

## Schedule 9 Co-location Services

### 1 Service Description

- 1.1 The emPOWER Co-location Services comprise a pillar of the emPOWER Managed Services portfolio and are made up of the service offerings and/or products as set out below.
- 1.2 The emPOWER Co-location Services are designed to provide Customer with high a performance data centre environment that is managed by blueAPACHE, and that Customer can access and use to host equipment during the Service Period. The details of the specific emPOWER Co-location Services, the Customer obligations, Service Period, Minimum Service Period, Minimum Spend, Fees and other details will be set out on the Service Order.
- 1.3 blueAPACHE grants to Customer, for the duration of the Service Period, a personal, non-exclusive right to access the Data Centre Space on a 24 x 7 basis, to install, inspect, repair, maintain and remove its Customer Equipment from the Data Centre Space, subject to the requirements in this Schedule. Customer must not re-sell, lease or otherwise dispose of any right to access or use the Data Centre Space granted under this Schedule.

#### Access

- 1.4 Customer must comply with, and must ensure that Customer's Personnel comply with, the Facility Rules relating to the access and use of the Data Centre Space, including relating to the access and use of any Customer Equipment.
- 1.5 The Facility Rules may include rules relating to:
  - (a) the process for arranging access to the Facility and the Data Centre Space for Customer's Personnel, including the conducting of background checks and the undertaking of induction training;
  - (b) compliance with blueAPACHE instructions concerning security, safety and other general blueAPACHE procedures;
  - (c) display of identification and security passes by those authorised to access the Data Centre Space;
  - (d) issue and return of security passes; and
  - (e) access and use of any Customer Equipment.
- 1.6 blueAPACHE may suspend Customer's access to the Data Centre Space or may require Customer's Personnel to leave the Data Centre Space and the Facility:
  - (a) in an Emergency;
  - (b) in any event or circumstance where blueAPACHE considers it appropriate to do so;
  - (c) if required to do so by a government agency or any law or court order; or
  - (d) in the circumstances contemplated by clause 4 where blueAPACHE is exercising its lien.
- 1.7 blueAPACHE may refuse access to the Facility or remove from the Facility any of Customer's Personnel whose admission or presence is, or would be, in the reasonable opinion of blueAPACHE, detrimental to the security of the Facility or the Data Centre Space.

#### Power Allocation

- 1.8 Customer must ensure that its power utilisation does not exceed the Power Allocation specified on the Service Order.
- 1.9 If Customer's power utilisation exceeds the Power Allocation, blueAPACHE may give notice to Customer requiring Customer to rectify the breach.
- 1.10 Customer must rectify the breach as soon as reasonably practicable, but in any event within 48 hours of receiving blueAPACHE's notice under clause 1.9.
- 1.11 If Customer fails to rectify the breach within the period specified in clause 1.10, blueAPACHE may take whatever remedial action blueAPACHE deems necessary, including shutting down, or requiring Customer to shut down, Customer's Equipment, or disconnecting power to Customer's Equipment.

- 1.12 If blueAPACHE considers it necessary for the protection of the Facility, the Data Centre Space, any property of blueAPACHE or any third party or the safety or health of any person, or for blueAPACHE's compliance with any requirement of any government agency, any applicable law or court order or any obligation owed to any third party, blueAPACHE may exercise its rights under clause 1.11 without first being required to issue the notice in clause 1.9 or wait for Customer to rectify the breach under clause 1.10.
- 1.13 If Customer's power utilisation exceeds the Power Allocation for a period of more than 24 hours on more than 2 occasions in any rolling 60-day period blueAPACHE may, in its sole discretion, either:
- (a) increase the Power Allocation to an amount that blueAPACHE reasonably believes is not likely to be exceeded by giving written notice to Customer of the new Power Allocation, in which case Customer must pay blueAPACHE's standard rates for the Data Centre Space with the increased Power Allocation from the date upon which the Power Allocation is increased by blueAPACHE as well as any paying blueAPACHE for all power utilisation that exceeded the Customer's previous Power Allocation; or
  - (b) terminate the Service Order immediately by giving Customer written notice and in this case Customer must also pay blueAPACHE for using any amount of power that exceeded the previous Power Allocation at any time prior to the date of termination.

