

# CUSTOMER TERMS

## Important Customer Information

Version V30034 – 1 January 2026

These Customer Terms set out your rights and obligations and are a Standard Form of Agreement (SFOA) as per Part 23 of the Telecommunications Act 1997. Please read these Customer Terms carefully as they may have important consequences for you. The Customer Terms apply to your access, connection and use of the Services including the supply of any related Equipment or installation and maintenance services.

By accessing and using a Service you acknowledge that you have been given a reasonable opportunity to read and understand these Customer Terms. If you do not agree to these Customer Terms please do not use the Service or register an account. Your initial use of the Service or registration of an account constitutes acceptance of these Customer Terms. Any changes to the Customer Terms after your initial acceptance are subject to clause 3.

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## Part A – Introduction

### 1. About Our Customer Terms

- (a) These are Business 1300’s Customer Terms.
- (b) The Customer Terms:
  - i. apply to all Services including the supply of any related Equipment or installation and maintenance services we provide you;

- ii. may be amended by us from time to time in accordance with clause 3;
- iii. does not apply to the extent otherwise agreed between us and you in writing, provided that any such agreement must be signed by authorised representatives of both parties and must expressly identify which provisions are being varied. Any such variation must not reduce your rights under the Australian Consumer Law or other applicable consumer protection legislation, and any variation that purports to do so will be void to that extent.

## 2. About Us

- (a) A reference to 'B1300' or 'we' or 'us' or 'our' means Business 1300 Pty Ltd (ACN 108 753 751).
- (b) Our website is at [business1300.com.au](http://business1300.com.au)
- (c) Our email address is [care@businessco.com.au](mailto:care@businessco.com.au)
- (d) Our postal address is at SE5, Level 2, 2-6 Glenferrie Rd Malvern VIC 3144.
- (e) Our customer service number is 1300 00 1300.

## 3. Changing the Customer Terms

- (a) We may revise, amend, or modify the Customer Terms (including our Acceptable Use Policy, our Service Schedules and our other policies) if:
  - i. the change will benefit you, or we reasonably determine in good faith that it will not adversely affect you;
  - ii. you agree to the change; or
  - iii. we:
    - a. reasonably expect the change to adversely affect you; and
    - b. give you reasonable notice of the change.
- (b) Subject to clause 3(d), we will notify you at least 30 days before we make a change to our Customer Terms which is likely to have a detrimental impact on you. For the avoidance of doubt, "detrimental impact" includes but is not limited to increases in charges, reductions in service levels or entitlements, additional obligations imposed on you, restrictions on your rights under your Contract, changes to dispute resolution procedures, changes to liability or indemnity provisions, changes to termination rights, changes to data handling or privacy practices (which must also comply with the Privacy Act 1988 (Cth) and Australian Privacy Principles), or any change that materially affects the value proposition of the Services to you. We will notify you of the change by one or a combination of the following:
  - i. email;
  - ii. a notice on your next bill; and/or
  - iii. posting the notice on our website.

- (c) Subject to clause 3(d), if we make a change to our Customer Terms which is likely to have a detrimental impact on you, and that impact is not minor, you may cancel the affected Services by giving notice to us in writing (including by email to the address listed in clause 2) within 30 days after the date we give you notice under clause 3(b). An impact will be considered "not minor" if it results in additional costs exceeding 5% of your current monthly Plan rate, a reduction in service levels of more than 5%, or any other material change to the fundamental nature of the Services being provided, including but not limited to changes affecting data, privacy protections, service availability guarantees, or your termination rights. However, this definition of "not minor" is not exhaustive, and you may demonstrate that an impact is not minor even if it does not meet these specific thresholds, where you can show the change materially affects your reasonable use of the Services. You will not incur any Early Termination Fee or other charges as a result of cancellation in accordance with this clause 3(c), except for:
- i. usage based charges incurred up to the date of cancellation; and
  - ii. installation Charges and costs of Equipment we have provided to you that you have not paid for.
- (d) We do not need to give 30 days' notice of changes to our Customer Terms or give you a right to cancel the Service under clause 3(c) in relation to:
- i. urgent changes we are required to make by law, for security reasons (which must involve an actual and imminent threat to security, not merely a potential or theoretical risk), or for technical reasons necessary to protect the integrity of our Network or that of our Partners (where such technical reasons must be objectively verifiable and not merely commercially convenient and must involve an actual technical failure or imminent risk of failure), provided that:
    - a. we notify you of such changes as soon as reasonably practicable and in any event within 3 Business Days of implementing the change;
    - b. we provide a clear explanation of the reason for the urgent change and the legal, security, or technical basis for it;
    - c. if such changes have a material detrimental impact on you, you retain the right to terminate the affected Services without penalty within 30 days of receiving notice of the change; and
    - d. where the urgent change was not legally mandated, we will offer reasonable alternatives if the change materially affects your use of the Services;
  - ii. the introduction of a new charge or increase in an existing charge arising:
    - a. due to an additional tax or levy imposed by law; or
    - b. for ancillary services such as credit card transactions or direct debit fees;

- iii. increases in charges due to increases imposed on us by our Partners, which may include reasonable and proportionate administrative costs associated with implementing such changes, for the following:
    - a. international carriage services (including voice and data services);
    - b. content and premium services from a third party; or
    - c. for calls made to satellite services;
  - iv. a change to or removal of any special feature of your Service that is not expressly referred to in the relevant Service Schedule.
- (e) We will provide reasonable notice of changes made under clause 3(d) where practicable by the notice methods outlined in clause 3(b).
- (f) Where we reasonably consider a change to our Customer Terms is likely to benefit you or have no impact on you we may make that change immediately without prior notice to you. We will notify you of such changes within 30 days after making them by the notice methods outlined in clause 3(b).
- (g) If you can demonstrate that a change made under clause 3(f) has more than a minor detrimental impact on you and the change is not of a type described in clause 3(d), you may cancel your Service in accordance with clause 3(c). The burden of proof regarding whether the impact is more than minor shall rest with you on the balance of probabilities, but we will not set this burden unreasonably high, and we will consider your circumstances in good faith, taking into account your specific usage patterns, business needs, and the particular circumstances of your use of the Services. We will provide you with a clear process for demonstrating such impact, which must include submitting written evidence of how the change affects your use of the Service. We will respond to your submission within 10 Business Days with a written decision including reasons. If we determine the impact is more than minor, your cancellation rights under clause 3(c) will apply retroactively from the date of the change.

## Part B – Customer Contracts

### 4. Your Customer Contract

We supply Service under a Customer Contract or Contract that includes:

- (a) your Application,
- (b) any Service Schedule for the Service,
- (c) the Critical Information Summary,
- (d) this Part B,
- (e) the General Terms in Part C,
- (f) the Acceptable Use Policy.

## 5. Priority of Document

If different parts of these Customer Terms are inconsistent, the part listed earlier in the above list takes priority to the extent of the inconsistency.

## 6. Plans

- (a) Many Services are available under different Plans, each with its own features, entitlements, contract period, Charges and special conditions.
- (b) Your Contract also includes the terms of any Plan you select and that we agree to provide to you.

## 7. Periodic Entitlements

- (a) A Plan may include the right to use a certain amount of a Service during a certain period.
  - i. e.g. An Internet Plan might let you download 300 gigabytes of data each month at no extra cost.
  - ii. e.g. A Phone Answering Plan might let you use 20 inbound calls each month at no extra cost.
  - iii. e.g. An Inbound Service might let you use \$15 worth of calls at no extra cost.

We call these Periodic Entitlements.

- (b) Unused Periodic Entitlements do not carry forward to subsequent billing periods and are not redeemable for cash or other credit.
- (c) If you exceed your Periodic Entitlement, extra Charges may apply or a Service may be limited in some way. Your Plan will give details.

## 8. Prepaid Plans

For a Prepaid Plan:

- (a) Prepayments are not redeemable for cash or other credit.
- (b) The Plan may specify a Use-by Date i.e. a period after which any Prepaid Entitlements that are not used expire without refund. Unless a Plan specifies otherwise, a Use-By Date of one year from the date of purchase or recharge applies to all Prepaid Plans. We will provide you with at least 30 days' notice before any Prepaid Entitlements are due to expire.
- (c) Prepayments are transferable between Plans of equivalent or greater value. If you voluntarily change to a Plan of lesser value, you will receive a pro-rata credit for unused Prepaid Entitlements.
- (d) Where we:
  - i. initiate or require a Plan change;
  - ii. discontinue your Plan; or
  - iii. make material changes to it;you will receive a full credit for unused Prepaid Entitlements.
- (e) We may specify minimum and/or maximum prepayments that you may make.

- (f) When your Prepaid Entitlements are used up we may cease providing the Service after providing you with at least 5 Business Days' notice (which must be by at least two of the following: SMS, email, phone call, or through your online account). We will make reasonable efforts to contact you through multiple channels. Subject to any applicable Consumer Guarantees, we are not responsible for the consequences of the Service ceasing where you have failed to maintain adequate Prepaid Entitlements after receiving such notice, provided that we have complied with our notification obligations.

## 9. Non-Prepaid Plans

For a Plan that is not a Prepaid Plan, you may use the Service without paying in advance in full, but:

- (a) We may require partial prepayment for a period of Service.
- (b) We may require a partial prepayment before or after your Service Start Date.
- (c) We may require you to maintain a minimum prepaid balance for a Service.
- (d) We may vary the amount of a required prepayment or minimum prepaid balance from time to time by providing you with at least 30 days' written notice, provided that any increase does not exceed 25% of the then-current amount unless justified by a material change in your usage patterns or payment history. All customers may terminate the affected Services without penalty if such variation increases the required prepayment or minimum balance by more than 25%. Any increase in required prepayment or minimum balance will be determined at our discretion acting reasonably, taking into account relevant commercial factors including but not limited to usage patterns, creditworthiness, payment history, market conditions, and our reasonable business requirements. We will provide written reasons for any such increase at the time of notice.
- (e) We may apply your prepaid balance to your next Bill or any later Bill/s.

## 10. Acceptable and Fair Use Policies

- (a) We may publish an Acceptable Use Policy and/or a Fair Use Policy for a Service or Plan. The policy can be found on our website listed in clause 2.
- (b) An Acceptable Use Policy or Fair Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service and/or our resources.
- (c) You must comply with an applicable Acceptable Use Policy or Fair Use Policy, provided such policy is reasonable, lawful, clearly communicated to you in advance of enforcement, does not conflict with any express rights granted to you under your Contract or applicable Consumer Guarantees.
- (d) For additional information regarding our Fair Use and Acceptable Use Policies, please visit our website (see clause 2) or alternatively to obtain a copy of the applicable policy free of charge, write to our Customer Information and Compliance Officer at our postal address (see clause 2) or email address (see clause 2).

## 11. Legal Compliance Policies

- (a) We may publish a policy directed to ensuring that the use of a Service complies with all Laws.
- (b) You must comply with such a policy.

## 12. Interacting with Our Staff

- (a) You must deal with our staff courteously.
- (b) You must not be rude to our staff.
- (c) You must not harass or mislead our staff.
- (d) If you or your Authorised Representative breach this clause in a serious way (such as threatening, abusive, violent or discriminatory conduct):
  - i. we may make a written request that you comply with it; and
  - ii. if you breach it again, you are in material breach of your Contract.

## 13. Operational Directions

- (a) Acting reasonably and providing reasons in writing where practicable, we may give Operational Directions about a Service.
- (b) Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when reasonably necessary.
- (c) You must comply with an applicable Operational Direction.

## 14. Partner Requirements – General

- (a) Many of our Services are provided using facilities and infrastructure (Partner Facilities) operated by third-party Partners. Partners may impose their own requirements (Partner Requirements) as a condition of using their facilities.
- (b) You must comply with applicable Partner Requirements that we notify to you in writing, provided that:
  - i. we give you at least 30 days' notice (or such shorter period as is reasonably necessary in an emergency);
  - ii. the requirements are lawful and reasonable; and
  - iii. the requirements do not materially increase your obligations or costs beyond what was reasonably contemplated when you entered into your Contract.
- (c) Where a Partner Requirement grants a Partner a specific right or power in relation to your Service, either:
  - i. the Partner may exercise that right or power directly; or
  - ii. we may exercise the right or power on the Partner's behalf.

- (d) Subject to the Privacy Act 1988 (Cth) and applicable privacy laws, you consent to us sharing your information with our Partners for the purpose of providing Services to you and for purposes reasonably related to the provision of those Services. You may withdraw this consent at any time by providing written notice to us. Upon withdrawal of consent, we will cease sharing your information with Partners within 5 Business Days, except where such sharing is required by law or necessary to fulfill our existing contractual obligations to you under this Contract. You acknowledge that withdrawal of consent may affect our ability to provide Services to you, and we will inform you of the specific impacts before such withdrawal takes effect.
- (e) Our Partners may change the Carrier used to provide a Service that we resupply to you, provided that:
- i. the change does not materially degrade the quality, reliability, or functionality of the Service compared to the specifications in effect when you entered into your Contract, and the changed Service continues to meet all Consumer Guarantees and any express warranties or representations made at the time of entering into the Contract. If the Carrier change results in any material degradation, you will have the right to terminate the Contract without penalty within 30 days of the change taking effect; and
  - ii. we give you at least 30 days' prior written notice of any carrier change that may affect your Service.

