

Wholesale Telecommunications Master Services Agreement

Parties

- **Supplier:** Capti Networks Pty Ltd, ABN 85 647 301 997 of Shop 1, Level 1/9 Sherwood Rd, Toowong QLD 4066
- **Retailer:** The retail service provider identified in the particulars (“Retailer”).

Background

The Retailer and the Supplier have entered into this Agreement under which the Supplier will provide wholesale telecommunications services to the Retailer.

1. Agreement, Term, and Termination

1.1 Formation and Structure of Agreement

- (a) This Wholesale Telecommunications Master Services Agreement outlines the general terms and conditions under which the Supplier agrees to supply wholesale telecommunications services to the Retailer.
- (b) The Parties’ obligations in relation to a Service commence when the Retailer requests a Service to be provided at a Site, and the Supplier accepts the request. Requests are made through the Supplier's platform, which the Supplier will provide to the Retailer. The Supplier reserves the right to accept or decline any such request.

1.2 Term of Agreement

- (a) This Agreement becomes effective on the date it is signed by both Parties and remains in effect until terminated as per the terms of this Agreement.
- (b) Services are provided on a month-to-month basis and can be terminated by either Party with notice, effective at the end of the billing period in which the notice is given, using the Supplier's platform.

1.3 Precedence

- In the event of any inconsistency, the Agreement shall be interpreted in the following order of precedence:
 - (a) This Wholesale Telecommunications Master Services Agreement;
 - (b) The final Access Determination for the Superfast Broadband Access Service (SBAS) or any relevant ACCC access determination, as updated from time to time;
 - (c) The Supplier’s protocols, price lists, rules, and policies published on the Supplier’s website or otherwise communicated to the Retailer.

2. Termination

2.1 Termination by Supplier

The Supplier may terminate this Agreement or any Service without liability to the Retailer, by providing written notice to the Retailer if any of the following conditions are met:

- (a) The Retailer experiences an Insolvency Event;
- (b) The Retailer fails to pay an undisputed invoice within 30 days of the due date, and the issue is not resolved within 30 days after a reminder notice is issued;
- (c) The Retailer fails to pay invoices on time on three or more occasions within any 12-month period, and the issue remains unresolved within 30 days after a reminder notice is issued for each unpaid invoice;
- (d) The Retailer commits a material breach of the Agreement that cannot be remedied;
- (e) The Retailer commits a material breach of the Agreement that can be remedied but fails to do so within 30 days of receiving notice from the Supplier;
- (f) A Force Majeure Event prevents the Supplier from performing its obligations under this Agreement for more than 60 days;
- (g) A Supplier failure occurs, a Supplier changes its terms of supply, or any required permit, consent, license, or lease for the provision of the Service cannot be obtained or retained, and this issue cannot be resolved within 30 days of notice to the Retailer.

2.2 Termination by the Retailer

The Retailer may terminate this Agreement or a Service by providing written notice to the Supplier if any of the following conditions are met:

- (a) The Supplier commits a material breach of the Agreement that cannot be remedied;
- (b) The Supplier commits a material breach of the Agreement that can be remedied but fails to do so within 30 days of receiving notice from the Retailer;
- (c) A Force Majeure Event prevents the Supplier from fulfilling its obligations under this Agreement for more than 60 days;
- (d) The Supplier experiences an Insolvency Event;
- (e) In the case of a Service, by providing the Supplier with written notice prior to the RFS Date and covering all reasonable costs incurred by the Supplier in preparing for the Service.

2.3 Consequences of Termination

- (a) Termination of the Agreement results in the termination of all Services.
- (b) Termination of a Service does not automatically result in the termination of the entire Agreement.
- (c) Termination does not affect any accrued rights or remedies of either Party, including the right to payments that are due.
- (d) If termination occurs under clauses 2.1(a) - 2.1(e), the Retailer must promptly pay the Supplier any outstanding charges that are reasonably applicable.
- (e) Upon termination of the Agreement, each Party must return or destroy any Confidential Information belonging to the other Party that is in its possession.