### **Power Balance**

- 1.14 If the Data Centre Space is a Block or a Suite:
- (a) Customer must use reasonable efforts to ensure that its power utilisation is evenly spread across each power feed to the Data Centre Space and, where applicable, between phases on a three phase supply;
  - (b) if, in the reasonable opinion of blueAPACHE, there is a material imbalance in Customer's power utilisation, blueAPACHE may give Customer a notice requiring Customer to rectify the imbalance;
  - (c) Customer must rectify the imbalance as soon as reasonably practicable, but in any event within 5 days of receiving blueAPACHE's notice under clause 1.14(b).

### **Customer Equipment**

- 1.15 Customer must:
- (a) install, inspect, operate, repair and maintain Customer's Equipment in accordance with the Facility Rules and any requirements and instructions of blueAPACHE;
  - (b) install, inspect, operate, repair and maintain Customer's Equipment in accordance with the relevant manufacturer's instructions, and any applicable standards, codes of practice or guidelines, that are applicable to Customer or the Customer Equipment and its operation in Australia (whether the applicable standards, codes of practice or guidelines are mandatory or voluntary);
  - (c) ensure that all of Customer's Equipment is in good repair and condition at the time it is installed in the Data Centre Space and that it is kept in good repair and condition throughout the Service Period;
  - (d) ensure that it minimises the use of any space external to the Data Centre Space when installing, inspecting, operating, repairing and maintaining Customer's Equipment;
  - (e) observe the maximum load weights throughout the Facility;
  - (f) obtain blueAPACHE's prior written approval (which will not be withheld if all amounts due and payable under Service Order have been paid) before removing a significant piece of Customer's Equipment from the Data Centre Space (other than removing a significant piece of Customer's Equipment from the Data Centre Space for the purpose of replacing it with a similar piece of equipment).
- 1.16 blueAPACHE may require Customer to remove any of Customer's Equipment from the Data Centre Space and the Facility that does not comply with this Schedule or the Facility Rules.
- 1.17 Customer is responsible for all loss or damage to the Customer's Equipment however caused, except to the extent caused by blueAPACHE's recklessness or unlawful conduct.
- 1.18 Customer must ensure that any data that it stores, processes or transfers using the Customer Equipment:
- (a) is backed up by Customer regularly and completely in accordance with industry best practice;
  - (b) is subject to disaster recovery procedures operated by Customer that prevent any loss, damage or corruption of that data;

- (c) is monitored and cleansed by anti-virus software that is installed, configured and operated by Customer in accordance with industry best practice.

### **Repair and Maintenance**

#### **1.19 Customer must:**

- (a) ensure that the Data Centre Space is kept in good repair and condition;
- (b) ensure that the Data Centre Space is kept clean and tidy and that no flammable or hazardous materials are left or kept in the Data Centre Space or the Facility;
- (c) comply with blueAPACHE's requirements and instructions regarding rubbish removal and recycling;
- (d) inform blueAPACHE in writing of any damage to the Data Centre Space, the Facility, other property of blueAPACHE or of any third party immediately upon becoming aware of the damage;
- (e) if requested by blueAPACHE, promptly repair any damage to the Data Centre Space, the Facility, other property of blueAPACHE or of any third party that was caused or contributed to by Customer, at Customer's cost.

### **Works**

#### **1.20 Customer must not carry out alterations, modifications or other works to the Data Centre Space, without blueAPACHE's prior written consent.**

#### **1.21 blueAPACHE may impose conditions if it gives its written consent (including what works are to remain, what are to be removed and what are to be reinstated and to what condition they must be left in when the Customer vacates the Data Centre Space).**

#### **1.22 Customer must not begin to carry out works until it has satisfied blueAPACHE that, in connection with those works:**

- (a) it has obtained all consents, permits, approvals, authorities and licences required; and
- (b) all insurances required by applicable laws or that blueAPACHE reasonably requires are in place.

