspend the Service under clause 13.1 as soon as MedicCom gives the Customer notice, unless otherwise set out in the Agreement. However, MedicCom may suspend the Service immediately if there is an emergency.

13.3 MedicCom may suspend the Service if any amount owing to MedicCom is not paid by its due date, MedicCom gives you notice requiring payment of that amount (which MedicCom may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after MedicCom has completed investigations referred to in clause 11.4) and you fail to pay the amount in full within 5 Business Days after MedicCom gives you that notice.

13.4 If MedicCom suspends the Service, MedicCom may later cancel the Service for the same or a different reason.

13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.

13.6 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay MedicCom a suspension fee.

13.7 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to MedicCom provided that if the Service is suspended as a result of circumstances attributable to the Customer and MedicCom reactivates the Service, the Customer may have to pay MedicCom a reconnection or reactivation fee or such higher amount as may be set out in clause 17.

## 14. Liability

14.1 The Customer is liable to MedicCom for any breach of the Agreement that causes foreseeable loss to MedicCom.

14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to MedicCom for any consequential losses MedicCom suffers or for any costs, expenses, loss or charges that MedicCom incurs which are not a direct result of something the Customer has done.

14.3 MedicCom is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep MedicCom fully indemnified against any loss or damage incurred in connection with any claim against MedicCom by a Business End User in relation to:

- a) the use (or attempted use) of the Service; or
- b) the equipment used in connection with the Service.
- c) 3.4 MedicCom has responsibilities and obligations under the law, including under:
- d) the Telecommunications Legislation;
- e) the Competition and Consumer Act; and
- f) applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

14.5 MedicCom may be liable to the Customer for:

- a) breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Trade Practice Act, Australian Consumer Law or other laws, then MedicCom's liability (if any) for breach of that condition or warranty in connection with any goods or services MedicCom supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.6 If the Customer has contributed to any loss or damage the Customer is claiming against MedicCom, MedicCom's liability is reduced to the extent of the Customer's contribution.

14.7 MedicCom is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something MedicCom has done.

14.8 In relation to a Business Customer, to the extent permitted by law, MedicCom's total liability for loss is limited in aggregate for any claim or series of connected claims, to an amount calculated by multiplying the amount MedicCom charges the Customer each month for its Service by 12, to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

## 15. Assignment and transfer

15.1 MedicCom may:

- a) assign some or all of its rights under the Agreement to a third party without consent;
- b) transfer some or all of its obligations under the Agreement to any MedicCom Group Company that is able to perform those obligations; and/or
- c) perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another MedicCom Group Company, provided MedicCom remains responsible for the performance of the obligations, and the Customer irrevocably authorises MedicCom to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

15.2 The Customer may not assign or otherwise deal with (or purport to do so) any right or obligation under this Agreement to a third party, including without limitation to a Related Corporation without MedicCom's prior written consent, with such consent not to be unreasonably withheld or delayed.

## 16. General

16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the State of Queensland.

16.2 MedicCom owns all material (including Intellectual Property Rights) developed by MedicCom or MedicCom's personnel, at MedicCom's direction.

16.3 MedicCom may permit the Customer to use this material, or other material licensed by MedicCom, as part of the Service. This permission is subject to any conditions which MedicCom may impose from time to time and will cease when the Service is cancelled.

16.4 The Customer must not infringe any person's Intellectual Property Rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, MedicCom may suspend or cancel the Service without notice.

16.5 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:

- a) the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- b) the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.

16.6 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer is or becomes a carrier or carriage service provider, MedicCom may immediately cancel the Service by giving the Customer notice.

16.7 If the Customer breaches the Agreement and MedicCom does not exercise a right that MedicCom has because of the Customer's breach, MedicCom does not waive:

- a) that right unless MedicCom gives the Customer notice in writing confirming that MedicCom have waived that right; or
- b) MedicCom's right to insist that the Customer perform any obligation the Customer has under the Agreement.

16.8 MedicCom may pay a commission to any of MedicCom's personnel in connection with the Agreement.

16.9 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

16.10 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.

16.11 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a) to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to MedicCom in writing; and
- b) to MedicCom at MedicCom's latest address and facsimile number indicated on MedicCom's website at: <https://MedicCom.com.au/terms>

Any such notice shall be deemed to be received:

- a) in the case of delivery, at the time of delivery;
- b) if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed;
- c) in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error; or
- d) in the case of an e-mail, on production of an e-mail header indicating delivery without error.

16.12 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.