2.4 Surviving Rights After Termination

- (a) Termination or expiration of this Agreement does not constitute a waiver of any breach by a Party or any of its provisions and does not prejudice any rights, liabilities, or obligations of any Party that have accrued up to the date of termination or expiration, including a right of indemnity.
- (b) Termination of this Agreement for any reason does not affect the provisions of this Agreement that are intended to survive termination.

3. Co-operation

Each Party agrees to reasonably cooperate with the other in performing their obligations under this Agreement and must ensure that they and their contractors conduct their activities at any Site in a manner that protects the safety of persons and minimizes interference with the activities of the other Party and third parties performing work on the Site. Each Party is responsible for the safe operation of its own network, systems, equipment, and facilities.

4. Payment Terms

- (a) The Retailer agrees to pay interest on overdue amounts at a rate of 2% per annum above the 60-day Bank Bill Swap Reference Rate.
- (b) All amounts payable under this Agreement are exclusive of GST, and the Retailer will pay the applicable GST to the Supplier.
- (c) The Supplier will issue monthly invoices in advance to the Retailer for the Wholesale Service Charge. The Supplier may include amounts in an invoice related to a previous billing period to the extent that such amounts were not previously invoiced.
- (d) The Retailer must pay invoices within 14 days of issuance by the Supplier.

5. Title in Facilities

Unless expressly provided otherwise in this Agreement, the Retailer does not acquire any right, title, or interest in any part of the Supplier's infrastructure, equipment, software, or other components of the Network.

6. Subcontracting

Either Party may subcontract any of its obligations under this Agreement but will remain responsible to the other Party for the performance of those obligations.

7. Wholesale Services

- (a) The Supplier will provide Wholesale Services to Carriage Service Providers and Carriers on a non-discriminatory basis.
- (b) The Supplier will provide Wholesale Services to the Retailer at the Wholesale Service Charge.
- (c) The Supplier may modify products, prices, and terms (including the introduction or modification of a Wholesale Service or a price change) by providing at least 40 days' notice to the Retailer, although shorter or no notice is required for any price reductions or if necessary for the Supplier to comply with regulatory or legal obligations.
- (d) In line with its regulatory obligations, the Supplier may use the Network to provide Wholesale Services to other Carriage Service Providers or Carriers who may offer Retail Services to End-Users at a Site.
- (e) The Supplier will take reasonable care to ensure that the Wholesale Service is fit for its intended purpose and is provided to an industry standard.
- (f) The Retailer must pay the Wholesale Service Charge to the Supplier in accordance with the Agreement.
- (g) The Wholesale Service Charge for a specific Service begins on the RFS Date (regardless of whether the End-User has started using the Service by that date).
- (h) The Wholesale Service Charge for a specific Service ends when the Service is terminated, in accordance with Clause 2.
- (i) The Retailer must comply with, and ensure that End-Users comply with, the Acceptable Use Policy to the extent reasonably possible.
- (j) The Retailer must comply with all relevant Acts, Regulations, and directions from regulatory bodies, including the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, and the Australian Communications & Media Authority.
- (k) The maximum period within which the Supplier will connect premises after the Retailer submits a request on behalf of an End-User is:
 - (i) After the RFS date – 14 days;
 - (ii) Prior to the RFS date – on a mutually agreed date.

8. Service Suspension

The Supplier may suspend or restrict a Service:

- (a) By providing one week's notice if the Retailer or an End-User fails to comply with the Acceptable Use Policy. However, the Supplier may immediately suspend a Service without notice if the Retailer or an End-User significantly fails to comply with the Acceptable Use Policy, or if the Supplier deems it necessary to comply with any law, regulation, or directive from a government or regulatory body, or if the Supplier believes it is necessary to protect any person, facility, equipment, network, or due to an emergency;
- (b) By providing two weeks' notice if technical issues or maintenance needs to be addressed and the issue is not resolved within the two-week notice period. However, the Supplier may immediately suspend a Service without notice if emergency maintenance is required.