**TCP Customers:** we will comply with all applicable TCP Code requirements regarding service variations.

- (f) If a Partner varies its terms of supply to us in a way that affects your Service:
- i. we may vary your Contract only to the extent reasonably necessary to comply with the changed Partner terms;
  - ii. we will give you at least 30 days' written notice before the variation takes effect (or such shorter period as is permitted under these Customer Terms);
  - iii. our notice will include:
    - a. details of the Partner's variation and how it affects your Contract; and
    - b. the date the variation will take effect.

**ACL Consumers and ACL Small Businesses:** If a new or amended Partner Requirement is materially detrimental to you, you have Walk Away Rights which allow you to terminate your Contract without penalty within 30 days of being notified of the change. We will clearly identify in our notification whether the change is materially detrimental and inform you of these Walk Away Rights.

## 15. Fixed Terms

A Plan may specify a fixed or Minimum Term. If it does:

- (a) A Contract for the Plan is a contract for at least that specified term.
- (b) Either you or we can terminate the Contract on or after the end of that specified term, by giving at least 30 days' prior written termination notice to the other party. For clarity, no early termination fees or penalties shall apply to terminations made in accordance with this clause. Any termination by us must comply with the Consumer Guarantees and the requirements of the TCP Code, and must be for reasonable cause. Where we terminate, we must provide you with written reasons for the termination at least 30 days before the termination takes effect, and information about your rights to dispute the termination through our complaints process and, if applicable, through the Telecommunications Industry Ombudsman.
- (c) If neither of the parties gives a termination notice before the end of the specified term, the Contract continues on a month-to-month basis after that term, subject to the termination rights in clause 16. If a Contract is renewed for a further fixed or Minimum Term, it becomes month-to-month after that subsequent term.

## 16. Month-to-Month, Casual or 'No Contract' Terms

If a Plan or a Contract is described as month-to-month, casual or similar:

- (a) we may terminate it on at least 30 days' prior written notice, except where such termination would breach the Consumer Guarantees, the TCP Code requirements, or other mandatory consumer protections under Australian law. For TCP Customers and ACL Consumers, we may only terminate month-to-month Contracts for reasonable cause, which includes (but is not limited to) non-payment of Charges, material breach of your obligations under the Contract, or our genuine inability to continue providing the Service due to technical or regulatory reasons beyond our reasonable control. For all other customers, we may terminate month-to-month Contracts without cause on 30 days' notice. Any termination notice must specify the reason for termination (where a reason is required), inform you of your rights to dispute the termination, provide details of our complaints handling process and your right to escalate to the Telecommunications Industry Ombudsman (where applicable), and allow you a reasonable opportunity to remedy any breach (where capable of remedy) before termination takes effect. Where the reason for termination is capable of remedy, we will provide at least 14 days from the date of the termination notice for you to remedy the breach before termination takes effect; and
- (b) you may terminate it at any time in writing, taking effect at the end of the Billing Period in which the termination notice is received by us.

## 17. Bundled Equipment

- (a) Under some of our Plans, you will be supplied with Equipment (e.g. a router or an IP phone) without paying its full purchase price on delivery (Bundled Equipment).
- (b) The supply of Bundled Equipment is subject to a minimum Contract term (e.g. 24 months) and Early Termination Fees apply as per the Plan.
- (c) Clause 35(c) explains when ownership of Bundled Equipment passes to you. While we or our Partners retain title to the Bundled Equipment, you hold it as bailee for us and must exercise reasonable care in storing, maintaining, and protecting the Equipment from loss, damage, theft, or destruction. You must notify us within 5 Business Days of becoming aware of any loss, theft, or material damage to the Equipment, or as soon as reasonably practicable if circumstances beyond your reasonable control prevent earlier notification. Your failure to provide timely notification may be considered as a factor in determining whether you exercised reasonable care but will not automatically establish liability. Your liability for loss or damage shall be determined based on whether such loss or damage was caused by your negligence, wilful misconduct, or breach of your obligations under this clause. You will not be liable for loss, theft, or damage to the Equipment where such loss, theft, or damage was not caused by your negligence, wilful misconduct, or breach of your obligations under this clause. Where you are liable, any liability for loss, theft, or damage shall be limited to the lesser of:
  - i. the depreciated value of the Equipment at the time of the loss, theft, or damage, calculated on a straight-line basis over the minimum term; or
  - ii. the reasonable cost of repair or replacement.

## 18. Telecommunications Consumer Protections (TCP) Code

- (a) The TCP Code applies to consumer and some business customers, called **TCP Customers** in our Customer Terms. Refer to the Dictionary for the detailed definition.
- (b) A term or note in our Customer Terms headed 'TCP Customers' applies to you if you are a TCP Customer, but not otherwise.

## 19. Australian Consumer Law (ACL)

- (a) Some provisions of the ACL apply to:
  - i. individuals who enter Consumer Contracts (as defined in the ACL). We call those persons **ACL Consumers** in our Customer Terms. Refer to the Dictionary for the detailed definition; and
  - ii. businesses that enter Small Business Contracts (as defined in the ACL). We call those persons **ACL Small Businesses** in our Customer Terms. Refer to the Dictionary for the detailed definition.

- (b) A term or note in our Customer Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.
- (c) A term or note in our Customer Terms headed 'ACL Small Businesses' applies to you if you are an ACL Small Business, but not otherwise.

## 20. ACL Consumers, ACL Small Businesses and Unfair Contract Terms

- (a) Our Customer Terms apply to a wide variety of customers and circumstances and must reasonably protect our interests across that wide variety.
- (b) If you are an ACL Consumer or an ACL Small Business, and a term of your Contract would (except for this clause) be unfair (within the meaning of sections 23 and 24 of the ACL), that term will be void to the extent it is unfair, and we will not apply or rely on that term.

## 21. Consumer Guarantees

- (a) Under the Australian Consumer Law, consumers (as defined in the ACL) have the benefit of certain Consumer Guarantees:
  - i. that cannot be excluded; and
  - ii. where the consumer's rights in case of breach cannot be limited by your Contract or can only be limited to a certain extent.
- (b) Your Contract never operates to exclude the Consumer Guarantees (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

## 22. Understanding and Navigating Our Customer Terms

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 116.
- (b) Rules for interpreting other expressions in our Customer Terms are set out in clause 115.
- (c) The Index is at the beginning.

## Part C - General Terms

### 23. Application for Service

- (a) You must comply with any application form or process we specify.
- (b) All information you provide in connection with an application must be true, accurate, complete and not misleading or deceptive.

### 24. Processing an Application

- (a) We do not have to accept an application, provided that any rejection is not based on unlawful discrimination and, for TCP Customers, complies with applicable requirements of the TCP Code.

- (b) Before we confirm that we can and will provide Service (i.e. before the Contract Date), if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk, except to the extent we have negligently, misleadingly, or in breach of any statutory duty (including the Australian Consumer Law or the TCP Code) induced you to take such steps, or where such steps were taken in reasonable reliance on our express written or oral representations made by our authorised representatives. Notwithstanding the foregoing, where you have taken such steps in reasonable reliance on information provided by us during the application process, and we subsequently determine we cannot provide the Service through no fault of yours, we will reimburse you for reasonable direct costs incurred in reliance on our ability to provide the Service, up to a maximum of \$500, provided you submit a written claim with supporting documentation within 30 days of being notified that we cannot provide the Service. We will notify you promptly (and in any event within 2 Business Days) if we determine we cannot provide the Service. For TCP Customers, we will comply with all applicable TCP Code requirements regarding application processing timeframes and customer notifications.
- (c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 69 and the Privacy Act 1988 (Cth).

## 25. Relevant Dates

- (a) The date when you make an application is the **Application Date**.
- (b) The date when we confirm that we can and will provide Service is the **Contract Date**.
- (c) The date when we notify you that Service is available for use (or the date you first use the Service, if that is earlier) is the **Service Start Date**.

## 26. Providing Service

- (a) We will commence the Service as soon as reasonably practicable after the Contract Date, and in any event within the timeframe specified in your Plan or as otherwise agreed in writing, or if no timeframe is specified, within 10 Business Days of the Contract Date for standard services or 20 Business Days for services requiring special infrastructure or third-party coordination. If we fail to commence Service within the specified timeframe without reasonable cause, you may terminate the Contract without penalty by providing written notice, and we will refund any amounts paid in advance. For TCP Customers, we will comply with all applicable connection timeframe requirements under the TCP Code. We will commence billing you from the Service Start Date or as otherwise specified in your Plan, but not before Service is actually available for use.
- (b) We may provide the Service using Our Facilities and/or third-party Partner Facilities, as we decide from time to time in our reasonable discretion. Together, we call those **Facilities**.

## 27. Obsolete Services

- (a) We regularly change the Service plans and pricing that we offer to our customers. When any applicable Contract Term expires, we may (although we are not obliged to do so) continue to provide a Service to you in accordance with the same Service Schedule and Rate Card that applied during the Contract Term, even where we no longer offer that plan and pricing to new customers (Obsolete Services). We will provide details of the terms of any Obsolete Service we supply to you on request. Where we continue to provide an Obsolete Service, we will provide you with at least 60 days' prior written notice before discontinuing that Obsolete Service or materially varying its terms, except in cases of technical necessity or regulatory requirement where shorter notice may be given (and in such cases we will provide as much notice as reasonably practicable in the circumstances, being not less than 14 days unless genuinely impracticable). For TCP Customers, we will comply with all applicable TCP Code requirements regarding service discontinuation and variation notices.

## 28. Variations to the Service by You

- (a) You may request a variation to the Service and we may make that variation in our reasonable discretion, provided that we will not unreasonably refuse a variation request from a TCP Customer where the TCP Code requires us to facilitate such variation.
- (b) If we make a variation under clause 28(a):
- i. that upgrade, downgrade or change will occur on the next billing cycle;
  - ii. different Charges may apply to the varied Service in accordance with the relevant Service Schedule and Rate Card; and
  - iii. a Downgrade Fee may apply to the varied Service as specified in the relevant Service Description or Rate Card.
- (c) Where you require an immediate upgrade, we may make the variation prior to the next billing cycle (subject to technical feasibility). If we do so, you forfeit any remaining time or data for the remaining period, and we will provide you with clear written notice of this forfeiture before implementing the immediate upgrade.

## 29. Use of Service by Others

- (a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for commercial gain, remuneration or reward of any kind. For clarity, this does not prohibit reasonable sharing of a Service within a household or small business for the normal purposes for which the Service is supplied, and such reasonable sharing shall not be deemed to violate any usage limits or Acceptable Use Policies, and where the sharing remains within the normal scope of household or small business use.

- (b) Anyone who makes use of a Service with your consent or from your premises or using your equipment or log-in credentials is counted as your **End User**.
- (c) You will use reasonable endeavours to ensure your End Users comply with the terms of your Customer Contract, and you will be responsible for the acts and omissions of your End Users with respect to a Service to the extent such acts or omissions breach your obligations under your Customer Contract, except where:
  - i. you have taken all reasonable steps to prevent such breach;
  - ii. the breach results from misconduct by the End User that you could not reasonably have foreseen or prevented despite taking such reasonable steps; and
  - iii. you promptly notify us upon becoming aware of such breach and take immediate steps to remedy it.
- (d) You must take reasonable steps to ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you, including by implementing appropriate usage policies and access controls proportionate to the nature of the Service and your business or household.

### 30. Using a Service

- (a) When using a Service, you must comply with:
  - i. your Customer Contract (including any applicable Acceptable Use Policy or Fair Use Policy); and
  - ii. any applicable Laws.
- (b) You must not use a Service:
  - i. in breach of any applicable Law;
  - ii. to breach anyone else's rights;
  - iii. to infringe copyright;
  - iv. to create, transmit or communicate communications which are illegal, defamatory, obscene, pornographic, discriminatory (within the meaning of applicable anti-discrimination legislation), materially offensive, in breach of confidence, or which bring us or any of our Partners into disrepute through unlawful conduct;
  - v. to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;
  - vi. to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act 2003 (Cth);
  - vii. in a way that is misleading or deceptive, where that is contrary to Law;
  - viii. in a way that results, or is likely to result, in damage to property or injury to any person; or

- ix. in any way that materially damages or interferes with our Services to our other customers, our Partners or any Facilities, or exposes us or our Partners to material liability, provided that we will provide you with written notice of any alleged breach and a reasonable opportunity (being at least 10 Business Days) to remedy the breach before taking action, except in cases of emergency where immediate action is necessary to prevent ongoing harm. "Emergency" means circumstances where there is an immediate and substantial risk of:
  - a. significant harm to persons or property;
  - b. material damage to our network or systems;
  - c. material disruption to services provided to other customers; or
  - d. breach of applicable law or regulatory requirements.

