

**FIBRUS NETWORKS WHOLESALE ACCESS SERVICES
WHOLESALE PROVIDER AGREEMENT**

This Agreement is dated _____

Parties:

- (1) FIBRUS NETWORKS LIMITED incorporated and registered in Northern Ireland with company number NI612703 whose registered office is at Lanyon Plaza, West Tower, 8 Lanyon Pl, Belfast BT1 3LP (**Fibrus Networks**)

- (2) [NAME~ Registered office~ Co number] (**Wholesale Provider**)

Whereas

- (a) Fibrus Networks builds, operates and maintains a fibre optic network electronic communications network including fibre to the premises which is available for wholesale access

- (b) The Wholesale Provider is an internet service provider to business and/or consumer end-users and wishes to offer its services over Fibrus Networks' network

It is agreed as follows:

1. Interpretation

1.1 Definitions:

Additional Services: the Installation Services, Network Extension Services and other related wholesale access services available to be ordered by the Wholesale Provider as detailed in an Order according to the requirements of the applicable Schedule;

Backhaul Provider: any party providing backhaul capacity to Fibrus Networks in connection with the delivery of the Services to the Wholesale Provider.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Charges: the charges payable by the Wholesale Provider for the supply of the Services in accordance with clause 7 (Charges and payment) and the Wholesale Price List applicable to this Agreement, the current version of which is at <https://hyperfastni.com/wholesale-partners> but which may be amended from time to time in accordance with clause 5;

Commencement Date: the date recorded above;

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

CPE: the Customer Premises Equipment which the Wholesale Provider supplies to End-Users to access the Fibrus Networks Network via an Ethernet connection to Fibrus Networks' NTE to enable the delivery of active Services;

End-User: the Wholesale Provider's end-user customers;

Wholesale Provider Default: has the meaning set out in clause 6.4;

Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (GDPR) ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;

Excused Outage: any outage or unavailability of any part of the Network associated with or caused by:

- a) Planned Maintenance;
- b) Failure of a Backhaul Provider's service;
- c) Wholesale Provider Default; or
- d) by any other situation listed in the Service Level Agreement

Guidance Documents: documents (which may be amended from time to time) made available to Wholesale Providers to

assist with their use of the Services, found at: <https://hyperfastni.com/wholesale-partners>

Installation Services: the services provided by Fibrus Networks to connect Service Delivery Points to the Network as further described in the applicable Specification, Guidance Documents and Schedule 1 (Installations);

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Network: the Fibrus Networks fibre to the premises network (FTTP) made available for wholesale access to Wholesale Providers;

Network Extension Services: bespoke services available to order to investigate or enable groups of the Wholesale Provider's end-users to be connected to the Network according to the terms and charges which will be provided on request;

NTE: Network Termination Equipment;

Order: a 'Wholesale Access Order' placed by the Wholesale Provider in accordance with clause 2 and the Guidance Documents which records the Wholesale Access Services, Additional Services and Service Levels required together with the applicable Charges and any other details;

Outage: an unscheduled, continuous or interrupted period of time when the Network, or a portion thereof, is unavailable, interrupted or materially degraded for a period of at least one hour

Planned Maintenance: such preventative, routine or scheduled maintenance work, including tests and adjustments, as Fibrus Networks may consider necessary for the Network to be maintained in efficient working order.

Service Levels: the level of service applicable to the Wholesale Provider as recorded in the order details and specified in the Service Level Agreement;

Service Level Agreement: the current Fibrus Networks Service Level Agreement (available at <https://hyperfastni.com/wholesale-partners>) which contains details of the Service Levels and the applicable support & maintenance;

Service Delivery Point: the individual connection delivered by Fibrus Networks to an address served by the Fibrus Networks Network to enable a Wholesale Provider to deliver its services to an End-User in accordance with the Order;

Services: all services delivered which are ordered by the Wholesale Provider and supplied by Fibrus Networks in accordance with these terms;

Specification: the description or specification of the Services available to be ordered over Fibrus Networks' Network, the current version of which is made available at <https://hyperfastni.com/wholesale-partners>;

Wholesale Access Services: the specific active ethernet services delivered over the Fibrus Networks Network according to the Specification ordered by the Wholesale Provider to enable them to provide ultrafast broadband services to their End-Users;

Wholesale Passive Services: the specific passive (dark fibre, duct or cabinet) services delivered over the Fibrus Networks Network according to the Specification ordered by the Wholesale Provider to enable them to provide services to their End-Users;

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.
- (d) The schedules to this Agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this Agreement means this Agreement together with the Schedules and

all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.

