

Internet Network Service Agreement

Fibre / Ethernet over Copper Services.

V3.00 – November 2019

- A. The **client** has requested that Sensible Business solutions Pty Ltd ABN 87 084 151 477, “Sensible”, provide **services** to the **client**.
- B. Sensible will supply, and the **client** will acquire, the **services** on the terms and conditions specified in:
- (i) this **Network Service Agreement**; and
 - (ii) the **Schedule to the Network Service Agreement**; and
 - (iii) any **Orders for Service**;
 - (iv) the **Direct Debit Agreement**; and
 - (v) any other documents that may be subsequently incorporated into this **agreement**.

1. Definitions and Interpretation

It is agreed:

1.1. Definitions

The following definitions apply to the whole of this agreement inclusive of this **Network Service Agreement**, the **Schedule to the Network Service Agreement**, any **Orders for Service** and any other documents that may be subsequently incorporated into this **agreement**, unless the context requires otherwise:

Acceptable Use Policy means the document with that title available for download from the **Sensible Website**.

Agreement means this **Network Service Agreement**, the **Schedule to the Network Service Agreement**, any **Orders for Service**, the **Direct Debit Agreement** and any other documents that may be subsequently incorporated into this Agreement.

Agreement date means the date of **agreement** nominated at clause 2 of the **Schedule to the Network Service Agreement**.

Client means the client specified in the **Schedule to the Network Service Agreement**.

Commencement date means the date that the **services** are made available to and notified to the **client** by email.

End User means any person who uses the **services** by virtue of the **client's** access to the **services** with or without the **client's** permission.

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil discords, rebellions or revolutions, strikes and lockouts.

Law means law in force in Queensland including, but not limited to, Commonwealth and Queensland State legislation, common law in force in Queensland and binding regulatory and industry codes.

Network Service Agreement means this document in its entirety including any amendments.

Order for Service means a document with that title relating to the **client**.

Provisioning Date means the date when Sensible advises the Network Services are operational.

Schedule to the Network Service Agreement means the document with that title relating to the client.

Service Level Agreement means the document "Service Level Agreement – Network Services" available for download from the **Sensible Website**.

Services means services and/or products Sensible has agreed to provide and the client has agreed to acquire as outlined in the applicable **Orders for Service**.

Sensible means Sensible Business Solutions Pty Ltd and its employees, subcontractors and suppliers unless the context requires otherwise.

Sensible Website is accessible at www.sensible.com.au .

1.2. Interpretation

The following rules apply to the whole of this **agreement** inclusive of this **Network Service Agreement**, the **Schedule to the Network Service Agreement**, any **Orders for Service** and any other documents that may be subsequently incorporated into this agreement, unless the context requires otherwise:

- 1.2.1 The singular includes the plural and the plural includes the singular.
- 1.2.2 The definition of a word or phrase is applicable to its other grammatical forms.
- 1.2.3 A reference to dollars or \$ is to Australian currency.
- 1.2.4 A reference to a “day” or “month” or “year” refers to a calendar day, month or year respectively.
- 1.2.5 Words shown in bold type in this **agreement** are defined in the definitions section at subclause 1.1.

2. The Supply and Commencement of Services

2.1 . Placing an order for **services** does not guarantee that Sensible will supply the **services**. **Services** are subject to availability and eligibility, and Sensible may refuse any application in its absolute discretion.

2.2. The **client** agrees that any **services** provided to the **client** will be supplied on the terms and conditions of this **agreement** which are specified in:

this **Network Service Agreement**; and

- i. the **Schedule to the Network Service Agreement**; and
- ii. the Schedule to the **Network Service Agreement**; and
- iii. any **Orders for Service**;
- iv. the **Direct Debit Agreement**; and
- v. any other documents that may be subsequently incorporated into this **agreement**.

2.3. The **client** agrees to use the **services**, and will ensure that its **end users** use the **services**, in accordance with

(a) the terms and conditions of the **agreement**;

(b) **law** in force in New South Wales; and

(c) Sensible's various policies published on the Sensible website, and available on request by emailing info@Sensible.com.au, including but not limited to:

i. the **Acceptable Use Policy**; and

ii. the **Privacy Policy**;

2.4. Sensible will notify the **client** via email when the services have been provisioned. This notification will include advice of the **Provisioning Date** that the services are available for use and that billing has commenced.