### 31. Exploitative Use

- (a) 'Exploitative Use' means:
  - i. using an unlimited mobile telephone Service to generate mobile terminating access or SMS message terminating access payments (for example, by using SIM boxing);
  - ii. using a Service to transit, refile or aggregate domestic or international traffic on our network;
  - iii. using a Service with devices that switch or reroute calls to or from Our Network without our consent;
  - iv. using a Service in a manner similar to the kinds described in clauses 31(a)i, 31(a)ii, or 31(a)iii; or
  - v. any other use of a Service in a manner that cannot reasonably be considered to be within the range of uses for which the Service is ordinarily supplied (as objectively determined by reference to industry standards and ordinary commercial practices in Australia, and having regard to the specific Service Plan and any usage limits or descriptions provided to you).
- (b) You must not engage in Exploitative Use. If we reasonably believe you are engaging in Exploitative Use, we will provide you with written notice specifying in detail the conduct we believe constitutes Exploitative Use, including specific evidence and data supporting our belief (subject to any confidentiality or security constraints that would prevent disclosure of such information), and you will have 5 Business Days to either cease such conduct or demonstrate that it does not constitute Exploitative Use under this Contract. During this period, we will not suspend or terminate the Service unless the conduct poses an immediate risk of material harm to our network or other customers.

### 32. Telephone Numbers

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) The Telecommunications Numbering Plan 2015 (Cth) sets out rules for issuing, transferring and changing phone numbers. You and we must both comply with the Telecommunications Numbering Plan.

- (c) You and we must both also comply with the Smart Number Rules (if applicable). The rules are administered by the Australian Communications and Media Authority (ACMA).
- (d) You have no claim against us arising from anything we do in good faith compliance with the Numbering Plan (including changing or withdrawing a previously allocated number) or the Smart Number Rules, except where we act negligently, in breach of the Consumer Guarantees, in breach of the TCP Code requirements, or fail to provide you with reasonable notice (being at least 30 days' notice where reasonably practicable) of any change or withdrawal of a number, provided that no notice period shall be required where the Numbering Plan or applicable Law requires immediate action or prohibits us from providing such notice.
- (e) You must not:
  - i. do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it;
  - ii. relocate, reassign, or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (f) You do not own any number allocated to you, and (except where Law, including the Telecommunications Numbering Plan 2015 (Cth), the TCP Code, the Smart Number Rules and number portability requirements, permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Contract ends. We will use reasonable endeavours to facilitate any lawful transfer of numbers to which you are entitled under applicable Law.

### 33. IP addresses, Email Addresses and Domain Names

- (a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or internet identifiers.
- (b) These internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- (c) We are not responsible for anything done, or required to be done, by these authorities, except to the extent we fail to comply with our obligations to implement or facilitate actions required by such authorities in accordance with applicable Law.
- (d) You do not own any internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an internet identifier to another service provider) you have no right to retain them when your Contract ends.
- (e) An IP address allocated to you:
  - i. may be managed using Network Address Translation (NAT);

- ii. may not be 'globally routable' i.e. directly reachable by all other internet users; and
  - iii. may therefore not support applications or services that require inbound connections to be established (e.g. a Virtual Private Network). This reflects common industry architecture and is not a defect in the Service. We will not be liable for any inability to use such applications or services unless we have expressly agreed in writing to provide support for them, except to the extent such liability cannot be excluded under the Australian Consumer Law or other applicable consumer protection laws, including the Consumer Guarantees. Where we have agreed in writing to provide support for such applications or services, we will clearly specify the scope and limitations of such support in writing in the applicable Service terms. For the avoidance of doubt, our agreement to provide support for such applications or services does not constitute a guarantee that such applications or services will function in all circumstances, and our liability remains subject to the limitations set out in this Contract.
- (f) We may allocate you with a globally routable IP address, if you request it or applicable Service terms provide for it, subject to:
- i. availability;
  - ii. Service terms;
  - iii. our current allocation policy at the time of request; and
  - iv. payment of an additional Charge.

### 34. Dynamic IP Addresses

- (a) Unless your Internet Service specifies that we shall provide you with a static (i.e. nonchanging) IP address, we may provide it using dynamic IP addresses (that change periodically).
- (b) The periodic changing of dynamic IP addresses is normal network behaviour and not a fault.
- (c) It may be difficult or impossible to operate an internet server (e.g. a mail server or a web server) using an Internet Service with a dynamic IP address. If you intend to operate such a server, you should use an Internet Service with a static IP address.

### 35. Supplied Equipment

- (a) This clause applies if we supply **Equipment** to you.
- (b) You assume all risk of loss, damage, or destruction of Equipment upon delivery to you or your nominated recipient (or when the Equipment is left in a safe place in accordance with your delivery instructions), except where such loss, damage, or destruction:
  - i. is caused by our negligence or wilful misconduct;
  - ii. constitutes a breach of the Consumer Guarantees;
  - iii. occurs prior to actual delivery being completed; or
  - iv. results from defects in the Equipment existing at the time of delivery.

- (c) We or our Partners retain title to Equipment:
  - i. for Equipment rented or loaned to you – at all times;
  - ii. for Bundled Equipment until the earlier of:
    - a. completion of the minimum term, or
    - b. payment of any early termination fees or buyout amounts specified in the Plan; and
  - iii. for any other Equipment until full payment has been made.
- (d) While we or our Partners retain title to Equipment, you hold it as bailee for us and must exercise reasonable care in storing, maintaining, and protecting the Equipment from loss, damage, theft, or destruction. You must notify us within 5 Business Days of becoming aware of any loss, theft, or material damage to the Equipment, or as soon as reasonably practicable if circumstances beyond your reasonable control prevent earlier notification. Your failure to provide timely notification may affect your rights to claim insurance coverage or dispute liability for the Equipment.
- (e) If your Contract terminates for any reason and there is Equipment that we have sold to you under a payment plan or instalment arrangement, but you haven't yet fully paid for it, we will charge you for the unpaid balance of the price of the Equipment and those charges are payable within 30 days of the date of the invoice.
- (f) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.

### 36. Substituted Equipment

- (a) On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may, at our discretion, supply substitute Equipment that is substantially equivalent to the advertised Equipment after notifying you of the substitution and providing details of the substitute Equipment, including specifications demonstrating substantial equivalence, and obtaining your written consent to the substitution. "Substantially equivalent" means equipment that has comparable or superior technical specifications, functionality, and performance characteristics to the advertised Equipment. If you do not accept the substitute Equipment, you may terminate the relevant Service order without penalty within 10 Business Days of receiving notice of the substitution, and we will refund any amounts paid in relation to the Equipment within 10 Business Days of termination.
- (b) On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may, at our discretion and after consulting with you, supply substitute or modified Equipment that is more suitable. Any additional costs for upgraded Equipment will be advised to you prior to supply.

### 37. Delivery of Equipment

- (a) We will use reasonable endeavours to deliver Equipment to you on the delivery date (**Delivery Date**) and at the address (**Site**) indicated on your Application during normal business hours in that area. If we become aware that delivery will be delayed, we will notify you as soon as reasonably practicable and provide a revised estimated delivery date. Subject to the exceptions below, we will not be liable for any delays in delivery except:
  - i. where caused by our negligence, wilful misconduct, or breach of the Consumer Guarantees; or
  - ii. where delay exceeds 14 days from the Delivery Date (in which case you may terminate the order without penalty and receive a full refund of any amounts paid in relation to that order within 10 Business Days of termination).
- (b) Variations at your request to Delivery Date or Site:
  - i. are at our discretion; and
  - ii. may be subject to conditions, including extra Charges, which will be notified to you prior to any variation being implemented.

### 38. Installation and Connection of Equipment

- (a) This clause only applies if we expressly agree to install or connect Equipment.
- (b) We will install the Equipment at the Site within 10 Business Days after the Delivery Date (or such other timeframe as agreed in writing) to connect you to the Service during normal business hours in that area, subject to receiving timely safe and unobstructed access and your reasonable cooperation. You must provide us and our contractors with safe and unobstructed access to the Site and comply with all reasonable directions regarding access and safety.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
  - i. appropriate electricity supply;
  - ii. appropriate electrical and mechanical fittings;
  - iii. appropriate environmental conditions;
  - iv. a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
  - v. all necessary facilities for the location of the Equipment;
  - vi. access to all necessary personnel including your technical personnel;
  - vii. where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.

- (d) You warrant and represent to us that as at the date of installation and connection to the Service, you will have obtained all necessary consents, permits, and approvals (including from property owners, landlords, body corporate, and any other relevant parties) for us and our contractors to enter onto the Site, install Equipment and connect you to the Service, and you will provide us with evidence of such consents, permits and approvals upon reasonable request and within a reasonable timeframe. We will provide you with reasonable advance notice of the specific consents, permits and approvals we require, and reasonable guidance on obtaining them.
- (e) You must indemnify and keep indemnified us, our officers, employees, contractors, and agents against any claim, demand, action, damage, loss, cost, or expense (including reasonable legal costs on a solicitor-client basis) made against or incurred by us in connection with such entry and installation, except to any extent that we cause or contribute to it by:
  - i. our negligence, or
  - ii. our breach of the Consumer Guarantees.
- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) Where:
  - i. a Safe Work Method Statement is required; or
  - ii. other construction related requirements apply under the occupational health and safety laws of your jurisdiction, you must comply with such requirements.
- (h) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

### 39. Installation Charges

- (a) We will charge you installation Charges as stated in your Contract.
- (b) We will inform you in advance of any installation Charges that will be charged by us or our Partners, where reasonably practicable.
- (c) If we reasonably determine that installation will be more costly than originally quoted due to factors beyond our reasonable control (including but not limited to site conditions, access issues, or requirements for additional materials) that could not have been reasonably identified prior to providing the original quote, we may decline to proceed with the installation unless you agree in writing to revised Charges within 10 Business Days of receiving our notice. You may request an extension of up to an additional 10 Business Days if you reasonably require additional time to assess the revised Charges. We will provide you with a detailed explanation of the additional costs and the reasons for them, including supporting documentation where reasonably available, and you reserve

the right to terminate your Contract without penalty if you do not accept the revised Charges. If you terminate under this clause, we will refund any amounts you have paid for the installation within 10 Business Days.

#### 40. Additional Equipment Services

- (a) You may ask us to supply additional services in relation to Equipment e.g. repairs.
- (b) If we agree to provide additional services, we will charge on a time and materials basis at our then-current standard rates (which may include materials supplied by our Partners at rates they determine). We will provide you with a written quote for such additional services before commencing work, and will not commence work without your written approval of the quote, except in emergency circumstances where delay would cause significant harm or loss. In emergency circumstances, we will notify you as soon as reasonably practicable (and in any event within 24 hours of commencing work) and you will remain liable for payment of our reasonable Charges for such emergency work, provided such Charges do not exceed 120% of our standard rates without your prior approval. We will provide you with a detailed invoice substantiating the emergency nature of the work and the Charges incurred within 5 Business Days of completion.

#### 41. Lost, Stolen and Damaged Equipment

- (a) You are responsible for any lost, stolen or damaged Equipment owned by us or our Partner that is in your possession, under your control or on your property, only where such loss, theft or damage is caused by your negligence, wilful misconduct, or failure to exercise reasonable care in accordance with our equipment handling instructions (which we will provide to you in writing prior to or at the time of Equipment delivery).
- (b) You must pay for the replacement or (if repair is reasonable and economically viable) repair of such Equipment within 10 Business Days of our written demand (which demand must include reasonable evidence of the replacement or repair cost) except where the loss, theft or damage is directly caused by us, our personnel or our Partner (including NBN Co). You may dispute our assessment of the replacement or repair cost within 5 Business Days of receiving our demand by providing alternative quotes or evidence.