#### **1.23 Customer must carry out any works:**

- (a) in a proper and workmanlike manner;
- (b) in accordance with any conditions imposed by blueAPACHE when giving its written consent;
- (c) in accordance with blueAPACHE's requirements and instructions;
- (d) in accordance with any Facility Rules;
- (e) in accordance with all plans, specifications and schedule of finishes approved by blueAPACHE;
- (f) in accordance with all applicable laws and any consents, permits, approvals authorities and licences required in connection with those works;
- (g) using contractors approved by blueAPACHE (approval not to be unreasonably withheld); and
- (h) without disturbing or causing interruption to others.

### **Allocation of Data Centre Space**

#### **1.24 blueAPACHE will allocate the Data Centre Space in its sole discretion.**

#### **1.25 In the event of an Emergency, blueAPACHE may modify, substitute, replace or change the Data Centre Space without notice.**

#### **1.26 blueAPACHE will provide Customer with prior notice of any modification, substitution, replacement or change to the Facility or the Data Centre Space that blueAPACHE wishes to make for operational or commercial reasons.**

#### **1.27 blueAPACHE will provide Customer with prior notice of any modification, substitution, replacement or change to the Facility or Data Centre Space as is reasonable in the circumstances, subject to clause 1.25.**

#### **1.28 blueAPACHE will use reasonable endeavours to minimise any disruption or inconvenience to Customer during any modification, substitution, replacement or change to the Facility or the Data Centre Space.**

### **Customer's General Obligations**

#### **1.29 Customer must comply with, and must ensure that Customer's Personnel comply with, the Facility Rules at all times.**

- 1.30 blueAPACHE may add to, amend or replace the Facility Rules at any time, provided that such addition, amendment or replacement does not materially derogate from Customer's rights, or materially alter Customer's obligations, under the Service Agreement.
- 1.31 Any addition, amendment or replacement of the Facility Rules will not come into effect unless and until blueAPACHE gives Customer notice of the addition, amendment or replacement.
- 1.32 Customer must not do any act or thing (including in connection with the installation, inspection, operation, repair, maintenance or replacement of Customer's Equipment, the use of the in the Facility or the Data Centre Space or the storage, processing or transfer of any data):
- (a) that is fraudulent or illegal (including breaches the Telecommunication Act 1997 (Cth) or the Telecommunications (Interception and Access) Act 1979 (Cth);
  - (b) that, in the reasonable opinion of blueAPACHE, will or is likely to:
    - (i) be dangerous, annoying, offensive or immoral;
    - (ii) cause the Customer to breach its Service Agreement with blueAPACHE, or
    - (iii) cause the Customer to breach a law (including a foreign law), a code or an instrument which governs the Customer's conduct;
    - (iv) cause blueAPACHE to breach, or be involved in a breach of law (including a foreign law), a code or an instrument which governs blueAPACHE's conduct;
    - (v) cause blueAPACHE to suffer or incur liability to any person, including in connection with the SPAM Act 2003 (Cth), laws dealing with intellectual property rights, privacy, confidentiality or defamation;
    - (vi) interfere with any other Facility user's service, the blueAPACHE Environment, the network or equipment of another person or the provision by blueAPACHE of services to Customer or another person;
    - (vii) adversely affect or prejudice blueAPACHE's reputation or brand; or in a manner which attempts to manipulate or bypass any limitations on a Customer's service by any means.
  - (c) that interferes with, obstructs access to, damages or overloads the Facility, the Data Centre Space or any property of blueAPACHE or any third party;
  - (d) that causes nuisance to or interference with the use of the Facility or any part of the Facility by blueAPACHE or any other customer of blueAPACHE (or their customers) (and, for the purposes of this clause, interference shall include technical interference);
  - (e) that may cause blueAPACHE to be in contravention of any applicable law or any approval, license, consent, authority or permit held or required to be held by blueAPACHE.
- 1.33 Customer must not use any photographic equipment in any part of the Facility or the Data Centre Space (including limited to security cameras or phone cameras) without the prior written approval of blueAPACHE.