16.13 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

## 17. Special terms and conditions applicable to the Service

17.1 The Agreement is a Fixed-Term Agreement with a Minimum Term of twelve (12), twenty-four (24), or thirty-six (36) months (as indicated by the Customer on the Application). Therefore, if the Agreement is terminated during the Minimum Term for any reason after the Service Start Date, the Customer shall be liable to pay to MedicCom a MedicCom Cancellation Fee equivalent to the sum of:

- a) For nbn Enterprise Ethernet – the monthly access charge payable to MedicCom multiplied by the number of months (or part of a month) in the unexpired portion of

the Minimum Term;

- b) For Telstra Ethernet Access – the monthly access charge for each link payable to MedicCom multiplied by the number of months (or part of a month) in the unexpired portion of the Minimum Term, plus the full (100%) undiscounted Installation Charge for each link; and
- c) The MedicCom Cancellation Fee is in addition to any other right that MedicCom may have under the Agreement.

17.2 If the Service is cancelled by the Customer before the Service Start Date then (unless the Service is cancelled as a result of circumstances reasonably attributable to MedicCom) the Customer must pay MedicCom a Supplier Cancellation Fee based on the following order stages below:

a) **For nbn Enterprise Ethernet:**

- i) orders placed and accepted by MedicCom and in the nbn Planning Stage - \$1000;
- ii) orders in the nbn Design Stage - \$2,100;
- iii) orders in the nbn Build Stage or Pre-Delivery Stage - \$9,600 plus any applicable Fibre Build Charge as notified during the order.

b) **For Telstra Ethernet Access:**

- i) orders placed and accepted by MedicCom and Telstra has not installed their customer equipment on customer premises - \$1,600 for each link;
- ii) orders placed and accepted by MedicCom and Telstra has installed their customer equipment on customer premises - \$4,850 for each link.

17.3 Fibre build timeframes and/or delivery timeframes will be provided after acceptance of an order. The Fibre Build Timeframe and/or delivery timeframes can be more than 50 Business Days from the date of acceptance as specified by nbn or Telstra or another third party supplier and is not within MedicCom's control. MedicCom is not liable for any loss or delay as a result of the timeframes by nbn, or Telstra or another third party supplier.

17.4 For Customer's Services MedicCom orders through NBN or Telstra there may be an upfront charge as follows:

- a) **For nbn Enterprise Ethernet** - Fibre Build Charge or cost which You will be required to pay. This Fibre Build Charge may be adjusted higher retrospectively by NBN if they determine that the actual cost they will incur is higher. You agree that if NBN passes on a higher Fibre Build Charge to MedicCom, MedicCom may pass it onto You. However, prior to the order being accepted, you can decline these Fibre Build Charges and cancel the order without financial penalty. Once the order is accepted, Fibre Build Charges will apply and be payable by the Customer.
- b) **For Telstra Ethernet Access** - Special Linkage Charge or cost which You will be required to pay. This Special

Linkage Charge may be adjusted higher retrospectively by Telstra if they determine that the actual cost they will incur is higher. You agree that if Telstra passes on a higher Special Linkage Charge to MedicCom, MedicCom may pass it onto You. However, prior to the order being accepted, you can decline these Special Linkage Charge and cancel the order without financial penalty. Once the order is accepted, Special Linkage Charges will apply and be payable by the Customer.

17.5 Acknowledgement and Acceptance of Orders for nbn Enterprise Ethernet and Telstra Ethernet Access:

- a) Orders are accepted by MedicCom in the normal course of our business on the basis that there are no outstanding matters that require information from the Customer, or the approval of the Customer. Telstra or nbn will acknowledge the Order once it is placed by the Customer with MedicCom. Approval will then be sought from the Customer where additional charges may be applied by NBN or Telstra in assessing or delivering the Service to the nominated Premises, such as Site Survey Charges, Special Linkage Charges or Fibre Build Charges, as determined by Telstra or nbn.
- b) Prior to the acceptance of the Order by the Customer, the Customer must ensure that it has obtained all necessary approvals. Acceptance of the Order by the Customer without the necessary approvals, will result in the Customer being liable for the Supplier Cancellation Fees.

17.6 Upon acceptance by MedicCom of an Application and subject to You meeting your responsibilities under Agreement, MedicCom will provide the Service to You. The Customer will need to provide requested supplementary information to MedicCom after the initial order placement. Failure to provide this requested supplementary information in a reasonable timeframe will result in the cancellation of the order by MedicCom, where you will be liable for the Supplier Cancellation Fees.

17.7 You must provide accurate and complete Premises address information to MedicCom for use in qualifying each Service. You may be liable for any costs incurred by MedicCom due to any incorrect, false or misleading information You provide. If You change a Premises prior to the delivery of the Service, You must pay MedicCom's reasonable costs and fees (if any) arising from the change of Premises.

17.8 The Customer must provide all reasonable assistance to enable MedicCom or MedicCom personnel and nbn, Telstra or another third party supplier's personnel, to provide adequate and timely access to the Premises. Failure to provide adequate and timely access to the Premises may result in Service delays and/or additional charges which may be payable by the Customer, including Supplier Cancellation Fees.