#### 42. Return of Loan Equipment

- (a) If your Contract terminates for any reason other than our breach or fault, and you are in possession of Equipment that we or our Partners have loaned to you ("Loan Equipment"), you must:
  - i. return the Loan Equipment to us at your cost within 10 Business Days of the termination date or receipt of our written return instructions (whichever is later), provided that if termination occurs due to our breach or fault, we will bear the cost of return;

- ii. return the Loan Equipment in the same condition as when provided to you, allowing for reasonable wear and tear;
  - iii. ensure the Loan Equipment is securely packaged and returned to the address we specify in writing.
- (b) If you fail to return the Loan Equipment within 10 Business Days as per clause 42(a), we will send you a written notice requiring return. You will then have a further 10 Business Days to comply. If you still fail to return the Loan Equipment, we may:
  - i. arrange collection of the Loan Equipment and charge you our reasonable costs of recovery; or
  - ii. charge you for the depreciated replacement value of the Loan Equipment, calculated on a straight-line basis over the manufacturer's expected useful life of the Equipment (or 5 years if no manufacturer specification exists).
- (c) Additional provisions:
  - i. Any charges for depreciated replacement value or recovery costs will be invoiced to you and are payable within 30 days of the invoice date.
  - ii. We will provide you with a reasonable itemised breakdown of any charges claimed under this clause 42.
  - iii. If the Loan Equipment is returned damaged beyond reasonable wear and tear, we may charge you the reasonable cost of repairing the Loan Equipment or, if repair is not economically viable, the depreciated replacement value of the Loan Equipment. We will provide you with evidence of the damage (including photographs where practicable) and a reasonable opportunity to inspect the Loan Equipment before charging you. You may dispute our assessment of damage within 10 Business Days of receiving our notice.

#### 43. Non-Supplied Equipment Used with Services

If you use in connection with a Service any Equipment we or our Partners have not provided:

(a) **Compatibility and Standards**

Your Equipment must be compatible with our Service and comply with the technical standards and requirements set by us or our Partners. If you are unsure whether your equipment is compatible, you may contact us for confirmation before attempting to use it with the Service. Where we confirm Equipment compatibility in writing, and that Equipment subsequently proves incompatible due to inaccurate information provided by us, we will not hold you liable for any service faults directly caused by such Equipment during the period you reasonably relied on our confirmation.

(b) **Legal Compliance**

Your Equipment must comply with all applicable Laws, including telecommunications and electrical safety standards.

(c) **Fault Diagnosis and Notification**

- i. If we reasonably determine that your Non-Supplied Equipment is the primary cause of a fault with the Service, we will notify you in writing with details of:
  - a. the nature of the fault;
  - b. the reasons we believe your Non-Supplied Equipment is causing or materially contributing to the fault;
  - c. the steps required to rectify the issue;
  - d. in genuine emergencies where the equipment poses an immediate risk to Network integrity, safety, or the services of other customers, in which case we may suspend the Service immediately but will provide notice as soon as reasonably practicable (and in any event within 1 Business Day).
- ii. If you dispute our determination that your Non-Supplied Equipment is causing the fault, you may:
  - a. request a detailed technical explanation of our diagnosis;
  - b. provide evidence from a qualified technician supporting your position;
  - c. request that we conduct further testing which may be subject to reasonable charges, provided we notify you of the estimated charges before commencing such testing.

(d) **Liability**

We will not be liable to you for any losses, expenses, damages, or costs you incur in relation to your use of Non-Supplied Equipment (including any incompatibility, malfunction, or unsuitability for your intended purpose), except:

- i. to the extent we cause or contribute to such losses or expenses by our negligence, wilful misconduct, breach of the Consumer Guarantees, or breach of any express written representation we have made to you about the compatibility or suitability of specific Equipment;  
or
- ii. to the extent liability cannot be excluded under the Australian Consumer Law or other applicable consumer protection legislation.

(e) **Your Responsibilities**

You acknowledge and agree that you are responsible for:

- i. ensuring your Non-Supplied Equipment meets all technical requirements before connecting it to our Service;
- ii. maintaining your Non-Supplied Equipment in good working order;

- iii. promptly removing or replacing any Non-Supplied Equipment that is causing faults or interference with the Service.

Nothing in this clause limits your rights under the Australian Consumer Law or the TCP Code.

#### 44. Authorised Representatives

- (a) You can appoint an Authorised Representative to act on your behalf if you require.
- (b) To be effective, we require that any such appointment:
  - i. is in writing;
  - ii. is signed by you (unless you are unable to sign due to disability or other reasonable cause, in which case we shall work out a feasible and mutually acceptable alternative with you in accordance with applicable disability discrimination laws and the Disability Discrimination Act 1992 (Cth));
  - iii. is verified by you in person or by telephone, including reasonable evidence of your identity (unless you are unable to communicate with us in person or by telephone due to disability or other reasonable cause, in which case we shall work out a feasible and mutually acceptable alternative with you in accordance with applicable disability discrimination laws and the Disability Discrimination Act 1992 (Cth));
  - iv. states any limitations on the authority of your Authorised Representative (e.g. time limit; limit on access to your account, or personal information; limit on authority to incur expense on your behalf); and
  - v. where we reasonably require that the appointment contains particular information or is in a particular form, it must contain that information and/or be in that form.
- (c) If your appointment does not state any limitations, your Authorised Representative has the power to act on your behalf as if they are you.
- (d) If your appointment states any limitations, your Authorised Representative has powers, including access to your information, in accordance with your appointment and those limitations.

#### 45. Authorised Advocates

- (a) You can use an **Advocate** to communicate with us if you require.
- (b) We presume that an Advocate is not authorised to establish or make changes to your account or Services unless the Advocate is also your Authorised Representative under clause 44.
- (c) A person acting as your Advocate has no power to act on your behalf and has no access to your information without you being present and agreeing to such action.

## 46. Rights and Remedies for PDH Goods and Services

**Important Consumer Information:** Full details of the consumer rights and remedies referred to in clauses 46 and 47 can be obtained from the Australian Competition and Consumer Commission (**ACCC**) at [www.accc.gov.au](http://www.accc.gov.au) or from your local consumer protection agency.

- (a) If we supply you with goods or services of a kind ordinarily acquired for personal, domestic or household (PDH) use or consumption you have important rights under the Australian Consumer Law (ACL) including Consumer Guarantees and remedies. Nothing in your Contract limits those rights and remedies in any way.
- (b) If we supply you with PDH Goods or Services, and you are told they come with a 'manufacturer's warranty' or 'one year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

## 47. Rights and Remedies for Non-PDH Goods or Services Costing No More than \$100,000

If we supply you with goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and cost no more than \$100,000, you have important rights under the ACL including Consumer Guarantees and remedies, but:

- (a) in relation to these goods, our liability for failure to comply with a Consumer Guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
  - i. replacing the goods or supplying equivalent ones;
  - ii. repairing the goods;
  - iii. paying the cost of replacing the goods or of acquiring equivalent ones; or
  - iv. paying the cost of having the goods repaired,
- (b) in relation to these services, our liability for failure to comply with a Consumer Guarantee is limited to:
  - i. supplying the services again; or
  - ii. paying the cost of having the services supplied again.
- (c) If we supply you with non-PDH Goods or Services that cost no more than \$100,000, and you are told they come with 'manufacturer's warranty', those rights are in addition to, and not instead of, your rights under the ACL.

## 48. Privacy

We collect, use and disclose your personal information in accordance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles, as set out in our Privacy Policy (available on our website listed in clause 2) and relevant clauses of these Customer Terms. By entering into your Contract, you acknowledge that you have read and understood our Privacy Policy. To the extent permitted by applicable privacy laws, you consent to

the collection, use and disclosure of your personal information for the purposes of providing the Services and as otherwise described in our Privacy Policy.

#### 49. Integrated Public Number Database

- (a) This clause 49 applies when we are required to comply with the Integrated Public Number Database (IPND) regulations under the Telecommunications Act 1997 (Cth).
- (b) The Integrated Public Number Database (IPND) is a collection of information – including telephone numbers, names and addresses - about all telephone services in Australia. Information about every phone service in Australia (fixed, mobile, and others) is stored in the IPND.
- (c) As a mandatory requirement of being a telecommunications service provider under the Telecommunications Act 1997 (Cth), we must provide accurate data to the IPND. Access to the information contained in the IPND is regulated strictly by legislation including the Privacy Act 1988 (Cth) and the Telecommunications Act 1997 (Cth). You acknowledge that we are required by law to provide your information to the IPND and consent to such provision.
- (d) IPND data is used for the following:
  - i. Emergency Services (for example, when you dial 000);
  - ii. Directory Publishers for public and not for unlisted numbers;
  - iii. Location Dependent Services such as law enforcement agencies.
- (e) The IPND stores the following information:
  - i. your name;
  - ii. your telephone number;
  - iii. your address;
  - iv. your nominated preference for a publicly listed, suppressed or unlisted telephone number.
- (f) If we provide a telephone number to you as part of the Services, you expressly acknowledge and agree:
  - i. that we will provide to the IPND information about you as we are required to do so by law and government regulatory authority;
  - ii. in order to ensure that the data provided to the IPND about you is correct, you will regularly ensure that the information you have provided to us about you is correct, and where necessary you will update that information by contacting us using contact information listed in clause 2.

#### 50. Service Level Agreements (SLA)

If a Service or a Plan includes a Service Level Agreement (SLA):

- (a) we are liable for any remedy or rebate specified by the SLA; and
- (b) subject to clauses 46 and 47, your non-excludable rights under the Australian Consumer Law, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

## 51. Customer Service Guarantee

For some of our Services, it is a condition that you waive your entitlements under the Customer Service Guarantee Standard (the CSG). If you have waived your CSG entitlements, then this clause may not apply and will be subject to the waiver you gave us.

- (a) **What is the Customer Service Guarantee (CSG)?**
  - i. The CSG sets out minimum performance standards for Standard Phone Services in relation to connection times, fault repairs, and keeping appointments.
  - ii. When we provide you with a Standard Phone Service and specified enhanced call handling features, that Service must comply with the CSG.
  - iii. If we don't meet CSG standards, you may be entitled to a monetary compensation according to the CSG.
- (b) **There are circumstances where we may be exempt from meeting the CSG standards, including:**
  - i. if you agreed to a CSG waiver in your application or the relevant Critical Information Summary;
  - ii. where you unreasonably refuse us access to your premises; or
  - iii. if you miss an appointment without giving us reasonable notice.
- (c) **The CSG does not apply to:**
  - i. mobile phone and internet services;
  - ii. customer Equipment;
  - iii. fax lines;
  - iv. customers that have more than five (5) Standard Phone Services.

## 52. Exclusion of Implied Terms

**Important Consumer Information:** Nothing in this clause 52 limits the consumer rights and remedies referred to in clauses 46 and 47.

Subject to clauses 46, 47 and 50:

- (a) Any representation, warranty, condition or undertaking that would be implied in your Contract by legislation, common law, equity, trade custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law.
- (b) Subject to any non-excludable warranties or guarantees under the Australian Consumer Law, we do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors, or interruptions.

### 53. Limitation of Liability – General

**Important Consumer Information:** Nothing in this clause 53 limits the consumer rights and remedies referred to in clauses 46 and 47.

Subject to clauses 46, 47, 50 and 54, and to the maximum extent permitted by law, we are not liable to you for, and you release us from any Claim for, any Loss, except where such Loss arises from our fraud, wilful misconduct, gross negligence, or breach of a non-excludable statutory obligation.

### 54. Limitation of Liability – ACL Consumers and ACL Small Businesses

**Important Consumer Information:** Nothing in this clause 54 limits the consumer rights and remedies referred to in clauses 46 and 47.

If you are an ACL Consumer or an ACL Small Business, clause 53 will not apply but:

- (a) subject to any non-excludable rights under the Australian Consumer Law, neither of us is liable to the other for economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or agreements, anticipated savings, loss of data, or an obligation to indemnify another person, except to the extent such loss is reasonably foreseeable as a consequence of a breach of this Contract; and
- (b) except for liability under clauses 55(a), 55(b) or 55(c), 57 or 58, the liability of each of us to the other for any Loss is limited to the greater of \$1,000 or the total Charges paid by you in the 12 months preceding the event giving rise to the Loss, in aggregate in respect of the Term.

### 55. Liability – General

- (a) You must pay us all Charges and other amounts due under your Contract.
- (b) You must pay us the fair value of any Equipment that you fail to return to us when required (less any amounts you may already have paid for the Equipment).
- (c) You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- (d) Your obligations under this clause survive termination of your Contract.

### 56. Liability – Legal Requests, etc.

- (a) This clause applies where we reasonably incur expense as a result of or in connection with:
  - i. a police request for information or evidence in relation to you or your use of a Service; or
  - ii. a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
  - iii. a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.

- (b) You must reimburse our reasonable and properly documented expenses within 30 days of receiving an itemised invoice, provided we have made reasonable efforts to minimize such expenses.

## 57. Your Liability to Us – (alleged) Illegal Use, etc.

- (a) This clause applies where:
  - i. your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
  - ii. we suffer loss or reasonably incur expense as a result.
- (b) You must make good our reasonably foreseeable loss and reimburse our reasonable and properly documented expenses within 30 days of receiving an itemised invoice, provided that:
  - i. we have made reasonable efforts to minimize such loss and expenses;
  - ii. the loss or expense was directly caused by your breach or the alleged illegal use; and
  - iii. where the use is only "allegedly" illegal and you are not ultimately found liable for any illegality, or where you successfully defend against such allegations, we will reimburse you for any amounts paid under this clause within 30 days of the final determination, together with interest calculated at the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 (Vic) or equivalent in the applicable jurisdiction.