#### **blueAPACHE's Right to Enter**

- 1.34 blueAPACHE and its Personnel may enter the Data Centre Space after giving Customer reasonable notice:
- (a) to inspect the condition or state of repair of the Data Centre Space;
  - (b) to verify that Customer is complying with its obligations under the Service Agreement;
  - (c) to do repairs to the Data Centre Space or the Facility or other works that cannot reasonably be done unless blueAPACHE enters the Data Centre Space;
  - (d) to do anything blueAPACHE must or may do under Service Agreement or must do under applicable laws or any approval, license, consent, authority or permit held or required to be held by blueAPACHE;
  - (e) to exercise blueAPACHE's rights under this Schedule, including clauses 1.11 or 1.12; and
  - (f) to remedy any breach by Customer under the Service Agreement, provided that blueAPACHE has given Customer a notice of such breach and Customer has failed to remedy that breach within the time specified in the notice.

- 1.35 blueAPACHE and its Personnel may enter, and remain in, the Data Centre Space at any time and without notice for the purpose of carrying out Scheduled Maintenance on the Facility or the Data Centre Space, or to take any action required in an Emergency.

### **Real Property**

- 1.36 The Service Agreement is a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that Customer has not been granted any real property interest in the Facility or the Data Centre Space and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws.

### **Customer Indemnity**

- 1.37 in addition to any other indemnity provided under the Service Agreement, Customer will indemnify and hold harmless blueAPACHE and its Personnel against any liability, loss, damage or expense (including legal fees on an indemnity basis) arising out of, or in connection with any:
- (a) fees and charges that are payable to a carrier by Customer in respect of any Cross Connect Services;
  - (b) breach of the Facility Rules by Customer or its Personnel;
  - (c) loss or damage to any Customer Equipment and any data stored on that Customer Equipment;
  - (d) loss or damage to the Facility, Data Centre Space, blueAPACHE Environment or any third party's property caused or contributed to by any act or omission of Customer or its Personnel;
  - (e) injury, sickness or death of Customer's Personnel, any blueAPACHE Personnel or their respective Personnel (including the Facility contractor's Personnel) arising from or in connection with the Customer's Equipment, Customer's and its Personnel's use of the Facility or the Services, or any act or omission of Customer or Customer's Personnel;
  - (f) failure by Customer or any Customer Personnel to comply with any Laws when using the Facility, Data Centre Space or the Services;
  - (g) any negligent act or omission of Customer or its Personnel.

### **Insurance**

- 1.38 Customer must maintain during any Service Period, and for any policies that are a "claims made" policy for a period of 7 years after the end of the relevant Service Period, insurance policies that provide cover for all liabilities arising out of each Service Agreement with the following minimum insured amounts, including:
- (a) workers' compensation insurance;
  - (b) public liability insurance for no less than \$20 million per occurrence;
  - (c) to the extent not covered by public liability insurance, insurance covering any loss or damage (to the full replacement value) to the Facility, Data Centre Space, blueAPACHE Environment or any third party's property (including data) as well as any loss of business, economic loss, loss of revenue, loss of profit, losses arising from business interruption and loss of goodwill that may arise as a result; and
  - (d) such other insurances that blueAPACHE may require from time to time.
- 1.39 All policies of insurance must be:
- (a) entered into with an insurer that is approved by blueAPACHE, and which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by Law; and
  - (b) cover blueAPACHE, Customer and their respective Personnel for their respective rights, interests and liabilities.
- 1.40 The insurance policies must not have a deductible of greater than \$100,000 per claim, and must not have any non-standard exclusions.
- 1.41 Customer must provide blueAPACHE with certificates of currency issued by its insurer or insurance broker (or other form of evidence acceptable to blueAPACHE) for the insurances required to be affected and maintained under this Schedule:
- (a) prior to the commencement of any Services under this Schedule;

- (b) prior to being given access to the Facility;
- (c) on the yearly anniversary of this Agreement; and
- (d) at any other times upon blueAPACHE's request.

1.42 If Customer fails to provide the certificates of currency for the insurances within 10 days of the required date then:

- (a) blueAPACHE may take out the relevant insurance and the cost of doing so will be a debt due and payable by Customer to blueAPACHE; and
- (b) blueAPACHE may elect to suspend the relevant Service Agreement until certificates of currency for the insurances are forthcoming, or blueAPACHE may terminate the relevant Service Agreement for cause immediately by giving a written notice to Customer.

## 2 Add-On Services

### Add-On Services

2.1 Customer may from time to time request blueAPACHE to provide any Add-On Services including:

- (a) Cross Connect Services;
- (b) Remote Hands;
- (c) Moves, Adds, Changes,

that blueAPACHE may offer from time to time. Add-On Services are subject to the provisions of the Service Agreement and the Facility Rules.