- (e) If any conflict arises between the terms and conditions of this Agreement and any provision of any Schedule, the terms and conditions of the Schedule shall prevail.

2. Commencement and duration

2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 11 (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than first anniversary of the Commencement Date and shall expire on the completion of all Services in delivery pursuant to Orders entered into before the date on which it is served.

2.2 The parties shall not agree any further Orders after the date on which notice to terminate is served under clause 2.1.

2.3 The Wholesale Provider may procure any of the Services and Additional Services by agreeing an Order with Fibrus Networks pursuant to clause 3. (Order Process).

2.4 Fibrus Networks shall provide the Services from the date specified in the relevant Order.

3. Order Process

3.1 Each Wholesale Access Order shall be agreed according to the following process:

- (a) the Wholesale Provider shall ask Fibrus Networks to provide any or all of the Services or Additional Services and provide Fibrus Networks with as much information as it reasonably requests
- (b) following receipt of the information requested from the Wholesale Provider, Fibrus Networks shall, as soon as reasonably practicable either:
 - (i) inform the Wholesale Provider that it declines to provide the requested Services; or
 - (ii) provide the Wholesale Provider with a draft Wholesale Access Order.

- (c) if Fibrus Networks provides the Wholesale Provider with a draft Order pursuant to clause 3.1(b)(ii), Fibrus Networks and the Wholesale Provider shall discuss and agree that draft Order; and

- (d) both parties shall sign the draft Order when it is agreed.

3.2 No Order will be accepted by Fibrus Networks until it has been agreed and signed by both parties.

Service Orders for Active Ethernet services are made via the Fibrus Networks Wholesale portal or as otherwise agreed by both parties. Any order placed is deemed accepted by the Wholesale Provider when the order is confirmed and the Installation is booked with the Wholesale Provider. Service Orders for Passive services are made via written agreement and will not be accepted by Fibrus Networks until signed by both parties.

3.3 Orders for individual Service Delivery Points shall be placed according the Guidance Documents and applicable Specifications which may be amended from time to time.

3.4 Unless otherwise agreed, the Charges applicable to the Order shall be calculated in accordance with the Wholesale Price List. Charges for Network Extensions and Passive Services will be discussed and agreed with the Wholesale Provider on a bespoke basis according to the Wholesale Provider's requirements.

3.5 Once a Wholesale Access Order has been agreed and signed in accordance with this clause 3 no amendment shall be made to it except in accordance with clause 14.4 below.

3.6 A completed and signed Wholesale Access Order form is part of this Agreement and does not form a separate contract.

4. Supply of Services

4.1 Fibrus Networks shall supply the Services to the Wholesale Provider in accordance with Orders placed in accordance with clause 3 and the Guidance Documents and in accordance with the Specification and the terms of this Agreement in all material respects.

4.2 For Active Ethernet services the Wholesale Provider will not be permitted itself to install Fibrus Networks equipment (other than the Wholesale Provider's CPE)

that connects directly to the Network. Where End-Users require a connection to the Network and an NTE to be installed from their Point of Termination, this will be performed by Fibrus Networks, and the Wholesale Provider will request Installation Services in accordance with the procedure set out in the applicable Specification, Guidance Documents and Schedule 1 and pay Fibrus Networks' reasonable charges for such work. The current Charges and criteria for installation is set out in the Wholesale Price List and the applicable Specifications.

For Passive services, once Fibrus Networks has handed the service over and it has been accepted by the Wholesale Provider, the Wholesale Provider may install or connect its own equipment subject to the Fibrus Networks service documentation.

4.3 The Fibrus Networks Network and all Fibrus Networks equipment, including the NTE whether installed in or on a Wholesale Provider's end user premises or otherwise, will remain the property of Fibrus Networks at all times.

4.4 The Wholesale Provider's CPE and any other equipment may not:

- (a) interrupt, interfere with, degrade or impair service over any of the facilities comprising the Network or any circuits or facilities of any other entity connected to the Network;
- (b) impair the privacy of any communications over such circuits or facilities;
- (c) cause damage of any nature to the Network; or
- (d) create hazards to employees of Fibrus Networks or users of the Network or any third party.

4.5 The Service Levels set out in current version of Fibrus Networks' Service Level Agreement for Wholesale Access Service (available at <https://hyperfastni.com/wholesale-partners>) shall apply to the Services provided under this Agreement.

4.6 The Wholesale Provider acknowledges the possibility of an Outage. Outage time (including a Force Majeure Event) is defined in the Service Level Agreement. Interruptions or degradations in the Services are not counted as Outage time to the extent caused by an Excused Outage.