## 58. Liability and Our Partners

- (a) **No Claims Against a Partner**

If:

  - i. except for this clause, you would have a Claim against a Partner arising out of or in connection with your Service or their role in its supply, provided that such Claim does not arise from the Partner's fraud, wilful misconduct, gross negligence, or breach of any consumer guarantee under the Australian Consumer Law; and
  - ii. our Partner has required us to exclude the Claim and/or we are liable to indemnify it against the Claim;

then:

  - iii. you must not make the Claim;
  - iv. you release our Partner from the Claim; and
  - v. you indemnify us and our Partner against any direct Loss we reasonably suffer if you do make the Claim in breach of this clause 58(a).
- (b) **Partner Indemnity**

If we are liable to indemnify a Partner against any Claim or Loss arising out of or in connection with your Service or their role in its supply, and such liability arises from your breach of this Contract or

applicable law, you must indemnify us against our reasonable liability to the Partner except to the extent that:

- i. we caused or contributed to the Claim or Loss by our negligence, breach of any Law or breach of your Contract; or
- ii. the Claim or Loss arose from the Partner's own negligence, breach of law, or breach of contract.

(c) **No Application Where Unfair**

If:

- i. You are an ACL Consumer or an ACL Small Business; and
- ii. clause 58(a) or 58(b) would be an Unfair Contract Term within the meaning of sections 23 to 25 of the Australian Consumer Law;
- iii. it will not apply.

## 59. Force Majeure

Subject to your non-excludable rights under the Australian Consumer Law, we are not liable for:

- (a) any delay in installing any Service;
- (b) any delay in correcting any fault in any Service;
- (c) any failure or incorrect operation of any Service, or
- (d) any other delay or default in performance under your Contract;

if it is caused by any Force Majeure Event.

## 60. Maintenance and Faults

(a) **Maintenance**

From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

(b) **Reporting Faults**

- i. You may report faults in relation to a Service or the Network by contacting our help line during its operating hours.
- ii. Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by Equipment which is not part of the Network.
- iii. You must not report a fault directly to one of our Partners unless we ask you to do so.
- iv. If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

(c) **Repairing Faults**

- i. We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.

- ii. We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.
- iii. You are responsible for maintaining and repairing your own Equipment except where we supplied it and you have warranty rights in relation to a fault.

(d) **Cost of Repairs**

If you cause a fault or damage to the Network through your negligent act or omission or wilful misconduct, and we can demonstrate that you were responsible for such damage, we may charge you the reasonable cost of repairing it, provided that we provide you with:

- i. written notice of the damage and the basis for attributing it to you;
- ii. an itemised quote for the repair costs; and
- iii. an opportunity to obtain an independent assessment at your own cost if the quoted repair costs exceed \$500, and we will not proceed with repairs or charge you until the independent assessment is complete if you elect to obtain one within 14 days of receiving our quote.

## 61. Customer Transfers to Us

(a) Obligations to Your Current Supplier

- i. If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.
- ii. Unless we notify you in writing that we will manage the transfer of your Service(s) from your current supplier, you are solely responsible for terminating your contract and any services you hold with your current supplier in accordance with that contract. We will clearly inform you at the time of your application whether we will manage the transfer process.
- iii. You must promptly pay your current supplier all amounts you owe it.

(b) Transfer to Us – Where We Manage the Churn Process

- i. In some cases, there is an industry process under which we initiate and manage the transfer of your Service(s) from another supplier to us (**Industry Churn Process**).
- ii. Where we notify you that an Industry Churn Process is in place, by making an application for Service(s), you instruct and authorise us to arrange with your current supplier to transfer the Service(s) to us and authorise us to act on your behalf with your current supplier to transfer the Service(s) to us.

(c) Transfer from Us

- i. If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
- ii. If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply (see clause 83). You must pay the Early Termination Fees within 14

days of the transfer completion date, and we will not unreasonably delay or prevent the transfer pending payment of such fees.

## 62. Charges and Payment (1): Types of Charges

We have various types of Charges, including:

- (a) installation Charges e.g. for installing Equipment;
- (b) set up Charges e.g. a one-off Charge when you start on an Inbound Service;
- (c) periodic Charges e.g. a fixed monthly Charge for an NBN Service;
- (d) usage Charges e.g. a Charge per call made on an IP Voice Service;
- (e) prepaid Charges e.g. a Charge for call credit on a mobile telephone service;
- (f) call connection Charges e.g. a Charge incurred when a telephone call connects;
- (g) miscellaneous Charges e.g. a Charge for providing a second copy of a bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make;
- (h) third party Charges e.g. an amount we must pay to a Partner to install an NBN Service at your premises;
- (i) equipment Charges e.g. the price of a modem/router we sell to you – and other Charges stated as part of a Plan.

## 63. Charges and Payment (2): Prices

- (a) Subject to clause 65, our prices are as stated in your Plan.
- (b) Our current prices at any time are referred to as our '**Rate Card**'.

## 64. Charges and Payment (3): Spot Priced Services

- (a) We may designate a Service as a **Spot Priced Service**.
- (b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third-party charges can vary with little or no notice.
- (c) International telephone calls and international roaming calls are spot priced Services.

## 65. Varying Charges

We may vary the Charges or add new Charges from time to time, subject to the following conditions:

- (a) Notice Requirements – we will provide you with at least 30 days' written notice before any variation to Charges takes effect, except for variations covered by clause 65(c) below. Notice will be provided by at least one of the methods specified in clause 103 and will include:
  - i. the current Charges;
  - ii. the new Charges;
  - iii. the date the variation will take effect;

- iv. the reason for the variation;
  - v. your right to terminate under clause 65(b) (where applicable); and
  - vi. contact details if you wish to discuss the variation.
- (b) Your Right to Terminate – if we vary Charges in a way that increases your costs, you may terminate the affected Service(s) without penalty by providing written notice to us within 30 days of receiving our notice of variation. If you exercise this right:
- i. you will not be required to pay any Early Termination Fees;
  - ii. you will only be liable for Charges incurred up to the date of termination at the pre-variation rates; and
  - iii. you must return or pay for any Equipment in accordance with clause 42.
- (c) Exceptions to Notice and Termination Rights – provided we notify you of such changes as soon as reasonably practicable and in any event within 10 Business Days of the new Charges coming into effect, clauses 65(a) and 65(b) do not apply if:
- i. the variation is required by law, regulation, or determination; or
  - ii. the variation is the result of a variation in charges from our Partners or Wholesale Suppliers that are beyond our reasonable control and we provide evidence of such variation upon request; or
  - iii. the variation relates to Spot Priced Services as defined in clause 64.
- (d) Retroactive Application – no variation to Charges shall apply retroactively to Charges already incurred or Services already provided before the effective date of the variation, except where required by law or where the variation corrects an undercharge resulting from our manifest error and we provide written notice explaining the error and the correction.
- (e) Annual CPI Increases – we may increase Charges annually in line with the Consumer Price Index (CPI), provided that:
- i. any CPI increase does not exceed the percentage change in the CPI over the preceding 12-month period;
  - ii. we provide you with at least 30 days' written notice; and
  - iii. CPI increases are limited to once per 12-month period for each Service.

## 66. Special Promotions

- (a) We may offer Special Promotions to you, on particular terms.
- (b) The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Contract, provided that:
  - i. such terms are clearly disclosed to you in writing or by other durable medium before you accept the Special Promotion;
  - ii. they do not reduce your rights under the Australian Consumer Law; and

- iii. any such inconsistency is limited to pricing, service levels, promotional benefits, or related commercial terms only and does not modify liability limitations, indemnities, intellectual property rights, confidentiality obligations, dispute resolution procedures, or other material protective provisions.

## 67. Bundled Plans

- (a) We may offer a group of Services as a package (bundle) for discounted total Charges (compared to the total Charges that would apply if you acquired the same Services not as a bundle). e.g. We might offer bundled 'Netphone + Internet Access for \$90 a month' where our Charges for the individual Services would be \$100 a month.
- (b) Each Service in a bundle is subject to a separate but dependent Contract.
- (c) If you stop acquiring any Service in a bundle:
  - i. You have 'broken' the bundle; and
  - ii. We may bill you non-discounted Charges for the remaining Service(s), provided that:
    - a. we give you at least 30 days' written notice before applying non-discounted Charges; and
    - b. you have the right to terminate the remaining Service(s) without penalty within such 30-day notice period if you do not wish to continue at non-discounted rates.

## 68. Credit Management (1): Guarantees and Security

- (a) We can make supply of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction, provided that:
  - i. any such requirement is based on a reasonable credit assessment conducted in accordance with applicable privacy and credit reporting laws;
  - ii. the amount of security required does not exceed the greater of:
    - a. the estimated charges for the relevant Service over a period not exceeding 12 months, or
    - b. \$1,000, whichever is greater; and
  - iii. we provide you with written reasons for requiring such security and details of the credit assessment factors considered.
- (b) If we become entitled to suspend or terminate Service due to non-payment or breach by you, we may make the resumption of Service conditional on you giving us, and maintaining, reasonable security and/or third party guarantees, provided that:
  - i. the amount of such security does not exceed the estimated charges for the relevant Service over a period not exceeding 12 months;
  - ii. we provide written notice of the security requirement and the basis for it; and

- iii. if the breach or non-payment was disputed in good faith and subsequently resolved in your favour, or resulted from our error that we acknowledge in writing, we will not require additional security beyond what was previously required.
- (c) We may use a security payment to pay any billed Charge that is overdue for more than 30 days, where you have not disputed the Charge in good faith in accordance with our dispute resolution procedures within 14 days of the invoice date. Before we access a security payment, we will advise you in writing at least 5 Business Days in advance and provide you an opportunity to pay within that period.
- (d) We will refund any unused balance of a security deposit within 10 Business Days after you cease to acquire the relevant Service and all Charges in respect of that Service have been paid or finally determined (including any disputed amounts), provided that we may retain the security deposit for up to 60 days if there are reasonable grounds to believe additional charges may be incurred or identified.
- (e) We do not pay interest on security deposits unless required by law. If you make a written request for interest and we agree in our reasonable discretion that the administration costs are proportionate to the interest that would accrue, we may agree to pay interest. If we agree, interest will accrue from the date the security deposit was paid and will be calculated at the Reserve Bank of Australia cash rate less 2% per annum, provided that the rate shall not be less than zero.

## 69. Credit Management (2): Credit Checks

- (a) Credit Checks
  - i. At our discretion, we may obtain a credit report about you to help us decide whether to accept your application for service and to help us collect overdue amounts. We will not charge you for obtaining a credit report unless you have consented in writing to such charge after being notified of the specific fee amount.
  - ii. In the course of a credit check, we may disclose personal information about you to a credit reporting agency or other credit information provider. We may receive a credit report and other information about you, including personal information.
  - iii. A credit reporting agency may include the fact that we obtained a credit report about you in its credit information file on you.
- (b) Disclosure of Information

We may disclose to a credit reporting agency:

  - i. information in your application;
  - ii. details of your account;
  - iii. that you have applied for credit with us;

- iv. that we are a current credit provider to you;
  - v. payments that become overdue by 60 days or more, provided that we have first given you written notice of the overdue payment and allowed you a reasonable opportunity (at least 14 days from the date of that notice) to pay or make arrangements to pay, and the debt is subject to collection processes;
  - vi. any payment of yours for \$100 or more which has been dishonoured more than once;
  - vii. any serious credit infringement (as defined in the Privacy Act 1988 (Cth)) you have committed;
  - viii. that payments are no longer overdue.
- (c) Other Credit Disclosures
- We may disclose information about you and any debt you owe us to:
- i. a debt collection service we engage; and
  - ii. anyone who takes, or is considering taking, an assignment of any debt you owe us.
- (d) Your Consents
- i. If you are an individual, you consent to us conducting a credit check and verifying your personal details, in accordance with this clause, the Privacy Act 1988 (Cth), and the Privacy (Credit Reporting) Code 2014, provided that we only conduct such checks for the purposes disclosed in these Customer Terms and in accordance with our Privacy Policy.
  - ii. If you are self-employed, you agree that we can:
    - a. obtain and use any report or information from a credit reporting agency, which contains information about your commercial activities or commercial credit worthiness;
    - b. exchange with your other credit providers, any credit report or other report about your credit worthiness or history, or personal information contained in those reports – in accordance with this clause.
- (e) Further Acknowledgments
- You acknowledge that credit and other information about you may be used to:
- i. assess your application;
  - ii. assist you to avoid defaulting on your credit obligations;
  - iii. notify other credit providers of a default by you; and
  - iv. assess your creditworthiness.