2.2 Where blueAPACHE agrees to provide the Add-On Service, blueAPACHE will provide Customer with a Service Order setting out the details of the Add-On Service and the Fees payable.

2.3 blueAPACHE is not obliged to provide any Add-On Services requested by Customer until blueAPACHE receives a signed Service Order from Customer.

### Cross Connects

2.4 All data connectivity delivered to the Data Centre Space must be delivered by way of a Cross Connect Service provided by blueAPACHE.

2.5 If any Cross Connect Service involves Data Centre Space made available by blueAPACHE to a third party, Customer must obtain the consent of the third party to the provision of the Cross Connect Service.

2.6 Customer is responsible for the payment directly to the relevant carrier or other supplier of all fees and charges payable in connection with the supply of any products or services by the carrier or other supplier to Customer.

2.7 blueAPACHE is not under any circumstances liable for any acts or omissions of any carrier in connection with the supply of any products or services by the carrier to Customer.

2.8 blueAPACHE does not warrant that any Cross Connect Service will be free from interruptions, errors, defects or failures and does not accept any liability in connection with same.

### Moves Adds, Changes

2.9 Moves, Adds, Changes can be acquired in accordance with the process set out in clause 3.9 of the General Terms and Conditions.

### Process

2.10 A Variation which is the supply of an Add-On Service under this Schedule may be agreed by exchange of emails or faxes, with or without a signature.

## 3 Schedule Maintenance for the Facility

3.1 blueAPACHE will use its best efforts to carry out Scheduled Maintenance for the Facility:

- (a) with at least 3 Business Days prior notice from blueAPACHE; and

(b) with a minimum disruption to Customer's business.

- 3.2 In the event that, in the reasonable opinion of blueAPACHE, any Scheduled Maintenance for the Facility will cause, or is likely to cause blueAPACHE to fail to achieve a Service Level, blueAPACHE will give Customer at least 5 Business Days notice of the Scheduled Maintenance for the Facility, such notice to include, where possible, details of the nature of the Scheduled Maintenance for the Facility, the likely effect on the blueAPACHE's ability to achieve the Service Levels, the dates and times for carrying out the Scheduled Maintenance for the Facility and an estimated time scale for completing the Scheduled Maintenance for the Facility.

## 4 Lien

- 4.1 Customer acknowledges and agrees that blueAPACHE and/or its contracted provider of the Data Centre Space, has a lien over Customer's Equipment for any amount payable under the Service Agreement. If any amount payable under the Service Agreement is not paid within 45 days of its due date, Customer authorises blueAPACHE and/or its contracted provider of the Data Centre Space, to sell any or all of Customer's Equipment (without any obligation to remove any data from the Customer's Equipment) to recover any such amount, the costs of storing and selling Customer's Equipment and other liability, loss, damage or expense incurred by Customer in connection with Customer's breach of the Service Agreement.
- 4.2 blueAPACHE is not required to exercise the lien in clause 4.1 before seeking to recover any unpaid amounts from Customer, nor will exercise of the lien in clause 4.1 be blueAPACHE's sole remedy for recovering any unpaid amounts.

## 5 Service Levels

- 5.1 blueAPACHE provides Service Levels in respect of the Supply of Power, Maintenance of Temperature, and Maintenance of Humidity levels under the emPOWER Co-location Service.
- 5.2 blueAPACHE must meet any Service Level that is applicable to the emPOWER Co-location Service under the Service Order, except where the failure, delay or other breach arises from, or is contributed to by, a Reasonable Excuse.