4.7 Fibrus Networks or such third party as Fibrus Networks may designate from time to time, will be entitled to undertake Planned Maintenance. Planned Maintenance is not counted as an Outage for the purposes of applying Service Levels unless the Planned Maintenance exceeds the notified timescale. Fibrus Networks agrees:

- (a) to provide at least ten business days' written notice to the Wholesale Provider before initiating any planned maintenance operation; and
- (b) to take all reasonable steps (and procure that those third parties as designated by Fibrus Networks take all reasonable steps) to minimise disruption to the operation of the Network arising from Planned Maintenance operations.

5. Fibrus Networks' obligations

5.1 Fibrus Networks represents and warrants that it will take all reasonable steps to cause the Network to be duly constructed and completed in accordance with all applicable international, national, state and local engineering, construction and safety codes and standards.

5.2 Fibrus Networks will obtain and maintain all necessary licenses, approvals, permits and consents required by any government or regulatory authority having jurisdiction over the Network to authorise the construction, operation and use of the Network. Fibrus Networks will operate and use the Network in accordance with and subject to all applicable Legal Requirements including, but not limited to, any and all applicable rules, regulations and orders of any government or regulatory authority having jurisdiction over the Network.

5.3 Fibrus Networks represents and warrants that it will take all reasonable steps to cause the Network to be maintained in efficient working order in accordance with industry standards. Fibrus Networks will take all reasonable steps to ensure that its suppliers perform their obligations and will require its suppliers to provide routine preventive and corrective maintenance for the Network in accordance with performance standards that meet prudent industry standards.

5.4 Fibrus Networks will have sole responsibility for negotiating, executing and administering the agreements and all other aspects related to the construction, operation, maintenance and repair of the Network.

5.5 The Wholesale Provider acknowledges that Fibrus Networks cannot guarantee, and nor is it liable for, the security of information transmitted using the Network, and that Fibrus Networks does not warrant that the Services will be uninterrupted or error-free.

6. Wholesale Provider's obligations

6.1 The Wholesale Provider shall:

- (a) ensure that the terms of the Order are complete and accurate and follow the processes set out in the Guidance Documents;
- (b) co-operate with Fibrus Networks in all matters relating to the Services;
- (c) provide Fibrus Networks with such information and materials as Fibrus Networks may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) inform End-Users of the requirements as set out in Schedule 1 to enable the Installations Services to be provided;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) comply with all applicable laws, including health and safety laws;
- (g) comply with Fibrus Networks' reasonable instructions regarding use of the Network and regarding types and specifications of equipment to be connected;
- (h) comply with Fibrus Networks' reasonable instructions regarding physical and network security, and regarding security, health and safety when accessing any point on the Network; and
- (i) maintain any applicable industry standards

6.2 The Wholesale Provider will not, and will ensure that End-Users will not, use any part of the Network for

any illegal purpose, and will comply at all times with any applicable legal requirement in respect of it.

6.3 The Wholesale Provider shall ensure that its use or access of the Services causes no detriment or damage to Fibrus Networks or to the Network or any customers of Fibrus Networks and the Wholesale Provider shall indemnify Fibrus Networks fully against loss suffered by Fibrus Networks as a result of the Wholesale Provider's activities using the Network or any Services.

6.4 The Wholesale Provider may not use any contended Active Ethernet Services supplied under this agreement to provide a contended service to be used for resale of communications services to third parties. The supply of wholesale passive or dark fibre services must be the subject of a separate agreement between the parties.

6.5 If Fibrus Networks' performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Wholesale Provider or failure by the Wholesale Provider to perform any relevant obligation (**Wholesale Provider Default**):

- (a) without limiting or affecting any other right or remedy available to it, Fibrus Networks shall have the right to suspend performance of the Services until the Wholesale Provider remedies the Wholesale Provider Default, and to rely on the Wholesale Provider Default to relieve it from the performance of any of its obligations in each case to the extent the Wholesale Provider Default prevents or delays Fibrus Networks' performance of any of its obligations;
- (b) Fibrus Networks shall not be liable for any costs or losses sustained or incurred by the Wholesale Provider arising directly or indirectly from Fibrus Networks' failure or delay to perform any of its obligations as set out in this clause 6.4; and
- (c) the Wholesale Provider shall reimburse Fibrus Networks on written demand for any costs or losses sustained or incurred by Fibrus Networks arising directly or indirectly from the Wholesale Provider Default.