9. Representations and Warranties

Each Party represents that:

- It is a corporation incorporated under the laws of Australia;
- It has the legal capacity to enter into this Agreement and the necessary rights or interests to fulfill its obligations under this Agreement;
- It will perform its obligations under this Agreement with due care and skill and in compliance with any applicable laws;
- Any equipment used to perform its obligations under this Agreement will be fit for purpose.

Each Party acknowledges that it has not relied on any representations or warranties except those explicitly stated in this Agreement.

If the Retailer is entering into this Agreement as a trustee for any trust, the Retailer warrants that it has, and will continue to have for the term of this Agreement, the right to be fully indemnified out of the assets of the relevant trust in respect of obligations incurred by the Retailer under this Agreement, and that its right of indemnity out of, and lien over, the relevant trust has not been, and will not be during the term of this Agreement, limited in any way.

10. Liability and Indemnity

10.1 Indemnity

- (a) Each Party indemnifies the other Party against any loss suffered as a result of death, personal injury, or loss or damage to the indemnified Party's property directly caused or contributed to by the acts or omissions of the indemnifying Party.
- (b) Each Party must take reasonable steps to mitigate any loss it suffers and that is indemnified under subclause (a).
- (c) If a third-party makes a claim that a Party considers is indemnified by the other Party, the indemnified Party must:
 - (i) Provide the other Party with full details of the claim as soon as practicable;
 - (ii) Not make any admissions, settlements, or offers to settle the claim without the written consent of the other Party;
 - (iii) Allow the other Party to manage the negotiations and litigation at the other Party's expense; and
 - (iv) Provide the other Party with reasonable assistance in relation to the claim.

10.2 Limitation of Liability

- (a) To the extent permitted by law, the Supplier excludes all express or implied warranties and conditions, including any implied warranties of merchantability or fitness for a particular purpose. The Supplier does not guarantee that the Services will be secure, continuous, or error-free. Where the Supplier's liability for non-excludable conditions and warranties can be limited, it will be limited to:
 - (i) Resupplying the Services or goods; or
 - (ii) Paying the Retailer the cost of having the Services or goods resupplied.
- (b) Neither Party shall be liable to the other Party for any Consequential Loss, loss of revenue, loss of profit, or anticipated profit, or for any loss that does not naturally or directly result from its actions, omissions, or breach of this Agreement.
- (c) Except in relation to charges payable under this Agreement, including the Wholesale Service Charge, the aggregate liability of each Party to the other Party for all losses, including indemnified loss, shall be limited to the proceeds of any applicable insurance policy.

10.3 Proportionate Liability

Each Party's liability for loss is reduced to the extent that the other Party contributed to or caused the death, injury, damage, or loss.

11. Insurance

The Supplier must maintain the following insurance policies with financially sound and reputable insurance companies:

- Public and products liability insurance covering individual claims of at least \$10 million;
- Professional indemnity insurance covering individual claims of at least \$2 million;
- Workers compensation insurance as required by law.

The Retailer must maintain public and products liability insurance covering individual claims of at least \$10 million.

Upon request, each Party must provide the other Party with a copy of any insurance policy required under this Agreement.

The Supplier must ensure that any subcontractors it engages to undertake work or supply goods or materials under this Agreement maintain appropriate insurance coverage, taking into account the nature and extent of the work to be undertaken or the goods or materials to be supplied by the subcontractor.

12. Force Majeure

Neither Party shall be liable to the other Party for any delay or failure to perform its obligations under this Agreement due to an event beyond its reasonable control. However, the affected Party must take reasonable steps to overcome the event and resume the performance of its obligations as soon as practicable after the event subsides. This provision does not relieve either Party from its obligation to make payments as they become due under this Agreement.