Requirement	Details of blueAPACHE's Obligation
Supply of Power	Supply of continuous power up to and including at least one of the UPS output boards servicing the Data Centre Space for 100% of the time in any calendar month.
Maintenance of Temperature	<p>The temperature measured at any two consecutive, five minute intervals in any calendar day at the air flow point at or within 1 metre of the cold air output nominated by blueAPACHE located in the Data Centre Space is no greater than 35 degrees Celsius.</p> <p>This Service Level will not apply:</p> <ul style="list-style-type: none"> <li>(a) during any period where the heat output caused by Customer's Equipment exceeds the Power Allocation; or</li> <li>(b) during any period where Customer has not installed the appropriate number of grills for their intended cooling requirements.</li> </ul>
Maintenance of Temperature	<p>The average temperature measured on any calendar day at the air flow point at or within 1 metre of the cold air output nominated by blueAPACHE located in the Data Centre is no greater than 24 degrees Celsius.</p> <p>This Service Level will not apply:</p> <ul style="list-style-type: none"> <li>(a) in respect of any calendar day on which the heat output caused by Customer's Equipment exceeds the Power Allocation (regardless of the duration of such occurrence); or</li> <li>(b) if the Data Centre Space is a Block of Space, during any period where Customer has not installed the appropriate number of grills for their intended cooling requirements.</li> </ul>



Maintenance of Humidity	The averaged return air humidity measured at the CRAC unit located nearest to the Data Centre Space or as otherwise nominated by blueAPACHE will not deviate from the acceptable humidity range of 35-65% for a continuous period of more than 60 minutes in any calendar day.
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### Rectification of Failures

- 5.3 Customer must immediately notify blueAPACHE of a failure to meet the Service Levels.
- 5.4 On becoming aware of a failure to meet the Service Levels, blueAPACHE shall, where it is able:
- (a) specify to Customer an estimated time scale for rectification of the failure or the cause of the failure;
  - (b) use its reasonable endeavours to remedy the failure or the cause of the failure as soon as practicable; and
  - (c) update Customer as required until the failure or the cause of the failure is remedied.

## 6 Service Period, Renewal and Termination

### Service Period

- 6.1 The Minimum Service Period of the emPOWER Co-location Services shall be 36 months from the Service Commencement Date, unless otherwise set out on the Service Order.

### Renewal

- 6.2 Clauses 2.8 and 2.9 of the General Terms and Conditions do not apply to the emPOWER Co-location Services.
- 6.3 blueAPACHE will give Customer notice of the new Minimum Service Period (which shall be 36 months unless stated otherwise in the notice), Fees, Taxes and any new terms and conditions that will apply to any new Service Period (**Renewal Notice**), at least 6 months prior to the end of the current Service Period.
- 6.4 The Minimum Service Period (or any subsequent period of the Service Period) can be extended within the last 6 months of the Service Period for a subsequent Service Period of 36 months (which is a Minimum Service Period), or other such Minimum Service Period as agreed between the Parties, by the Parties signing a new Service Agreement.
- 6.5 At least 90 days before the end of the Minimum Service Period Customer must either:
- (a) sign a Service Agreement for the emPOWER Co-location Services on the terms and at the Fees set out in the Renewal Notice (or as otherwise agreed in writing by the Parties);
  - (b) give blueAPACHE Written Notice that Customer will not to renew the emPOWER Co-location Services.
- 6.6 Should the Service Period elapse without Customer signing a revised Service Agreement, or Customer has not given notice at least 90 days before the end of the Service Period that Customer will not to renew the emPOWER Co-location Services, the emPOWER Co-location Services will auto-renew for a further 12 months (which is a Minimum Service Period), and out of contract emPOWER Co-location Services list pricing (and not the Fees set out in the Renewal Notice) will apply for that 12 month Minimum Service Period, and any new terms and conditions that were included in the Renewal Notice shall apply (other than the 36 month Minimum Service Period).
- 6.7 Should an auto-renewal Minimum Service Period be entered into, blueAPACHE reserves the right to terminate the Service for convenience during that Minimum Service Period by giving Customer 30 days written notice. In this case Customer must pay Fees for all the Services provided up to the last day of the shortened Service Period, but does not have to pay the Early Termination Payment.

### Process

- 6.8 A Variation which is a renewal under this Schedule may be agreed by exchange of emails, with or without a signature, or by continued use of the Service.

### Termination for Convenience

- 6.9 Customer may terminate the emPOWER Co-location Services for convenience by giving blueAPACHE 30 days Written Notice at any time during the Minimum Service Period. Early termination will attract an Early Termination Payment calculated using the following formulae:

$$\text{Early Termination Payment} = (A * B) + C,$$





where;

"A" is the Minimum Spend;

"B" is the remaining term of the Minimum Service Period; and

"C" is any outstanding Fees for the emPOWER Co-location Services.