7. Charges and payment

- 7.1 The Charges for the Services shall be calculated in accordance with the Fibrus Networks Wholesale Access Price List found at: <https://hyperfastni.com/wholesale-partners>
- 7.2 The Charges will be benchmarked and reviewed annually as part of the wholesale prices review. Fibrus Networks will notify the Wholesale Provider of the outcome of the review and any material changes to the Charges and any percentage increase to the Charges in advance of such changes or increases taking effect.
- 7.3 Fibrus Networks shall invoice the Wholesale Provider monthly or annually in advance as recorded in the Order.
- 7.4 The Wholesale Provider shall pay each invoice submitted by Fibrus Networks:
 - (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Fibrus Networks, and time for payment shall be of the essence in this Agreement.
- 7.5 All amounts payable by the Wholesale Provider under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Agreement by Fibrus Networks to the Wholesale Provider, the Wholesale Provider shall, on receipt of a valid VAT invoice from Fibrus Networks, pay to Fibrus Networks such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.6 If the Wholesale Provider fails to make a payment due to Fibrus Networks under the Agreement by the due date, then, without limiting Fibrus Networks' remedies under clause 11, the Wholesale Provider shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or

withholding (other than any deduction or withholding of tax as required by law).

8. Intellectual property rights

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Wholesale Provider) shall be owned by Fibrus Networks.
- 8.2 The parties each grant to the other a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided in accordance with the Agreement for the term of the Agreement for the purpose of providing the Services.

9. Data protection and data processing

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Wholesale Provider is the Data Controller and Fibrus Networks is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 9.3 Without prejudice to the generality of clause 9.1, the Wholesale Provider will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Fibrus Networks for the duration and purposes of the Agreement.
- 9.4 Without prejudice to the generality of clause 9.1, Fibrus Networks shall, in relation to any Personal Data processed in connection with the performance by Fibrus Networks of its obligations under the Agreement:
 - (a) process that Personal Data only on the written instructions of the Wholesale Provider unless Fibrus Networks is required by the laws of any member of the European Union or by the laws of the European Union applicable to Fibrus Networks to process Personal Data (**Applicable Data Processing Laws**). Where Fibrus Networks is relying on laws of a member

of the European Union or European Union law as the basis for processing Personal Data, Fibrus Networks shall promptly notify the Wholesale Provider of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Fibrus Networks from so notifying the Wholesale Provider;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Wholesale Provider, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Wholesale Provider has been obtained and the following conditions are fulfilled:
 - (i) the Wholesale Provider or Fibrus Networks has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) Fibrus Networks complies with its obligations under the Data Protection

Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) Fibrus Networks complies with reasonable instructions notified to it in advance by the Wholesale Provider with respect to the processing of the Personal Data;
- (e) assist the Wholesale Provider, at the Wholesale Provider's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Wholesale Provider without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Wholesale Provider, delete or return Personal Data and copies thereof to the Wholesale Provider on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.

9.5 The Wholesale Provider consents to Fibrus Networks appointing certain third-party processors of Personal Data under the Agreement as notified to the Wholesale Provider, which may be changed from time to time according to the operational requirements of Fibrus Networks. Fibrus Networks will give the Wholesale Provider one month's written notice of any changes to third party processors. Fibrus Networks confirms that it has entered into or (as the case may be) will enter into with all third-party processors a written agreement incorporating terms which are substantially similar to those set out in this clause 9. As between the Wholesale Provider and Fibrus Networks, Fibrus Networks shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.

9.6 Either party may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any

applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).

10. Limitation of liability

10.1 This clause 10 prevails over all other clauses and sets out Fibrus Networks' entire liability whether in contract, tort (including the tort of negligence) or otherwise, and it sets out the sole and exclusive remedies of the Wholesale Provider in respect of the performance, non-performance, purported performance or delay in performance of this Agreement.

10.2 Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury caused by its (or its agents or sub contractor's) negligence or for fraud or fraudulent misrepresentation or any other liability that cannot, as a matter of applicable law, be limited or excluded.

10.3 Except as expressly stated in this Agreement, all warranties, conditions and other terms that may be implied by statute, by course of dealing or by common law are, to the fullest extent permitted by law, excluded from this Agreement.

10.4 Subject to clause 10.2, neither party shall under any circumstances whatever, be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (a) loss of profits;
- (b) loss of business;
- (c) depletion of goodwill or similar losses;
- (d) loss of anticipated savings;
- (e) loss of goods;
- (f) loss of agreement;
- (g) loss of use;
- (h) loss or corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

howsoever caused and whether or not foreseeable.