13. Assignment

- (a) Except as provided in subclause (b), neither Party may assign its rights under this Agreement without the prior written consent of the other Party.

- (b) The Supplier may, upon prior notice to the Retailer, assign its rights and obligations under this Agreement to a Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) or to any entity that acquires the Supplier's business or assets.
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14. Relationship Between Parties

The Parties are independent contractors, and nothing in this Agreement shall be construed to create any partnership, joint venture, employment, or other relationship between the Parties.

15. Failure or Delay in Exercising Rights

Unless otherwise stated in this Agreement, a Party's partial exercise, failure to exercise, or delay in exercising any legal right or any right under this Agreement does not constitute a waiver of that right or any other rights or remedies under this Agreement.

16. Costs

Each Party shall bear its own costs in connection with the preparation and execution of this Agreement.

17. Intellectual Property

- (a) Except as otherwise provided by subclauses (b) and (c), this Agreement does not transfer any of the Supplier's Intellectual Property to the Retailer, nor does it transfer any of the Retailer's Intellectual Property to the Supplier.
 - (b) The Supplier grants the Retailer a non-exclusive, non-transferable, irrevocable license to use the Supplier's Intellectual Property during the term of this Agreement to the extent necessary to receive the benefits of this Agreement.
 - (c) The Retailer grants the Supplier a non-exclusive, non-transferable, irrevocable license to:
 - (i) Reproduce, communicate, and adapt the Retailer's Intellectual Property internally within the Supplier to the extent necessary for the Supplier to provide Services to the Retailer;
 - (ii) List and refer to the Retailer and display the Retailer's logo on its websites and in its marketing or advertising materials.
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18. Confidentiality

The terms of this Agreement and each Party's Confidential Information are confidential and may not be disclosed to third parties except to the extent necessary for the execution of the Agreement, required by law, or permitted by the non-disclosing Party.

19. Authorized Representative and Notices

Each Party confirms that the authorized representative listed below is empowered to act on its behalf regarding all matters related to this Agreement. The Parties may change their authorized representative by notifying the other Party. All notices related to this Agreement must be delivered to the other Party's authorized representative or, if none is designated, to the registered business address of the other Party.

- Notices will be considered given:

- (a) When emailed, upon receipt of an automated read receipt message;
 - (b) If delivered by hand, upon delivery during business hours;
 - (c) If sent by certified or registered mail, on the third business day following the mailing within the same country or on the tenth business day following mailing to an address in another country.
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20. Disputes

If the Parties cannot resolve any dispute arising from this Agreement, either Party may issue a notice detailing the dispute to the other Party. If the dispute remains unresolved 5 business days after the notice is given, the Parties must exchange written summaries of the dispute, and within a further 5 business days, a senior employee or Director from each Party must attempt to resolve the dispute.

- If the senior employees or Directors are unable to resolve the dispute within a further 10 business days or a longer period agreed by the Parties, either Party may refer the dispute for resolution by a mutually agreed individual or, if no agreement can be reached, by an individual nominated by the President of the Institute of Arbitrators and Mediators of Queensland Australia.
 - This clause does not prevent a Party from applying to a court for urgent interlocutory relief. The Parties shall continue to perform their obligations to the extent possible, despite the existence of a dispute.
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21. Governing Law

This Agreement is governed by the laws of Queensland Australia, and each Party submits to the jurisdiction of the courts in that State.

22. Counterparts

This Agreement may be executed in multiple counterparts, each of which will be considered an original, and all counterparts together will constitute one and the same Agreement.