3. Orders for Service

3.1. Any **Order for Service** submitted to Sensible by the **client** constitutes a binding offer capable of acceptance by Sensible.

3.2. Sensible is not obligated to accept any **Order for Service** submitted to it.

4. Payment Terms

4.1 Initial Payment

4.1.1. An initial payment covering any setup fees, if applicable, is due on signing the **agreement**.

4.1.2. Sensible is not obliged to commence provisioning the **services** until it has received the initial payment, and the funds have cleared.

4.2 Subsequent Payments

4.2.1. Payments are to be made monthly in advance for each calendar **month** or part thereof for which **services** are made available to the **client**.

4.3 Cost

4.3.1. The minimum term is specified on the relevant **Order for Service** and commences from the **Provisioning Date**.

4.3.2. The minimum cost under this **agreement** is equivalent to the sum of the setup costs plus the minimum term multiplied by the monthly ongoing cost. The minimum cost is set out in the **Order for Service**.

4.3.3. The minimum cost will be payable regardless of whether the services are utilised or cancelled.

4.4 Overdue Payments

4.4.1. Payments are due **14 days** after the invoice date.

4.4.2. If Sensible has not received payment in full 14 days after the invoice date, the payment is deemed to be overdue.

4.4.3. An additional “late fee” for overdue payments will be payable by the **client**.

4.4.4. Upon discovery of an overdue payment, Sensible may make a demand for payment in writing to the **client**.

4.4.5. If payment of the overdue payment and late fee is not received by Sensible within 7 days of making the demand in 4.4.4, Sensible may, at any time, in its sole discretion do any, any combination, all or none of the following:

- (a) cease or suspend provision of all or some **services** to the **client** (the **client** will remain responsible for payment for the **services** regardless of whether they are ceased or suspended pursuant to this clause);
- (b) appoint a debt collection agency or debt collector to recover any or all monies owed to **Sensible** including, but not limited to, overdue payments, late fees, debt collection fees, excess usage and any fees that are or will become payable to **Sensible** including fees incurred as a result of the **client's** failure to pay, for example, debt collection fees, early termination fees, fees for any remaining contractual terms;
- (c) advise any **end user** or other affected party that the **client** has failed to make payments in accordance with its contractual obligations and describe the measures taken by **Sensible** as a result;
- (d) provide any services to the **end user** without breaching any other provision of this **agreement** in circumstances where the **end user** is inconvenienced in any way by the **client's** failure to make payments in accordance with its contractual obligations and/or **Sensible's** action taken as a result.

4.5. Payments made by credit card will incur an additional processing fee which is set out on the direct debit request form.

- 4.6. Whilst is Sensible's intention to invoice the **services** in a timely manner, the **parties** agree that Sensible may invoice the **client** at any time up to 24 months after the provision of the **services**.
- 4.7. The **client** acknowledges that it must pay for the **services** during the term of the **agreement** even if it does not receive or is unable to use the **services**.
- 4.8. If the **services** are cancelled before the expiry of the term of the **agreement** the **client** will be liable to pay an exit charge equal to the remainder of charges which would have been payable during the term of the **agreement**.
- 4.9. **Sensible's** rights pursuant to this clause exist in addition to its statutory rights and other rights pursuant to this agreement

4.10. **Excess Data Charges**

- 4.10.1. **Excess data** will be charged **monthly** in arrears.
- 4.10.2. Payments made by credit card may incur an additional processing fee to be advised by Sensible.

4.11 Updated Charges

- 4.11.1. If, at any time, there is an increase in Sensible's cost of providing the **services** Sensible may review and modify the charges by giving the **client** 10 business days' prior notice ("the notice period").
- 4.11.2. Upon receipt of a notice provided pursuant to clause 4.11.1, the **client** may elect to terminate **services** affected by the change in charges, by giving Sensible no less than 10 business days' notice of its intention to terminate pursuant to this clause.
- 4.11.3. If the **client** terminates affected **services** pursuant to clause 4.11.2, that termination is effective either, on the date that the amendment was to be effective (as notified by Sensible pursuant to clause 4.11.1), or the date 10 business days after Sensible receives notice of the **client's** intention pursuant to clause 4.11.2, whichever is the latter.
- 4.11.4. If, after the conclusion of the notice period notified pursuant to clause 4.11.1, the **client** has not made an election pursuant to clause 4.11.2, the **client** is deemed to have accepted the amendments notified pursuant to clause 4.11.1 and to have forfeited its right of termination under clause 4.11.2.