## 70. Credit Management (3): Services You Acquire for Others

If you enter a Contract where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your staff member):

- (a) You are responsible for all use of the Service and all Charges incurred under the Contract, except where such use or Charges result from our negligence, fraud, breach of contract, unauthorised

access due to a security vulnerability in our systems, or where liability cannot be excluded under the Australian Consumer Law.

- (b) If you give anyone else sufficient information about your Service (e.g. by giving them your user name, password or other credentials), they may be able to:
  - i. uncap or unlimit any cap or other limits that apply to it;
  - ii. change Plans;
  - iii. disconnect Service; and
  - iv. do anything else that you could do.

You should treat all information that allows control of your Service as secret.

- (c) Internet and telephone Services can be used to buy goods and services from third parties. You may be liable for debts incurred to these third parties.

## 71. When We Can Bill

- (a) Your 'Billing Period' is the period of time to which a Charge relates.
- (b) Our standard Billing Period is monthly, but we may vary it. We may bill a part-period e.g. to align your Billing Period with the first day of each month.
- (c) Subject to clause 71(d), we may bill for Charges as follows:
  - i. installation Charge – when you place an order;
  - ii. set up Charge – when you place an order;
  - iii. periodic Charge – one Billing Period in advance of the period it relates to, or as otherwise agreed in your Plan;
  - iv. usage Charge – at the end of each Billing Period;
  - v. prepaid Charge – when you buy or top up a prepaid Service;
  - vi. call connection Charge – at the end of each Billing Period;
  - vii. miscellaneous Charge – at the end of each Billing Period;
  - viii. third-party Charge – when you place an order that will incur the Charge;
  - ix. equipment Charge – when you place an order.
- (d) In any case, we may bill you for any Service we have already provided.

## 72. Bills – General

- (a) Unless otherwise agreed upon in writing, Services are supplied on a Direct Debit basis, subject to you completing a valid Direct Debit Request Service Agreement in accordance with the ePayments Code.
- (b) We will supply a Bill to you that covers all Charges that are due for payment and the Billing Period to which each Charge relates, except where your Service is Prepaid.

- (c) You acknowledge and agree that billing information will be accessible at least 10 calendar days before any Direct Debit is processed.
- (d) You acknowledge that our standard payment methods do not include payment by mail. However, we will offer an alternative payment method that is reasonably accessible to you upon request, at no additional charge beyond our standard payment processing fees.
- (e) If we do provide an invoice, statement or Bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

### 73. Extra Charges for Bills and Information

- (a) We may charge you an extra Charge (as specified in our Critical Information Summary or as otherwise notified to you in advance) if:
  - i. you request information about your bill or Charges beyond what is provided in our standard billing format and beyond what we are required to provide under the TCP Code, or
  - ii. you ask us to deliver a bill by a method that is not the standard method for a Plan.
- (b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is as notified in our Critical Information Summary (CIS) relevant to the Plan.

### 74. Billing Information – TCP Customers

- (a) Requesting Information

If you are a TCP Customer and request it, we will provide all Billing information related to your Service (including, if you request it, itemised details of Charges associated with the Service) relating to up to 72 months prior to your request, provided that:

  - i. for information relating to the 24 months prior to your request:
    - a. we shall provide it through at least one medium (of our choice) free of charge; and
    - b. otherwise we may impose a reasonable Charge for providing the information, limited to our actual and reasonable cost of providing it;
  - ii. for information relating to a period between 24 and 72 months prior to your request, we may impose a reasonable Charge for providing the information, limited to our actual and reasonable cost of providing it;
  - iii. you may request provision of Billing information via other mediums and formats normally available from us and we may impose a reasonable Charge for providing the information in that way, limited to our actual and reasonable cost of providing it.
- (b) Electronic Billing data

If you are a TCP Customer and we make information from, or about, a Bill, available in an electronic form, we will offer at least one method of accessing that information that does not involve paying

access Charges to us (but to avoid any doubt, this does not prevent us from making any Charge that is authorised by clause 74(a)).

- (c) Itemised Billing
  - i. You may request itemised billing details by providing us with notice in accordance with the timeframes specified below.
  - ii. Unless we advise you otherwise, the notice period is:
    - a. 10 Business Days where the information relates to Charges first billed within the last 12 months;
    - b. 15 Business Days where the information relates to Charges first billed within 12 to 24 months; and
    - c. otherwise – 20 Business Days.

## 75. Costs of Telephone Billing Enquiries

If we provide access to our billing enquiry point by telephone, you agree that standard call rates apply (including timed charges for national and mobile calls).

## 76. Out-of-Pocket Expenses

- (a) We may notify you that, in order to supply a Service, we need to incur some out-of-pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- (b) We may notify you that a Partner may charge us if you report a fault and, following reasonable investigation, there was no such fault, or the fault lies with Equipment for which the Partner is not responsible, or if you contact the Partner directly without our prior authorisation. You must pay or reimburse all such reasonable amounts, provided we supply you with reasonable evidence of the Partner's charges and the basis for those charges.

## 77. GST and Other Taxes

- (a) Unless otherwise stipulated in these Customer Terms, the Rate Card or the Critical Information Summary, Charges **do not include any GST**. We will include on each Bill a separate amount for the GST payable in respect of the Charges and you must pay the GST to us.
- (b) You must pay all taxes, duties, stamp duties, impost, levies or government charges relating to your Contract, the supplied Services and provision of Equipment. Should there be an introduction of any new tax, duty, levy or government charge relating to any charges (including Charges) under your Contract, you must pay us for such taxes, duty, levy or government charges imposed under such relevant legislation.

## 78. Late Billing

- (a) We may bill for Charges up to 160 days from the date the Charge was incurred, and we will provide you with notice of any late-billed Charges and an explanation for the delay in billing.
- (b) Some Charges in a Bill may relate to a previous Billing Period.

## 79. When You Must Pay

- (a) Where a Direct Debit or credit card arrangement applies:
  - i. you acknowledge and agree for us to debit your account 10 Calendar Days (usually on the 15<sup>th</sup> of each month) after we issue a Bill and provide you with billing information (usually no later than the 5<sup>th</sup> of each month); or
  - ii. after the end of the current Billing Period (if we do not issue a Bill for the Service).
- (b) If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.
- (c) In any other case, you must pay a Bill within 10 Calendar Days after its Bill Date.

## 80. How You Can Pay

- (a) If your Plan specifies 'Direct Debit Only' (or similar) then:
  - i. Direct Debit payment is a precondition to supply of Service to you.
  - ii. We may suspend Service if Direct Debit arrangements are not maintained.
  - iii. You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval or you have a legitimate dispute regarding the payment, or you are exercising rights under the Direct Debit Service Agreement or applicable banking regulations. Otherwise, you may be liable for our reasonable and properly documented costs of reinstating the transaction.
- (b) In any other case:
  - i. Direct Debit is our preferred payment method and incurs no surcharges.
  - ii. You may pay by:
    - a. MasterCard or Visa or any other card we notify you that we accept; or
    - b. any other payment option we notify you that we accept for your Plan.
  - iii. Payments made using credit cards may be subject to a surcharge as notified on our website or a Bill.
- (c) If any payment you make is dishonoured, we may charge you a reasonable payment dishonour fee not exceeding \$15 per dishonoured payment and recover from you any fees charged by our bank which result from the dishonoured payment, provided we supply you with evidence of such bank fees upon request.

## 81. Late Payment (1)

If a Bill is not paid on time:

- (a) you are in breach of your Contract, and
- (b) we may also charge:
  - i. interest at the rate of 10% per annum (or such lower rate as may be required by applicable law, including the Penalty Interest Rates Act 1983 (Vic)) from the date the Bill was due for payment until it is paid in full, calculated on a daily basis and compounded monthly;
  - ii. a reasonable late payment fee not exceeding \$15 per month;
  - iii. any collection fees and expenses that we incur; and
  - iv. we will not impose Credit Management Charges unless the Charges are a reimbursement of our reasonable and properly documented costs and you are advised of their amount or method of calculation in advance. Such charges must not exceed the amounts permitted under the TCP Code and must be notified to you in writing at least 10 Business Days before being imposed.

## 82. Late Payment (2) – Accounts Over 60 Days

If your payment is 60 days or more overdue or we otherwise consider it is reasonable to do so:

- (a) we may refer it to an external collections agency;
- (b) we notify you that our collection fees and expenses under clause 81(b)iii may:
  - i. include the external agency's collection fee and/or
  - ii. include a minimum recovery charge.

## 83. Early Termination Fees

The amount of an Early Termination Fee that we are entitled to charge is:

- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) otherwise:
  - i. any amount we remain liable to pay to a third party (e.g. a Wholesale Supplier) for goods or services we cannot resell or resupply to other customers; and
  - ii. a reasonable estimate of our lost profit as a result of early termination, calculated using a reasonable methodology that we will provide to you in writing at least 10 Business Days before charging the Early Termination Fee, and which shall not exceed the total remaining monthly charges that would have been payable for the remainder of the Minimum Term.

See clauses 90 and 93 for the circumstances in which we may charge an Early Termination Fee.

## 84. Billing Disputes

- (a) Our records of what you owe us are presumed to be accurate in the absence of manifest error, but you may dispute any charges by providing evidence that the records are incorrect, and we will investigate any such dispute in good faith within a reasonable timeframe not exceeding 15 Business Days from receipt of your dispute, and will provide you with a written response setting out the outcome of our investigation and the reasons for our decision.
- (b) We will not take Credit Management action in relation to a disputed amount that is the subject of an unresolved complaint, if we are aware that the complaint has not been resolved to your satisfaction and is being investigated by us, the TIO or a relevant recognised third party but:
  - i. you must still pay all undisputed portions, and
  - ii. if it is determined that some or all of the disputed portion is payable, you must pay that amount within 5 Business Days.
- (c) Unless required by law or a binding decision of a court or authorised external dispute resolution body, we will not provide a refund or credit in respect of a billing dispute that is raised with us more than 12 months after a bill is issued (except where the dispute relates to charges that were not reasonably discoverable within that period, or where we have failed to comply with our billing obligations under this Contract or applicable law), provided that:
  - i. we have issued the bill in accordance with our obligations under this Contract and applicable law;
  - ii. the bill was reasonably accessible to you during that period; and
  - iii. this limitation does not apply where we have engaged in fraud, wilful misconduct, or gross negligence.

## 85. Billing for Unauthorised Use of Your Account

Subject to applicable consumer protection laws (including the Australian Consumer Law and the TCP Code), you are responsible for, and must pay for, all use of your Service except for:

- (a) unauthorised use that results from our negligence or breach of a Consumer Guarantee;
- (b) unauthorised use that occurs after you have notified us of suspected unauthorised access and we have had a reasonable opportunity to suspend the Service (which shall not exceed 4 hours from notification during Business Hours, or 1 Business Day if notification occurs outside Business Hours);  
or
- (c) unauthorised use that results from a security vulnerability in our systems or the Service that we failed to reasonably address.

## 86. Billing Agents

- (a) We may bill you via a billing agent (e.g. another company in our group).
- (b) Payment to our billing agent constitutes payment to us.
- (c) Failure to pay our billing agent (where we have appointed one) constitutes failure to pay us.

## 87. Payment for Third Party Services

- (a) Using a Service may depend on you having goods or services supplied by third parties. For instance:
  - i. in order to use the NBN Service, you must have a suitable router;
  - ii. in order to use a mobile 5G Service, you must have a suitable mobile handset;
  - iii. in order to use an IP Voice Service, you must have a suitable internet connection.
- (b) You are solely responsible for the costs, including any maintenance costs, of all third party goods and services you acquire.

## 88. Your Cooperation

- (a) You must give us all reasonable cooperation that we require in order to provide a Service to you, fix any problems that arise, and resolve any disputes that may arise or complaints that you may have.
- (b) You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or our Partner may be required:
  - i. to intercept communications over the Service in accordance with applicable laws and lawful authority, and
  - ii. monitor usage of the Service and communications over it.

