

Schedule 11 Hardware and Ancillary Service

1 Hardware Sale

- 1.1 We will use its best efforts to procure the Hardware from the manufacturer or authorised reseller (if applicable) and Deliver the Hardware by the Estimated Delivery Date, as set out on the Service Order. We may Deliver the Hardware on any Service Order in one or more deliveries.
- 1.2 All Hardware Orders will be Delivered using standard packaging. If you requested other packaging:
 - (a) we take no responsibility for any loss or damage that occurs during transit, unless you can demonstrate that the loss or damage would have occurred even if standard packaging had been used; and
 - (b) you must pay our then current charges for such packaging.
- 1.3 Where the Service Order is placed on an "Ex Warehouse" basis, you must, at your cost and risk, collect the Hardware from the warehouse or collection point designated by us, within 5 Business Days of the date that we notify you that the Hardware is ready for collection. We may charge you holding costs, at our then current rates, (and such costs must be paid before we release the Hardware to you) if you do not collect the Hardware within that time.
- 1.4 You must inspect the Hardware at the time of Delivery to ensure that it conforms to the requirements of the Order. If you believe that any of the Hardware does not meet the requirements of the Order you must give us written notice of the alleged defect within 3 Business Days of the inspection.
- 1.5 If you believe that there is a defect in any Hardware you must promptly notify us in writing at the address set out in the Service Order setting out the details of the defect.
- 1.6 Where the defect in any Hardware is covered by the manufacturers' standard warranty, statutory guarantee under the Australian Consumer Law or any extended manufacturer's warranty service stated on the Service Order, we will provide a replacement or repair of the Hardware at no cost to you.
- 1.7 Where the defect in any Hardware is not covered by the manufacturers' standard warranty, statutory guarantee under the Australian Consumer Law or any extended manufacturer's warranty service stated on the Service Order, we will use our best efforts to repair or replace the defective Hardware in a reasonable period, and will charge you at our then current Professional Service Rates, plus the cost of any parts or replacement Hardware, for the time and materials needed to install any replacement part or replacement Hardware and to correct any defect in the Hardware, as well as shipment, insurance and Delivery costs. We will provide you with an estimate of the costs prior to commencing the repair or replacement. Repairs may not be available where the manufacturer has designated the "end of life" for the Hardware and/or does not make repairs or spares available.
- 1.8 Where the Hardware has user-installable replacement parts you must, at your cost and risk, install any replacement parts provided by us in accordance with the written instructions provided by the manufacturer or us.
- 1.9 Any replaced Hardware or parts become our property. Any repair or replacement may be with a refurbished part, provided that the use of a refurbished part does not affect the validity of any manufacturers' standard warranty, statutory guarantee under the Australian Consumer Law or any extended manufacturer's warranty service.
- 1.10 You must, at your cost:
 - (a) store, assemble, use and maintain the Hardware in accordance with the written instructions provided by the manufacturer or us;
 - (b) install and use any Consumables that do not invalidate any manufacturer's warranty and in accordance with the written instructions provided by the manufacturer or us;
 - (c) wherever technically possible, remove any data from any part of any Hardware that is to be repaired or replaced by us, prior to allowing us to repair or replace the Hardware or any part;

- (d) provide and maintain the network, and pay the associated capital and operating charges, required for the Hardware to operate in accordance with the written instructions provided by us.

Ancillary Service

- 1.11 We must perform any Ancillary Service set out in the Service Order in accordance with the requirements set out in the Service Order.

Spares and Repairs Facilities

- 1.12 We will take reasonable action to ensure that there are facilities available for the repair of Hardware and that spares are reasonably available for the Hardware, for a minimum period of 12 months from date of Delivery. You must order and pay separately for all repairs and spares ordered from us (other than where the repair is covered by a manufacturers' standard warranty, statutory guarantee under the Australian Consumer Law or any extended manufacturer's warranty service stated on the Service Order).