## 7 Customer Obligations at End of Service Period

7.1 On or before the last day of the Service Period, Customer must:

- (a) remove Customer's Equipment from the Data Centre Space and the Facility;
- (b) repair any damage to the Data Centre Space or the Facility caused by the removal of Customer's Equipment;
- (c) if and to the extent requested by blueAPACHE, remove any works carried out on the Data Centre Space and make good the Data Centre Space to the condition it was in prior to the works being carried out (and in carrying out any such works, Customer must comply with any Facility Rules);
- (d) deliver up the Data Centre Space in a condition that is consistent with Customer having complied with its obligations under this Schedule;
- (e) deliver any of blueAPACHE's Confidential Information to blueAPACHE.

In complying with its obligations under this clause, Customer must not disturb or cause interruption to blueAPACHE or other users of the Facility.

7.2 If Customer does not remove Customer's Equipment in accordance with clause 7.1(a), blueAPACHE may treat it as abandoned, in which case, it becomes the property of blueAPACHE and blueAPACHE may deal with it in any way it sees fit. blueAPACHE is under no obligation to remove any data from the Customer Equipment prior to dealing with that Customer Equipment as its own.

## 8 Pricing and Fees

### Fees

8.1 Customer must pay the following Fees for the emPOWER Co-location Services in this Schedule, as calculated in accordance with the Service Order and the Service Agreement, and subject to any Minimum Spend:

- (a) any establishment, installation or set up fee, is payable in advance;
- (b) a variable monthly Fee for each month during the Service Period, is payable monthly in advance;
- (c) a variable monthly use based Fee for any service or item that is described on the Service Order as being subject to a use based fee, for each month during the Service Period, is payable monthly in arrears;
- (d) any Cross Connect Fee which are comprised of:
  - (i) the Cross Connect Installation Fees, which is payable in advance; and
  - (ii) the Cross Connect Monthly Fees during the Service Period, which is payable in monthly in advance, provided that if the Cross Connect Installation Date is not the first day of the month blueAPACHE will, on the Cross Connect Installation Date, invoice an appropriate proportion of the Cross Connect Monthly Fees calculated at a daily rate based on the number of days between the Cross Connect Installation Date and the last day of the month (both days inclusive);
- (e) any Remote Hands Fee during the Service Period, is payable monthly in arrears;
- (f) a Fee for Moves Adds and Changes ("**MACs**") that occur during the month, is payable monthly in arrears;
- (g) any Fee payable for other Add-on Services; is payable monthly in arrears unless specified otherwise in the Service Order;

- (h) any additional Fee payable for excess Power Allocation use, is payable monthly in arrears;
- (i) any amounts that are payable by blueAPACHE to the Facility as a result of any act or omission of Customer (including any breach of the Facility Rules by the Customer or any service received from the Facility by Customer) plus an administration charge of [15%].

### Fee Increases

- 8.2 In addition to the provisions of this clause 8, the Fees may be increased in accordance with clauses in the General Terms and Conditions.
- 8.3 All Fees will be increased each 1st of January during the Service Period by the increase in the CPI (All Groups. 8 Capital Cities – as reported by the Australian Bureau of Statistics for the 12 months to September) or 3%, whichever is greater.
- 8.4 Unless stated otherwise on the Renewal Notice any Fees that are to apply for the period from the Services Commencement Date of the renewed Service Period until the next 1 of January (CPI Adjustment Date) are calculated using the following CPI formulae:  

$$\text{New Fees} = A + (A * B),$$
 where:  
 "A" is the Fees that were payable before the CPI Adjustment Date; and  
 "B" is the CPI last published before the CPI Adjustment Date, or 3%, whichever is greater.
- 8.5 blueAPACHE reserves the right to increase the Fees under due to market fluctuations in items such as wholesale power by giving the Customer no less than 30 days written notice. Any such fee increase will be discussed with Customer before the increase is imposed.