23. Definitions and Interpretation

23.1 Definitions

- **Acceptable Use Policy:** The Supplier's policy, as published on its website and amended from time to time, outlining rules that the Retailer and End-Users must follow in using a Service, designed to ensure that the Service is used lawfully and that no one interferes with the Network or other people's use of Services or the internet.
- **Agreement:** This document (the Wholesale Telecommunications Master Services Agreement), including any Supplier protocols, price lists, rules, and policies that are published on the Supplier's website or communicated to the Retailer, as amended from time to time.
- **Carriage Service Provider:** As defined in the Telecommunications Act 1997 (Cth).
- **Carrier:** As defined in the Telecommunications Act 1997 (Cth).
- **Confidential Information:** All information, regardless of its form or when the other Party (Recipient) becomes aware of it, that:
 - Is treated by the Discloser as confidential, including but not limited to information regarding strategy, personnel, Intellectual Property, and any industrial, marketing, or commercial information related to or developed in connection with the Discloser's business;
 - Is disclosed by the Discloser to the Recipient or becomes known to the Recipient; except information that the Recipient creates independently, is public knowledge (except as a result of a breach of confidentiality), or is acquired from a third party entitled to disclose it.

- **Consequential Loss:** Loss of revenue, profits, anticipated savings, business, economic loss, data, value of equipment (other than the cost of repair), opportunities, or any other consequential, special, indirect, punitive, or exemplary damages.
- **Control:** As defined in the Corporations Act 2001 (Cth).
- **CPI:** The 12-month change in the All Groups Consumer Price Index published by the Australian Bureau of Statistics for the previous four quarters.
- **End-User:** A retail customer of a Service at a Site.
- **Force Majeure Event:** An unforeseeable event or circumstance beyond the reasonable control of the party claiming force majeure, which prevents that party, in whole or in part, from fulfilling its obligations under this Agreement, including:
 - (a) An act of God, lightning, meteor strike, earthquake, storm, flood, landslide, explosion, or fire;
 - (b) General strikes or other industrial action (excluding industrial action involving some or all of that party's employees or contractors);
 - (c) Acts of a public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, or civil commotion.
- **GST:** As defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- **Insolvency Event:** The appointment of an administrator, liquidator, manager, and receiver, or any other administrator over the assets or business of the entity, or the entity entering into any composition or arrangement with its creditors.
- **Intellectual Property:** All industrial and intellectual property rights, including registered or unregistered trademarks, patents, copyrights, rights in circuit layouts, trade secrets, confidential know-how and information, and any application or right to apply for registration of any of those rights.
- **Network:** The telecommunications network(s) operated by the Supplier where a Service is provided to the Retailer.
- **Parties:** Both the Supplier and the Retailer.
- **POI:** Point of Interconnect.
- **POP:** Point of Presence.
- **Retail Services:** Services provided to End-Users.
- **RFS Date:** The ready-for-service date, which is the earlier of the date that the Supplier notifies the Retailer via the Supplier platform that a Service is operational and ready for use, or when the End-User begins using the Service.
- **Service:** A telecommunications service provided over the Network at a Site.
- **Site:** Any building(s) or locations where a Service is or will be provided.
- **Supplier:** A third party that provides goods or services to the Supplier, which are used in the Supplier's provision of Services to the Retailer.
- **Wholesale Service:** A Service provided by the Supplier to the Retailer, a Carriage Service Provider, or a Carrier.
- **Wholesale Service Charge:** The fee for Wholesale Services payable by the Retailer to the Supplier, which includes both recurring and non-recurring costs such as new development charges and labor services.

23.2 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation, and unless the contrary intention appears:

- (a) A reference to a person includes a reference to a corporation, trust, partnership, association, or other entity and vice versa;
- (b) The singular includes the plural and vice versa;
- (c) If an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) A word defined in this document and used but not defined in other parts of the Agreement has the meaning given to it in this document;
- (e) A provision of this Agreement must not be construed adversely to a Party solely because that Party drafted this Agreement or any part of it;
- (f) The meaning of general words is not limited by specific examples introduced by "including," "for example," or similar expressions;
- (g) Reference to a clause or schedule is a reference to a clause of or schedule to this Agreement;

- (h) Reference to a Party includes its successors and assigns and any Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth));
- (i) Reference to a Party's act, omission, or negligence is also a reference to the act, omission, or negligence of any person who is under that Party's control;
- (j) Reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments, or replacements of any of them.