5. Service Level Agreement

- 5.1. The **Service Level Agreement** prescribes the service level that Sensible is expected to meet and the compensation Sensible will provide to clients if its service level targets are not met.
- 5.2. The **client** acknowledges that Sensible may at any time amend the **Service Level Agreement**, or cancel and introduce a replacement **Service Level Agreement** and such amendment, cancellation and/or replacement will be binding on the **client** on and from the date that it is published on the **Sensible website**.

6. Method of Communication

- 6.1. By providing Sensible with the **client's** email address, the client consents to receiving communications from Sensible via email.
- 6.2. By providing Sensible with the **client's** facsimile number, the client consents to receiving communications from Sensible via facsimile.

7. Acceptable Use Policy

- 7.1. The **client** will comply, and will ensure that each of its **end users** complies with the **Acceptable Use Policy**.
- 7.2. The **client** confirms that it has read and understood the **Acceptable Use Policy** prior to signing the **agreement**.
- 7.3. The **client** acknowledges that Sensible may from time to time amend the **Acceptable Use Policy**, or cancel and introduce a replacement **Acceptable Use Policy** and such amendment, cancellation and/or replacement will be binding on the **client** on and from the date that it is published on the **Sensible website**.

8. Breach of Contract by the Client

8.1. Without limitation, if the **client** breaches any term of this contract, Sensible, may, in its sole discretion, exercise any of, any combination of or all of the rights afforded to it by this clause including, but not limited to,

8.1.1.1. Sensible may terminate the contract and cease provision of **services** to the **client**; and/or

8.1.1.2. Sensible may pursue any remedy available to it at law or take no action.

8.2. Sensible may notify the **client** in writing of the breach and give the **client** 7 days to remedy the breach.

8.2.1. If the **client** fails to remedy the breach to the satisfaction of Sensible within the period specified, Sensible may exercise any of the rights afforded to it by this clause or take no further action.

8.2.2. If the **client** does remedy the breach to the satisfaction of Sensible within the period specified, the parties remain bound by the **agreement**.

8.3. If the contract is terminated pursuant to this clause the **client** remains liable to pay the remainder of the contract price.

9. Breach of Contract by Sensible

9.1. The **client** may terminate **services** on written notice to Sensible if Sensible materially breaches the **agreement** in relation to those **services** and fails to remedy that breach within 30 **days** of receipt of written notice from the **client** defining the breach and requesting that the breach be remedied.

10. No Waiver

- 10.1. No failure to exercise and no delay in exercising any right, power or remedy under this **agreement** will operate as a waiver.
- 10.2. No single or partial exercise of any right, power or remedy under this **agreement** will preclude any other right, power or remedy.

11. Amendment of Agreement

- 11.1. Except as expressly provided for in this **agreement**, this **agreement** may be amended only by another **agreement** executed by all parties.
- 11.2. Where, in Sensible's reasonable opinion, the amendment does not have a material adverse impact upon the **client's** rights under this agreement, or the amendment is necessary because of any agreement Sensible has or will have with a supplier or contractor, Sensible may amend any part of this **agreement** at any time without the **client's** consent by giving the client not less than 10 business days' notice in writing.
- 11.3. Where, in Sensible's reasonable opinion, the amendment relates to improvements in the **services**, Sensible may amend any part of this **agreement** at any time without the **client's** consent by giving the client not less than 10 business days' notice in writing.
- 11.4. Where Sensible wishes to amend the **agreement** otherwise than in accordance with clauses 11.2 or 11.3, it may do so at any time by giving the **client** 10 business days' prior notice ("the notice period").

11.4.1. Upon receipt of a notice provided pursuant to clause 11.4, the **client** may elect to terminate this **agreement**, or where the amendment is to be made to one or more **Schedule(s)** and/or **Order(s) for Service**, the relevant **Schedule(s)** or **Order(s) for Service**, by giving Sensible no less than 10 business days' notice of its intention to terminate pursuant to this clause.