## 9 Additional Defined Terms

- 9.1 For the purpose of this Schedule only, the following terms have the meaning given to them in this clause, unless the context requires otherwise:
  - (a) **Add-On Services** means services that blueAPACHE may provide in addition to the Data Centre Services. Including Remote Hands, Cross Connects and Moves, Adds, Changes;
  - (b) **Cross Connect** means a cross connection between the Data Centre Space and any other space in the Facility (whether or not that space is provided by blueAPACHE to Customer or to a third party (including to a carrier).
  - (c) **Cross Connect Fees** means the fees described in clause 8.1(d).
  - (d) **Cross Connect Installation Date** means the date upon which a Cross Connect is installed under the Service Agreement.
  - (e) **Cross Connect Installation Fee** means the once-off fee for the installation of the Cross Connect agreed between the Parties in writing or, if no such Fee is agreed, blueAPACHE's standard rates for the installation of the Cross Connect at the time the Cross Connect is installed.
  - (f) **Cross Connect Monthly Fees** means the monthly fees for the ongoing provision of the Cross Connect during the Service Period agreed between the Parties in writing or, if no such fee is agreed, blueAPACHE's standard rates for the provision of the Cross Connect at the time the Cross Connect is installed.



- (g) **Cross Connect Service** means the installation and ongoing provision of a Cross Connect that Customer requests blueAPACHE to provide, and that blueAPACHE agrees to provide to Customer in accordance with this Schedule.
- (h) **Customer's Equipment** means all hardware, software, accessories, tools, Power Cabling, Network Cabling and other information, technology and telecommunications equipment owned, leased, licensed, controlled or otherwise used by or in the possession of Customer or Customer's Employees from time to time which is located in the Facility, including the Data Centre Space.
- (i) **Data Centre Space** means, in respect of the Service Agreement, the Data Centre Space specified in the Service Order, which may include:
  - (i) Racks;
  - (ii) Blocks;
  - (iii) Suites,For clarity, the Data Centre Space may:
  - A. include power supply, up to the power sockets that are provided by blueAPACHE (or the contractor that provides the Facility) as part of the Data Centre Space (but in no event does it include any Power Cabling);
  - B. include a data network, up to the network switch that is provided by blueAPACHE (or the contractor that provides the Facility) as part of the Data Centre Space (but in no event does it include any Network Cabling).
- (j) **Facility** means, in respect of the Service Agreement, the blueAPACHE data centre facility specified in the Service Order (as amended from time to time in accordance with this Schedule) and includes all the areas in the Facility that are common to all customers and invitees, fixtures, fittings, cabling, plant, machinery, equipment or other property of blueAPACHE or its Personnel (including the owners of the Facility) in or on the Facility.
- (k) **Facility Rules** means rules relating to the operation and management of the Facility, and works and the provision of the Services, as added to, amended or replaced by blueAPACHE from time to time in accordance with the Service Agreement.
- (l) **Network Cabling** means any network cabling that provides a data network (of any type, including a private data network or the internet) directly or indirectly to any Customer's Equipment from the Data Centre Space, whether that network is between items of Customer Equipment or that network connects any Customer Equipment to the Data Centre Space.
- (m) **Power Allocation** means, in respect of the Data Centre Space, the Power Allocation for that Data Centre Space specified in the Service Order.
- (n) **Power Cabling** means any power cabling that provides power directly or indirectly to any Customer's Equipment from the power feed in the Data Centre Space, whether that power cabling is between items of Customer Equipment or that power cabling connects any Customer Equipment to a power feed in the Data Centre Space.
- (o) **Remote Hands** means minor technical services that Customer requests blueAPACHE to provide, and that blueAPACHE agrees to provide under this Schedule, which may include:
  - (i) pushing a button;
  - (ii) toggling or flipping a switch;
  - (iii) rebooting or power cycling of equipment;



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- (iv) reading indicators;
- (v) reading off serial numbers on equipment;
- (vi) moving or securing a cable;
- (vii) swapping tapes;
- (viii) reporting what is on a monitor screen;
- (ix) any similar or basic service or work blueAPACHE performs on Customer's behalf.

It does not include services or work that requires a greater level of skill than the services listed above. Anything outside of the above may incur an additional Fee, should blueAPACHE be engaged, and agree, to perform them.

- (p) **Scheduled Maintenance for the Facility** has the meaning given to it in clause 3.