Wholesale Price List

Premises Charges

Monthly Recurring Charges as of 1 June 2024, subject to change per the Terms.

Wholesale Services are offered to Retailers on an open-access, non-discriminatory basis, with both Layer 2 and Layer 3 (Full Service) products available to all Retailers.

Layer 2 Product Summary

Layer 2 services are provided as bit-stream layer 2 services from Customer Access Circuit Port on Network Termination Device (ONT) to Supplier Network-to-Network Interface port to Retailer at Supplier-specified Pol.

Layer 3 (Full Service) Product Summary

Layer 3 (Full Service) services are offered as a bundle that includes the underlying Layer 2 service and additional optional services. Retailers may select any or all optional services. Services include a white-label ordering portal, white-label technical support, automatic credit billing functionality (prepaid services only), and IP transit. The Layer 3 (Full Service) Product does not include sales, marketing, or other retail functions.

Product Pricing

Product Speed Tier	Layer 2 (\$ ex GST)	Layer 3 (Full Service) (\$ ex GST)
12/1	\$33	\$36
25/5	Available at statutory pricing	Not available
50/20	\$45	\$52
100/20	\$50	\$65
100/40	\$55	\$70
250/25	\$62	\$80
1000/50	\$65	\$85

Notes:

- Not all Network Service speeds are available at all locations. Confirm with Supplier or utilize Portal/API for quoting/ordering.
- Network Service permits one MAC Address per connection.
- Network Service max MTU set at 1500.
- Network Services may not be used for network aggregation or service aggregation.
- Network Services may not be used for network backhaul, upstream layer 2, private networks, or upstream layer 3 connection.

Non-Recurring Pricing:

Product	Layer 2 Setup Charge (\$ ex GST)
New Development Charge	\$272.72
Service Adds/Moves/Changes	\$0.00

Product	Between Hours (\$ ex GST)	Afterhours/Emergency (\$ ex GST)
Call Out Standard – No fault found	\$150.00/hour	\$250.00/hour
Complex Installation / Build / Consulting	\$200.00/hour	\$300.00/hour

Notes:

- Standard call-out does not include complex installations, replacement equipment (where appropriate), or consulting; a minimum of 1 hour is charged.

Network Interface Pricing:

Product	Non-recurring Set-up Charge (\$ ex GST)	Monthly Recurring Charge (\$ ex GST)
1000BASE-T or LX	\$0.00	\$50.00
10GBASE-LR	\$0.00	\$100.00
40GBASE-LR4	\$500.00 (on approval)	\$200.00 (on approval)
100GBASE-LR4	\$2000.00 (on approval)	\$250.00 (on approval)
Additional Ports per Pol	\$0.00 (on approval)	\$0.00 (on approval)

Notes:

- Cross Connect Port services are provided on S-LAN as C-LAN at Supplier Pol closest to Network Service connection.
- The Retailer will require a cross-connect to Pol to connect to Port and receive S-LAN/C-LANs for any Layer 2 products. LOA will be provided at the facility of interconnect.

Pol Locations

State	Location	Network Interface Available
QLD	20 Wharf Street Brisbane QLD 4000 (NextDC)	1000BASE, 10GBASE-LR, 40GBASE-LR4, 100GBASE-LR4
NSW	55 Pyrmont Bridge Road Pyrmont NSW 2009 (SDC)	1000BASE, 10GBASE-LR, 40GBASE-LR4, 100GBASE-LR4
VIC	Level 15, 530 Collins Street Melbourne VIC 3000 (MDC)	1000BASE, 10GBASE-LR, 40GBASE-LR4