## 89. Complaints

- (a) If you have any complaints in connection with the Service (including complaints about your invoice) you should contact us first to resolve the complaint via the contact details available on our website.
- (b) We will handle your complaint in accordance with our complaint handling procedure and the TCP Code free of charge. You can get information on our complaint handling procedure on our website or by contacting us. A copy of the complaint handling procedure can be provided on request at no cost to you.
- (c) You are also entitled to make a complaint to the Telecommunications Industry Ombudsman and possibly to the Consumer Affairs office (however described) in your state. We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- (d) Where your complaint is about a fee or charge for the use of the Service, we may suspend your payment obligations for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

## 90. Termination and Suspension by Us (1): Early Termination

- (a) Prior to suspending, restricting or terminating your Service or your Contract under this clause 90, we will provide you with reasonable advance notice to the extent this is possible and does not result in any material risk or detriment to us, any third parties, or the integrity of the Network.
- (b) If you are under a fixed term Contract and your Service is terminated by us before the end of the agreed fixed term due to a reason outlined in clause 90(d)i, 90(d)ii, 90(d)iii, 90(d)iv, 90(d)v, 90(d)vi, 90(d)vii, 90(d)x, 90(d)xiii, 90(d)xv, 90(d)xvi, 90(d)xvii, we may charge you an Early Termination Fee as specified in clause 83, provided that such fee represents a genuine pre-estimate of our loss and is not a penalty.
- (c) We may charge a reasonable reconnection Charge not exceeding \$75 following action under this clause 90 unless it resulted from our mistake, and provided we give you at least 5 Business Days' notice of the reconnection Charge before it is applied.
- (d) Subject to clause 92 and applicable law, we may terminate a Contract, or suspend or restrict Service if, in relation to that or any other Contract or Service:
  - i. you fail to pay us any money that is due;
  - ii. your Credit Assessment Information was materially adversely inaccurate;
  - iii. you threaten not to pay us money that you owe us, or will owe us in the future;
  - iv. you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement);
  - v. you are in material breach of your Contract (including breach of our Acceptable Use Policy) and we have notified you in writing of your breach, specifying the nature of the breach and the steps required to remedy it (where the breach is capable of remedy), and you have failed to remedy the breach within 10 Business Days of receiving our notice (or such longer period as may be reasonable in the circumstances);
  - vi. you are subject to an Insolvency Event (except for as long as an Insolvency Protection Stay applies – see clause 98), provided that we comply with our obligations under the Corporations Act 2001 (Cth) and the Bankruptcy Act 1966 (Cth);
  - vii. we reasonably believe, based on objective evidence, that you have vacated your Service Address and we have made reasonable attempts to contact you to confirm;
  - viii. we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm;
  - ix. it becomes technically infeasible for us to continue Service;
  - x. you use a Service in a way that places unreasonable demands on our Network;
  - xi. we are unable to obtain access to your Service Address as required to provide, maintain or repair the Service;

- xii. there is an emergency that warrants it;
- xiii. you have told us that you no longer require the Service;
- xiv. if we reasonably suspect fraud or attempted fraud involving the Service;
- xv. we suspend the Service, and the suspension continues for more than a month (except for as long as an Insolvency Protection Stay applies – see clause 98);
- xvi. you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that); or
- xvii. in any other circumstances stated elsewhere in our Customer Terms.

## 91. Termination and Suspension by Us (2): Other Events

Subject to clause 92:

- (a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or are subject to an Insolvency Event, or if we have reasonable grounds, based on objective evidence, to believe that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract (except for as long as an Insolvency Protection Stay applies – see clause 98);
- (b) We may suspend or restrict the supply Service if there are reasonable grounds for believing:
  - i. a serious threat or risk exists to the security or integrity of the Network, or
  - ii. the provision of the Service may cause death, personal injury or damage to property.
- (c) We may suspend or restrict Service in cases of emergency, including for the provision of support to emergency and other essential services.
- (d) We may terminate a Contract or suspend or limit or vary performance of our obligations under it to comply with:
  - i. legislative or regulatory requirements, or
  - ii. the order of a court or lawful direction of a competent authority – to the extent the legislative or regulatory requirements or order or direction unavoidably requires us to do so.
- (e) We may suspend, intercept or terminate a service in order to comply with a warrant or other court order, or as otherwise required or authorised by law.

## 92. TCP Customers – Disconnection, Suspension and Restriction

If you are a TCP Customer:

- (a) we will not disconnect, suspend or restrict a Service for credit and/or debt management reasons, without first informing you unless:
  - i. we reasonably assess, based on objective criteria, that you or the account status presents an unacceptably high credit risk to us; or
  - ii. we reasonably suspect fraud or attempted fraud; or

- iii. you have nominated to us an agreed point at which Service will be limited and that point has been reached; and
- (b) except where clause 92(a) applies, we will give you at least 5 Business Days' notice prior to disconnecting, suspending or restricting your Service; and
- (c) we shall otherwise comply with the rules in the TCP Code about disconnection, suspension or restriction of the Service.

### 93. Termination by You (1): Early Termination

- (a) You are not entitled to terminate a Contract during its fixed or minimum term, unless our Customer Terms expressly provide for early termination or the law requires us to permit it.
- (b) Our Plans are priced on the basis that you will complete your Contract.
- (c) Where you are entitled to terminate your Contract early (e.g. because we have offered you that option following a variation to your Contract) we may bill you for:
  - i. any outstanding amounts for installation costs or Equipment that can be used in connection with services provided by other suppliers; and
  - ii. usage or network access Charges incurred up to the date on which the Contract ends.
- (d) If we agree that you may terminate it early in any other circumstances, we may bill you:
  - i. an Early Termination Fee (ETF);
  - ii. any applicable amounts under clause 93(e);
  - iii. a reasonable administration Charge;
  - iv. usage or network access charges incurred up to the date on which the Contract ends; and
  - v. any other Charge that is specified in the applicable Plan or the Rate Card.
- (e) Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and if we agree that you may do so) we may also bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.
- (f) All early termination requests must be submitted in writing before we can action them.

### 94. Termination by You (2): Other Events

You may terminate your Contract and/or Service:

- (a) (except during a fixed or minimum term; or unless otherwise set out in a relevant Service Schedule) by submitting a cancellation request no later than 5pm AEST on the 24<sup>th</sup> day of the calendar month in which you wish to cancel the Service and/or Contract; or
- (b) if we are in material breach of your Contract and:

- i. you have notified us in writing of our breach and we have failed to remedy it within 10 Business Days of your notice; or
  - ii. the breach is of a type which cannot be remedied, in which case you have the right to terminate your Contract immediately by providing us with notice;
- (c) in any other circumstances where your Contract provides for it.

We will not charge you an Early Termination Fee if you terminate your Contract under clause 94(b).

If you terminate your Service and/or Contract before the end of the current Billing Period (other than due to our material breach or fault or where you are exercising a right to terminate under clause 94(b)), you will not receive a pro rata refund for any unused days of the current Billing Period that fall after your Contract and/or Service termination date, except where required by law.

## 95. Post-Termination

If your Contract ends:

- (a) Our obligations to you under the Contract are at an end (except for any accrued entitlements you may have under the consumer rights and remedies referred to in the applicable consumer protection provisions).
- (b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract.
- (c) All bills are payable immediately.
- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, provided that we first provide you with a detailed invoice or statement. If you normally pay by Direct Debit, you authorise us to Direct Debit such amounts from your nominated credit card or bank account, provided we give you at least 10 calendar days' prior written notice of the amount to be debited and the debit date.
- (e) You must return to us, within 14 days of termination, any of our Equipment under your control. (If you fail to do so, we may bill you a Charge representing the reasonable depreciated value of the Equipment, taking into account its age and condition).
- (f) Any cause of action that either of us had against the other pre-dating the termination is not affected.
- (g) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue.
- (h) No other Contract is affected unless we also terminate it.

Otherwise, that Contract is at an end for all purposes.

## 96. Suspension of Service

We may suspend Service at any time, without liability and immediately and (except in the case of an emergency or your death) by reasonable notice to you, if:

- (a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Contract (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within at least 10 Business Days after we send you a written notice specifying the overdue amount, warning of potential suspension, providing information about how to make payment, and advising you of your rights to access financial hardship provisions and complaint resolution processes;
- (c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach is not reasonably capable of being remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and you do not remedy that breach within 10 Business Days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are the subject of an Insolvency Event (except for as long as an Insolvency Protection Stay applies – see clause 98);
- (f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
- (g) we reasonably believe, based on documented objective criteria that we have disclosed to you, that you may be a credit risk in relation to the Service (except for as long as an Insolvency Protection Stay applies – see clause 98);
- (h) you are a natural person (i.e. not a company) and you die, provided that we will work with your estate representatives to facilitate an orderly transition or termination;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Service or integrity of the Network;
- (k) the Service may cause death, personal injury or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Contract.

## 97. Charges During a Period of Suspension

If we suspend Service:

- (a) because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension;

- (b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

## 98. Insolvency Protection Stays

- (a) If:
  - i. you are a corporation; and
  - ii. your Contract started on or after 1 July 2018 – our enforcement of certain rights may be stayed by the operation of sections 415D, 434J or 451E of the Corporations Act (Insolvency Protection Stay).
- (b) If and for as long as an Insolvency Protection Stay operates, we do not assert an entitlement to enforce any right that is subject to it.
- (c) This clause 98 does not prevent us from disputing that an Insolvency Protection Stay applies or making an application for an Insolvency Protection Stay to be lifted in whole or part or otherwise exercising our legal rights.

## 99. Errors In Our Documents

- (a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Contract, including any Plan terms, catalogues, rate cards, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- (b) You are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints unless you reasonably relied on them to your detriment, the error was material and would have affected your decision to enter into the Contract, or the error would result in you paying significantly more than the advertised or quoted price.

## 100. Carrier or Carriage Service Provider

- (a) You represent and warrant that you are not currently a carrier or a Carriage Service Provider as defined under the Telecommunications Act 1997 (Cth).
- (b) If you become a Carrier or a Carriage Service Provider, you must notify us within 5 Business Days. We or our Partners may then cancel the Service and terminate your Contract by giving you at least 30 days' written notice, unless you cease to be a Carrier or Carriage Service Provider within that notice period.

## 101. Provision of Services by Our Partners

- (a) If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.

- (b) If our rights and obligations under your Contract are assigned or novated to our Partner in order to supply the Service directly to you, the Partner will honour your existing rate plan and Charges for the remainder of your current contract term. After the current term expires, the Partner's standard rates may apply, subject to the Partner providing you with at least 60 days' written notice prior to the expiry of the current term. You will have the right to terminate the Contract without penalty if you do not agree to the Partner's standard rates. We will provide you with the Partner's contact details and any information reasonably necessary to enable you to continue receiving the Service.

## 102. Assignment

- (a) We may assign or novate all or part of our rights and obligations under your Contract to a third party (including any of our Related Bodies Corporate as defined in the Corporations Act 2001 (Cth)) without your prior consent, provided that:
  - i. we give you at least 30 days' written notice of any such assignment or novation;
  - ii. the assignee agrees to be bound by the terms of your Contract; and
  - iii. the assignment or novation does not materially adversely affect your rights or materially increase your obligations under the Contract.
- (b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

## 103. Notices

- (a) How We Give Notices

Subject to clause 103(b), we may give notice to you in connection with, or as required by our Customer Terms:

  - i. in person;
  - ii. by fax;
  - iii. by email;
  - iv. by post;
  - v. by Instant Messaging; or
  - vi. in any other way allowed by law – or by giving you (by one of the above means) notice of the address of a web page where the notice can be read.
- (b) Form of Notice
  - i. If our Customer Terms, or any Law, requires a notice to be in writing, we will give it in writing.
  - ii. Otherwise, we may give a notice:
    - a. verbally or in writing; or

- b. by voice call (provided that robocalls or recorded messages may only be used for notices where permitted by law and subject to compliance with the Do Not Call Register Act 2006 and the Spam Act 2003) or, if you do not answer a voice call, by leaving voicemail.
- (c) Address or Number for Notices  
We may direct a notice to:
  - i. a number or address that we reasonably believe to be current;
  - ii. in any event, the most recent number or address that you have notified to us; and
  - iii. if you are a company, your registered office.
- (d) Time of Receipt
- (e) A notice is taken to have been received:
  - i. if we deliver it to you in person (including a voice call you are a party to) – at the time of delivery;
  - ii. if we give it to you by voicemail during business hours in your locality – when you could reasonably be expected to have accessed the voicemail, being no less than four hours later (or such earlier time if there is evidence you actually accessed it);
  - iii. if we give it to you by voicemail outside business hours in your locality – at 9am on the next Business Day in your locality;
  - iv. if we fax it during business hours in your locality – four hours later, subject to our fax machine receiving a successful transmission confirmation;
  - v. if we fax it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to our fax machine receiving a successful transmission confirmation;
  - vi. if we email it during business hours in your locality – when you could reasonably be expected to have accessed the email, being no less than four hours later (or such earlier time if there is evidence you actually accessed it), subject to a ‘delivery failure’ message not being received;
  - vii. if we email it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to a ‘delivery failure’ message not being received;
  - viii. if we post it – at noon on the second Business Day after posting;
  - ix. if we send it by Instant Message during business hours in your locality and you have consented to receive notices by Instant Message – two hours later (or such earlier time if there is evidence you actually accessed it);
  - x. if we send it by Instant Message outside business hours in your locality and you have consented to receive notices by Instant Message – at 9am on the next Business Day in your locality;
  - xi. if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
  - xii. if there is evidence that you received it at an earlier time – that earlier time.