17.9 Relocation Fee for nbn Enterprise Ethernet or Telstra Ethernet Access Services:

Should the Customer wish to relocate an nbn Enterprise Ethernet or Telstra Ethernet Access Services prior to the end of the

Minimum Term or Renewal Term, You agree that relocation fees from nbn or Telstra will apply. MedicCom will pass through any relocation fees to you which you must pay upon the relocation order being placed with nbn or Telstra.

17.10 The Customer acknowledges and agrees that:

- a) the Customer must comply with all reasonable terms and conditions imposed by nbn, Telstra or another third party supplier in connection with the Service.
- b) if the Customer purchases any equipment to support the Service such as a modem from MedicCom then, unless otherwise stated:
  - i) the charges for the equipment will be included as part of the fees applicable to the Service and will be invoiced to the Customer under the terms of the Agreement;
  - ii) title to the equipment remains with MedicCom until MedicCom has been paid in full;
  - iii) risk in the equipment passes to the Customer upon delivery to the Premises; and
  - iv) the Customer is solely responsible for the configuration and maintenance of the equipment including its internet network operating system (IOS) and software configuration.
- c) All hardware (including the modem) supplied with the Service comes with a twelve (12) months' limited manufacturer's warranty.
- d) The Customer authorises and permits MedicCom to provide nbn, Telstra or another third party supplier or its nominees with the Customer's personal information (including name, address and telephone number) provided to MedicCom as may be necessary for the purpose of fulfilling obligations under the third party supplier's agreement with MedicCom, including in relation to the sale of equipment where applicable.
- e) The Customer authorises MedicCom to act as the Customer's authorised agent or representative in MedicCom's dealings with the third party supplier to the extent required to comply with industry codes and practices for the provision of the Service.

## Appendix A

### Service Levels

MedicCom provides Enterprise Ethernet using nbn and Telstra Ethernet Access using Telstra with a target restoration time of up to 4-hours.

While MedicCom will enter into a service level agreement with an End User, MedicCom's ability to deliver services under such an agreement is dependent upon the performance of the nbn or Telstra network to a large extent, which is provided with the following service level targets.

## 1. Service Level Offered by Supplier

### For nbn Enterprise Ethernet:

1.1 Enterprise Ethernet has a network availability target of 99.95%.

1.2 MedicCom will apply the NBN Service Levels for Premium Assurance Service as detailed in the NBN Enterprise Ethernet Service Schedule accessible by this link: <https://www.nbnco.com.au/sell-nbn-services/supply-agreements>.

### For Telstra Ethernet Access:

1.1 Telstra Ethernet Access has a network availability target of 99.90% for a single link and 99.95% for a single link with mobile back up.

1.2 MedicCom will apply the Telstra Service Levels for Premium Assurance Service as detailed in the Telstra Ethernet Access Service Schedule.

## 2. Pro-Active Notifications

### Major Outages

2.1 In the event that a network outage should occur with the potential to impact multiple End Users, MedicCom will, when possible, pro-actively communicate to Customers with SMS and email as follows:

Notifications may be via:

- SMS with summary details for a limited number of customer contacts; and/or
- E-mail with more detailed information for all nominated customer contacts.

2.2 It is the Customer's responsibility to ensure that MedicCom has the correct and current list of nominated contacts and the Customer's contact details at all times.

### Planned Service Outages

2.3 MedicCom will use best efforts to provide 5 working days' notification of any scheduled or planned service outages to affected customers. Where practicable, planned service outages will occur from 1am local time in the affected state, the planned service outage may happen any day of the week. The process of notifying customers of planned service outages will be as follows:

- a) MedicCom may plan a service outage to conduct necessary maintenance and upgrade to its network. Planned service outages may also originate from nbn, Telstra or another third party supplier who are providing services to MedicCom; and/or
- b) MedicCom will notify all effected customers via e-mail. The e-mail will include details of the planned service outage.

2.4 In circumstances where an emergency service interruption is required, MedicCom reserves the right to undertake the service interruption without notice. In such cases MedicCom will use its best efforts to notify the customer prior to any service interruption. Notification via the SMS facility (as described above) may be used in case of an emergency service interruption.

### **3. Service Credit Calculation**

3.1 MedicCom will pass through to Customers service credits provided by nbn, Telstra or another third party supplier in relation to the impacted service.

### **4. Service credit conditions**

The following conditions apply to Service credits:

4.1 Service credits apply from the first full calendar month that the eligible Service is operational,

4.2 Where the credit is available, the credit is the only remedy in the event of any failure to meet the defined target (where the credit is not available, no remedy is available),

4.3 You must apply for the credit by contacting the Help Desk and following the prescribed process for obtaining credits within 30 calendar days of the end of the month to which the credit applies,

4.4 The Service credit may only be applied by way of a credit, and cannot be redeemed for cash; and,

4.5 The maximum Service credit available for each eligible Service in any month will not exceed 50% of the total monthly Charges for that eligible Service in that month.