11.4.2. If the **client** terminates the **agreement** or the relevant **Schedule(s)** or **Order(s) for Service** pursuant to clause 11.4.1, that termination is effective either, on the date that the amendment was to be effective (as notified by Sensible pursuant to clause 11.4), or the date 10 business days after Sensible receives notice of the **client's** intention pursuant to clause 11.4.1, whichever is the latter.

11.4.3. If, after the conclusion of the notice period notified pursuant to clause 11.4, the **client** has not made an election pursuant to clause 11.4.1, the **client** is deemed to have accepted the amendment(s) notified pursuant to clause 11.4 and to have forfeited its right of termination under clause 11.4.1.

11.5. For the purposes of this clause, notice in writing shall be achieved by publishing the amended agreement on the Sensible website or emailing the amended agreement to the **client's** email address as advised to Sensible.

12. Obligations

- 12.1. Each party will take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this **agreement**.
- 12.2. The **client** will not exercise any rights or perform any obligations pursuant to this **agreement** through any person other than the employees or officers of the **client** without the prior written consent of Sensible.
- 12.3. Irrespective of whether Sensible has provided its consent pursuant to clause 12.2, the **client** will remain responsible for the exercise of its rights and the performance of its obligations under this **agreement**.
- 12.4. The **client** will provide and maintain its own network security, use current antivirus software and firewalls, select strong passwords and protect usernames, email addresses and passwords.
- 12.5. The **client** will not do, or permit to be done, any act which could or does damage the reputation of Sensible, its employees or affiliates.
- 12.6. The **client** is responsible for any equipment provided by Sensible or its supplier and will ensure that any equipment provided by Sensible or its appropriate care. The **client** will notify any damage or maintenance issues to Sensible as soon as they become apparent to the **client**. The **client** is responsible for returning any equipment provided by Sensible or its supplier when the service for which the equipment was provided is concluded. The **client** is responsible for packaging (at least 2 layers of bubblewrap around each item individually) and postage costs when returning the equipment. Sensible will continue to bill the client for the relevant service until the equipment is received. Sensible reserves the right to recover the replacement cost from the client for any equipment provided by Sensible or its supplier which is damaged, destroyed or not returned on demand .

13. Warranties

- 13.1. Each party warrants that it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted; and
- 13.2. Each party warrants that it is capable of entering into this **agreement** and able to perform its obligations according to the terms of the **agreement**.
- 13.3. The **client** warrants that its and its **end user's** networks, systems, equipment and facilities used in connection with NBN-related networks and any NBN-based services have all necessary regulatory approvals.

14. Fault Reporting

- 14.1. Any faults in relation to the **services** should be notified to Sensible by the **client** upon discovery.
- 14.2. Sensible reserves the right to charge the **client** at its commercial rate (current at the time of the fault notification), for time spent responding to a request from the **client** for fault restoration where Sensible was not solely responsible for the fault.
- 14.3. Sensible's liability for any faults in relation to the supply of **services** is limited as provided for in the Service Level Agreement.

15. Disputes

- 15.1. The **client** agrees to abide by the Complaint Resolution Policy published on the **Sensible website** and available by email request to info@Sensible.com.au.
- 15.2. Sensible is committed to resolving any dispute or complaint that may arise. The **client** agrees to contact Sensible with any dispute or complaint in the first instance.
- 15.3. If a dispute remains unresolved, the **client** may be assisted by the Telecommunication Industry Ombudsman scheme. Further information is available at www.tio.com.au or 1800062058.

16. Sub-Contracting

- 16.1. Sensible may sub-contract or assign any of its obligations, or any part of its obligations under the **agreement** without the **client's** consent.

17. Set-off

- 17.1. Sensible may, without prior notice to the **client**, set-off any amount owing by the **client** to Sensible against any liability of Sensible to the **client**.

18. Force Majeure Events

- 18.1. This clause applies to obligations under the **agreement** other than an obligation to pay money.

- 18.2. Subject to clause 18.1, neither party will be liable for any default or delay in the performance of its obligations under the **agreement** which is due to a **Force Majeure Event**, provided that the party affected complies with clauses 18.3 and 18.4.