Risk, Title and Use

- 1.13 Risk in any Hardware passes to you upon Delivery.
- 1.14 Where the Hardware is being sold to you then title in the Hardware (other than title in any firmware or software) passes to you on the later of:
 - (a) payment in full for the Hardware; or
 - (b) Delivery.
- 1.15 Where Hardware is provided to us for repair and is replaced or a part is replaced, then risk and title to:
 - (a) the replacement part or the replacement Hardware passes to you on Delivery;
 - (b) the original defective Hardware or part that has been replaced, passes to us when we decide to replace the defective Hardware or part.
- 1.16 You must use any firmware and software in the Hardware in accordance with the License terms provided by the manufacture or owner of the Intellectual Property Rights in the firmware or software, as applicable.
- 1.17 Where we are acting as a reseller of a third party's Hardware or Consumables and the third party is unable or unwilling to supply us the Hardware or Consumables that form part of a Service Agreement for on-supply to you (for example, because the third party has recently declared the Hardware at "end of life" or you are on a list of persons to whom it is illegal to export the Hardware or Consumables) then we reserve the right to cancel the Service Agreement for such Hardware or Consumable and any Hardware or Consumable on the same Service Order whose use depends on the cancelled Hardware or Consumables, by giving you written notice of cancellation. In this case we must promptly provide a refund of any amounts paid for such Hardware or Consumables. To the extent permitted by law, this refund is our sole liability to you and your exclusive remedy for such cancellation. We will use our best efforts to notify you of any such cancellation within 5 Business Days of the Managed Service Commencement Date.
- 1.18 All Hardware is sold under a Service Agreement for your internal use only, and must not be re-sold to any other person.
- 1.19 Unless expressly stated otherwise on the Service Order, any Ancillary Service provided under a Service Agreement is provided as time and materials based Ancillary Service at Time and Materials Rates. In this case we will charge you for all time spent on the Ancillary Service (including travelling time to and from your Premises) at the Time and Materials Rates and you must pay for such time whether it is less than, or more than, any estimate given. We shall use our best efforts to advise you in advance if we believe that any estimate will be exceeded.
- 1.20 You must pay all our expenses incurred in providing the Ancillary Service in accordance with our then current expenses policy. Any work that is performed outside of our normal business hours, including on evenings, weekends and public holidays, will be charged at our then current overtime Professional Service Rates.

2 Product Recall and Safety

- 2.1 If any Hardware becomes subject to a product recall, then you must do all things required by us to immediately identify all recalled Hardware and any goods that includes any such Hardware that are in the custody or control of you or any

third party, and if requested in writing by us, return or destroy the recalled Hardware (and all goods that include the recalled Hardware) that are in your custody and control using the method/process/contractors directed by us. We shall reimburse you for the amount paid for the recalled Hardware and the cost of returning or destroying the recalled Hardware and any of your goods that include the recalled Hardware. To the extent permitted by law, the payment of this amount will be your sole remedy and our entire liability to you in respect of any claim arising from a product recall.

- 2.2 We may provide you with relevant safety data sheets, product batch numbers, other documents or information and/or provide warning labels as part of the packaging of any Hardware, which include product identification details, warnings and/or safety and health information concerning the products and/or the packaging, storage or handling for such products (**Safety Advice**). You must not remove, deface or alter any notice containing Safety Advice unless the Hardware to which the Safety Advice relates has been completely used up.
- 2.3 You must comply with the Safety Advice at all times and must maintain appropriate processes, resources and facilities to enable you to comply with the requirements in the Safety Advice at all times.
- 2.4 You must communicate such Safety Advice to all persons that you can reasonably foresee may be exposed to or may handle the Hardware and their packaging. You must do all things reasonably necessary to ensure that those persons follow such Safety Advice.
- 2.5 You must not deface, remove or cover any:
 - (a) trademarks, service marks, logos or other indicia of branding;
 - (b) any Safety Advice, warning, disclaimer or restrictive use notice, on any Hardware.
- 2.6 We and our nominees may enter and inspect any premises controlled by you to audit your compliance with clauses 2.2 and 2.5.

3 Ownership Rights

- 3.1 You acknowledge and agree that nothing contained or implied in a Service Agreement gives you ownership of, or gives rise to, any proprietary interest of you in the name, domain name, trademarks, trade names or any other Intellectual Property Rights of any manufacturer of the Hardware and their respective related bodies corporate, including any Intellectual Property Rights in any Hardware or item delivered through any services. You must not seek, or claim, any Intellectual Property Rights, in any Hardware or item delivered through any services. You must not use, copy, adapt, translate, manufacture or otherwise exercise any Intellectual Property Right in any manufacturer of the Hardware's, patents, trademarks, service marks, logos, industrial designs, illustrations, drawings, proposals or copyright materials, without the express written consent of blueAPACHE.