10.5 The total aggregate liability of Fibrus Networks to the Wholesale Provider in contract, tort (including negligence or breach of statutory duty), in connection with the Services made under this Agreement shall in no circumstances exceed a sum equal to 100% total amount of Charges paid or payable in respect of the Services in the twelve months preceding the claim.

10.6 Fibrus Networks has given commitments as to compliance of the Services with relevant specifications in clause 4.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

10.7 Unless the Wholesale Provider notifies Fibrus Networks that it intends to make a claim in respect of an event within the notice period, Fibrus Networks shall have no liability for that event. The notice period for an event shall start on the day on which the Wholesale Provider became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.8 This clause 10 shall survive termination of the Agreement.

11. Termination

11.1 Subject to clause 2.1, without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party three months' written notice.

11.2 Wholesale Access Services to individual Service Delivery Points may be cancelled by giving one month's notice in accordance with the Guidance Documents. If cancellations occur during the minimum term for the relevant Wholesale Service an Early Termination Charge (ETC) may apply as set out in the Wholesale Price List.

11.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that

breach within 60 (sixty) days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

11.4 Without affecting any other right or remedy available to it, Fibrus Networks may terminate the Agreement with immediate effect by giving written notice to the Wholesale Provider if the Wholesale Provider fails to pay any amount due under the Agreement on the due date for payment.

11.5 Without affecting any other right or remedy available to it, Fibrus Networks may suspend the supply of Services under the Agreement or any other Agreement between the Wholesale Provider and Fibrus Networks if the Wholesale Provider fails to pay any amount due under the Agreement on the due date for payment, the Wholesale Provider becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(d), or Fibrus Networks reasonably believes that the Wholesale Provider is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Agreement the Wholesale Provider shall immediately pay to Fibrus Networks all of Fibrus Networks' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Fibrus Networks shall submit an invoice, which shall be

payable by the Wholesale Provider immediately on receipt;

12.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

13. Force Majeure

13.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; an
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

13.2 Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from

performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

13.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than five days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 90 days, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' written notice to the Affected Party.

14. General

14.1 **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or deferred).

14.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Wholesale Providers, clients or Wholesale Providers of the other party, except as permitted by clause 14.3(b).

(b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

14.3 Entire agreement.

(a) The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Agreement.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

14.4 **Variation.** Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 14.5 **Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 14.7 **Notices.**
- (a) Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
 - (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.8 **Third party rights.**
- (a) Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
 - (b) The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.
- 14.9 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Northern Ireland.
- 14.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

Signed by:		Signed by:	
Name (print):		Name (print):	
Title:		Title:	
Date:		Date:	
With the full authority and on behalf of Fibrus Networks Limited		With the full authority and on behalf of Wholesale Provider	

Schedule 1: Installation services

1. Installation services must be ordered via the process set out in the Guidance Documents and applicable Specifications for each Service Delivery Point.
2. Charges for Installation Services are set out in the Wholesale Price List.
3. Installation Services are priced according to designation of standard or non-standard. Our standard installation service covers all installations except as set out in the Installation Guide (current version available at <https://hyperfastni.com/wholesale-partners>) and/or those which meet any one of the following criteria:
 - (a) total cable length of greater than 100m between the connection pot and the NTE;
 - (b) hot lay tarmac required to reinstate the ground;
 - (c) more than 10m concrete or tarmac area is required to be reinstated;
 - (d) over 5 metres of block paving or flag stone is required to be lifted and reinstated;
 - (e) some other unusual surface that will need specialist skills to lift or reinstate.
4. The Wholesale Provider is responsible for ensuring that Fibrus Networks has access to the End-User's premises to enable the Installations Services to be delivered and will ensure that the End-User's site safety and security requirements are brought to the attention of Fibrus Networks personnel at the premises. The Wholesale Provider will use reasonable endeavours to ensure that a suitable and safe working environment is provided at the End-User's premises.
5. The Wholesale Provider must give End-Users the information contained in the Installation Guide, the applicable Specification (current version available at <https://hyperfastni.com/wholesale-partners>) and as reasonably requested during the ordering and/or onboarding process before Installations Services can be delivered and use reasonable endeavours to ensure that End-Users take account of the important information it contains, to enable a successful and safe installation to be carried out. In particular the Wholesale Provider must draw the End-User's attention to the rights granted to Fibrus Networks under the Electronic Communications Code as a result of the installation of the Network on the End-User's property.
6. A charge will be made in circumstances where an installation visit cannot take place due to a failure to observe the instructions in the Installation Guide or the applicable Specification, or any other fault of either the Wholesale Provider or their End-User.