- 18.3 Subject to clause 18.1, any party who is unable to perform any of its obligations under the agreement because of a **Force Majeure Event** must provide the other party with:

- (a) notice that the party is unable to perform its obligations, specifying which obligations are affected; and
- (b) a description of the **Force Majeure Event** preventing the party from performing its obligations; and
- (c) a description of how the Force Majeure Event is preventing the party from performing its obligations; and
- (d) a description of the steps the party plans to take to remedy the situation and ensure performance of its obligations under the **agreement**; and
- (e) an estimate that is reasonable in the circumstances, of the time the party anticipates it will take to perform its obligations under the agreement.

- 18.4 A party who wishes to rely on clause 18.2 and/or 18.5 must perform clause 18.3 a minimum of once every 7 days during the Force Majeure Event to ensure that the other party is kept up to date as to the party's anticipated performance of its obligations pursuant to the **agreement**.

18.5 Subject to clause 18.1, a party who is unable to perform any of its obligations under the agreement because of a **Force Majeure Event** and who complies with clauses 18.3 and 18.4, will be excused from performance or observance of the obligations affected by the **Force Majeure Event** for as long as the **Force Majeure Event** prevails.

19. Severability

If any clause or subclause of this **agreement** is deemed prohibited or unenforceable, that clause or subclause is severed from the **agreement** and replaced with a clause or subclause that, to the extent permitted by law, has the most similar effect as the intended effect of the prohibited or unenforceable clause or subclause.

20. Indemnity and Liability

20.1. The **client** indemnifies and will keep fully indemnified, Sensible and each of its officers, agents, employees, contractors, and suppliers from and against any losses, damages, costs or expenses, including legal costs assessed on a solicitor and own client basis, suffered or incurred by Sensible or any of its officers, agents, employees, contractors, and suppliers arising out of or in connection with an action or claim brought by any third party against Sensible or any of its officers, agents, employees, contractors, and suppliers which is a result of:

20.1.1. any breach of this **agreement** by the **client**; or

20.1.2. any breach of the **Acceptable Use Policy** by the **client** or any of its **end users**;
or

20.1.3. any illegal, fraudulent or negligent act or omission perpetrated by the **client** or any of its **end users**; or

20.1.4. the transmission of or presence of any illegal, fraudulent or offensive material by the **client** or any of its **end users**; or

20.1.5. any defect, fault or problem whatsoever with equipment or services used by the **client** that is not provided by Sensible.

20.2. Liability

20.2.1. Sensible, its officers, agents, employees, contractors, suppliers and any third party will not be responsible for any loss or damage to the **client's** business which may result from any interruptions, delays, faults or errors in the supply of the services.

20.2.2. All terms, conditions or warranties which may be implied into this **agreement**, statutory or otherwise, relating to the provision by Sensible and any third party of the **services** are excluded to the fullest extent permitted by law.

20.2.3 Sensible's liability and the liability of any third party for breach of any term, condition or warranty or under any remedy implied by law which cannot be excluded will be:

(a) Limited, to the extent permitted by law, to the refund of the cost paid by the **client** for the affected **services** or to the re-supply of the affected **services**, at the election of Sensible; and

(b) Reduced to the extent that such liability is caused by the **client's** negligent acts or omissions, or the **client's** breach of the terms of the agreement.

20.2.4 The aggregate of Sensible's liability and the liability of third parties to the **client** for all direct, indirect and consequential losses, damages, costs, expenses, actions and claims arising out of or otherwise in connection with the agreement, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, is limited to the total fees paid by the **client** for the affected **services** under the **agreement** or the total fees paid by the **client** for **services** under the **agreement** in the 12 months preceding the relevant cause of action accruing (or if there is more than one, the last cause of action accruing), whichever is less.

20.2.5 Sensible has no liability to the client or any other person for:

(a) the acts or omissions or any third party; or

(b) faults or defects in services caused by the client's own conduct or misuse; or

(c) faults or defects in services caused by the equipment not provided by Sensible pursuant to this agreement.

21. Governing Law

The parties irrevocably submit to the jurisdiction of Queensland and agree that the governing law of the **agreement** is that in force in Brisbane, Queensland, Australia.

22. Entire Agreement

This **agreement** contains the entire agreement between the parties with respect to its subject matter. This **agreement** sets out the only conduct, warranties and representations relied on by the parties and supersedes all earlier conduct, warranties and representations made by the parties with respect to its subject matter.

23. Copyright

This **agreement** is subject to copyright and must not be reproduced in whole or in part without the express written consent of **Sensible**.