#### 104. Governing Law

Subject to the following paragraph, your Contract is governed by and must be construed in accordance with the laws of Victoria. You and we submit to the non-exclusive jurisdiction of the courts of Victoria, courts exercising federal jurisdiction in Victoria, and the Commonwealth of Australia.

**ACL Consumers and ACL Small Businesses:** Your Contract is governed by and must be construed in accordance with the laws of your State or Territory of residence. You and we submit to the non-exclusive jurisdiction of the courts of that State or Territory, courts exercising federal jurisdiction in that State or Territory, and the Commonwealth of Australia.

#### 105. Entire Contract

Your Contract is the entire Contract between you and us regarding its subject matter, and you acknowledge that:

- (a) your Contract does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it, other than:
  - i. a Consumer Guarantee to the extent it may not lawfully be excluded, and
  - ii. any term implied by law that cannot be lawfully excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Contract, except to the extent that such representations are protected by law (including under the Australian Consumer Law).

#### 106. Service Delays

- (a) Subject to your rights as an ACL Consumer or ACL Small Business, and except where your Contract specifies a fixed delivery date or time frame, time is not of the essence in the performance of our obligations, including the provision of Service, under your Contract.
- (b) Subject to your rights as an ACL Consumer or ACL Small Business, we are not liable to you for any delay in the provision of any Service, except where such delay is caused by our negligence, fraud, wilful default, or breach of our obligations under this Contract.
- (c) Subject to your rights as an ACL Consumer or ACL Small Business under the Australian Consumer Law, you may not cancel or amend an order for a service on the grounds of any delay in providing it, unless such delay is unreasonable in the circumstances or is caused by our breach of contract.

**ACL Consumers and ACL Small Businesses:** If your Contract does not fix a time within which a Service will be provided and the time is not to be determined in a way agreed between us, we shall supply it within a reasonable time and you may have rights and remedies under the ACL if we fail to do so.

### 107. No Waiver

A failure, delay, relaxation or indulgence by either party in exercising any power or right conferred under your Contract does not operate as a waiver of that power or right, nor does any single or partial exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right, nor does it prevent either party from exercising that power or right in the future.

### 108. Commission Payments

We may pay a commission to any agent, employee, contractor or dealer in connection with the acquisition of the Services and your Customer Contract. Any such commission is paid by us and does not affect the Charges payable by you under your Contract.

### 109. No Reliance

- (a) While we make reasonable efforts to ensure the information on our Website is correct and up to date, we do not warrant the accuracy, completeness, or currency of that information.
- (b) Our staff may provide you with advice in good faith to assist your use of the Service. However, we do not represent that our staff are experts in your particular computer hardware, software, or business operations. Subject to your non-excludable rights under the Australian Consumer Law (which we do not exclude), to the extent permitted by law, you acknowledge that any action you take on advice given by any of our staff is taken at your own risk and we are not liable for any loss or damage arising from your reliance on such advice.

### 110. Information About Your Rights

Information and advice about your rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission, or the relevant Department of Fair Trading or Department of Consumer Affairs in your State or Territory.

### 111. Complaints and Assistance Services

Our contact details are available on our website. You may contact us and make any complaint by contacting us or the following assistance services:

- (a) Customer Service – see clause 2 for the number.
- (b) National Relay Service – 133 677 or 1800 555 677
- (c) Translating and Interpreting Service – 131 450

## 112. Commercial Electronic Messaging

- (a) Subject to this clause, we may send you Commercial Electronic Messages regarding our telecommunications goods and services, and goods and services ancillary to those we supply to you under this Contract. By entering into your Contract, you expressly consent to us doing so.
- (b) Your consent under clause 112(a) (which you may withdraw at any time by giving us notice in accordance with clause 112(b)iii):
  - i. applies while your Contract is in force and for 12 months afterwards; and
  - ii. is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 16(2) of the Spam Act; but
  - iii. terminates if you give us reasonable written notice that it is withdrawn.
- (c) Any Commercial Electronic Message we send you in accordance with your consent under this clause does not have to comply with the unsubscribe facility requirements in section 18(1) of the Spam Act, but will otherwise comply with the Spam Act including the requirement to include accurate sender information.
- (d) This clause 112 survives the termination of your Contract.

## 113. Intellectual Property and Software Licences

- (a) We own all material (including intellectual property rights) developed by (or at the direction of) us, our staff or other personnel. We may allow you to use this material, or other material licenced by us, as part of the Service. Your use of this material is subject to any terms and conditions we impose and will cease when the Service is cancelled.
- (b) You do not own or have any legal interest in our intellectual property or any personal identifier issued by us to you, including any IP address, domain name, personal identification number, or telephone number.

## 114. Survival

Any provision of your Contract and these Terms which by its nature is intended to survive termination or expiry of the Contract (including without limitation any exclusion or limitation of liability or indemnity in your Contract, to the extent such provisions are enforceable) will survive termination or expiry of your Contract for any reason.

## 115. Interpreting your Contract

- (a) If an expression is defined in the Dictionary in clause 116, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint blue', then 'coloured' means 'painted blue'.)

- (c) Expressions like ‘includes’, ‘including’, ‘e.g.’ and ‘such as’ are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) The rule of construction known as *ejusdem generis* shall not apply, and clauses containing examples shall be construed without regard to that rule.
- (e) A provision of your Contract will not be construed against a party because that party proposed or drafted it.
- (f) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (g) A schedule to a document is part of that document.
- (h) A reference to the singular includes the plural and vice versa.
- (i) There is no significance in the use of gender-specific language.
- (j) A ‘person’ includes any entity which can sue and be sued.
- (k) A ‘person’ includes any legal successor to or representative of that person.
- (l) A reference to a law includes any amendment or replacement of that law.
- (m) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (n) Anything we can do, we may do through an appropriately authorised representative.
- (o) Any matter in our discretion must be exercised reasonably and in good faith, having regard to the legitimate interests of both parties. For the avoidance of doubt, this clause does not apply to any matter where we are expressly given an absolute or unfettered discretion.
- (p) A reference to a document includes the document as modified from time to time and any document replacing it.
- (q) The word ‘month’ means calendar month and ‘year’ means 12 months.
- (r) The words ‘in writing’ include any communication sent by letter, facsimile transmission or email sent to the address or email address last notified by the recipient to the sender, or any other form of communication capable of being read by the recipient and sent to an address or contact point last notified by the recipient to the sender.
- (s) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.
- (t) Money amounts are stated in Australian currency unless otherwise specified.
- (u) A reference to a ‘notice’ means a notice that can be read, unless stated otherwise.

## 116. Dictionary

**Account Page** means a web page or facility we may provide that permits you to view and/or manage details of your account.

**Acceptable Use Policy** means a policy so titled and issued under clause 10.

**ACL** means Australian Consumer Law, which is set out in Schedule 2 of the Competition and Consumer Act 2010.

**ACL Consumer** means an individual who enters a Standard Form Contract for goods and/or services wholly or predominantly for personal, domestic or household use or consumption, as determined in accordance with ACL.

**ACL Small Business** means a small business which enters a Standard Form Contract as determined in accordance with ACL.

**ACMA** means Australian Communications and Media Authority.

**Advocate** means the same as determined in accordance with the TCP Code.

**Contract** means the same as Customer Contract.

**Contract Date** – see clause 25(b).

**Application Date** – see clause 25(a).

**Authorised Representative** means the same as determined in accordance with the TCP Code.

**Bill** means an invoice from us stating Charges that you are liable to pay.

**Billing Period** – see clause 71(a).

**Bundled Equipment** – see clause 17.

**Business Day** – Monday to Friday excluding public holidays (VIC).

**Business Hours** – 9.00am to 5.00pm Monday to Friday (AEST) excluding public holidays (VIC).

**Carriage Service** means the same as in the Telecommunications Act 1997.

**Carriage Service Provider** means the same as in the Telecommunications Act 1997.

**Carrier** means the same as in the Telecommunications Act 1997.

**Charges** means a charge applicable under your Customer Contract.

**Claim** means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim).

**Commercial Electronic Message** means the same as in the Spam Act.

**Consumer Contract** means the same as in the ACL.

**Consumer Guarantee** means the same as in the ACL.

**Credit Assessment Information** means information that we obtain from you and reasonably use for the purpose of assessing your capacity to pay for Equipment and Services you ask us to supply.

**Credit Management** means the process by which we:

- (a) help customers to manage their expenditure on Services;
- (b) manage any credit risk to us; and
- (c) collect outstanding debts from customers and former customers.

**Critical Information Summary** means the document forming part of the Customer Terms describing the Service and setting out specific details, inclusions, limitations, and terms and conditions for that Service.

**CSG (Customer Service Guarantee)** has the meaning detailed in Part 5 of Telecommunications (Consumer Protection and Service Standards) Act 1999

**Customer Contract** – see clause 4.

**Customer Terms** – see clause 1.

**Delivery Date** – see clause 37.

**Direct Debit** means a payment that is deducted by us from your nominated financial institution account.

**Early Termination Fee** – see clause 83.

**End User** – see clause 29(b).

**Equipment** means a handset, modem, SIM card, router, cabling or other hardware.

**Exploitative Use** – see clause 31(a).

**Facilities** means equipment and infrastructure of all kinds used to provide or in connection with the provision of a Service.

**Fair Use Policy** means a policy so titled and issued under clause 10.

**GST** means Goods and Services Tax.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999.

**Inbound Number** means a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answer points.

**Insolvency Event** includes an event where a receiver or receiver and manager is appointed over any material portion of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you,

you enter into a scheme of arrangement or deed of company arrangement with your creditors (other than for the purpose of solvent reconstruction or amalgamation), you become unable to pay your debts when they are due or are deemed under applicable law to be unable to pay your debts, you are wound up or become bankrupt, you suspend or cease to carry on all or a material part of your business, you take any step toward entering into a compromise or arrangement with creditors, or any other analogous event or circumstance occurs under the laws of any jurisdiction.

**Instant Messaging** means SMS, iMessage and any similar instant messaging service by which you and we can exchange text or voice messages.

**Internet Service** means a service that provides access to the Internet.

**Intervening Event** means an event beyond our reasonable control which interferes with and prevents or materially impairs us from providing the Services to you. Such events include any disruption to our or our Partners' networks, infrastructure and equipment (except where caused by our negligence, wilful default, or breach of our obligations under this Contract), failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods, pandemics, epidemics, government-mandated lockdowns or restrictions, or other natural disaster. For the avoidance of doubt, acts or omissions of our Partners shall not constitute an Intervening Event unless such acts or omissions were themselves caused by events beyond the reasonable control of both us and our Partners, and we have taken reasonable steps to mitigate the impact of such acts or omissions.

**IP Telephony Service** is a service that enables voice communications using an internet service.

**IPND** means the Integrated Public Number Database.

**Law** means any applicable law, Act of Parliament, regulation, mandatory standard and industry code binding on the parties, and including any lawful requirement or direction of any Regulator that has jurisdiction over the Services provided under this Contract.

**Loan Equipment** means Equipment that has been loaned to you by us, our Partners or Wholesale Suppliers.

**Loss** means loss or damage suffered by a party and arising directly in connection with or out of your Contract or any supply made under it (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions), and including but not limited to:

- (a) economic loss;
- (b) business interruption;
- (c) loss of revenue, profits, actual or potential business opportunities or contracts;
- (d) anticipated savings;

- (e) loss of profits;
- (f) loss of data;
- (g) indirect or consequential loss;
- (h) an obligation to indemnify another person;
- (i) an obligation to contribute to the compensation of loss or damage suffered by another person.

**Minimum Term** – see clause 15.

**NBN Co** means NBN Co Ltd ACN 136 533 741.

**Numbering Plan** means the Telecommunications Numbering Plan.

**Operational Directions** – see clause 13.

**Partner** means a third party that, under a contract with us or our related entities, provides:

- (a) access to Facilities they manage or maintain, or
- (b) content, or
- (c) a service – that we resupply to you.

**Partner Facilities** means Facilities that are managed or maintained by a Partner.

**Partner Requirements** – see clause 14.

**PDH** means personal, household or domestic.

**Periodic Entitlements** – see clause 7.

**Plan** means a particular set of features, entitlements, term of Contract, Charges and special conditions in connection with a Service.

**Post-Paid Plan** means a Plan where you can use all or part of the Service before you pay for it.

**Prepaid Plan** means a Plan where you must pay in full for Service before you use it.

**Privacy Act** means the Privacy Act 1988.

**Product** means goods and/or services.

**Rate Card** – see clause 63.

**Regulator** includes the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC) and any other relevant government or statutory body or authority with jurisdiction over telecommunications services in Australia, and includes the Telecommunications Industry Ombudsman (TIO) and Communications Compliance Limited.

**Service** means a service (and includes Equipment) which we provide to you, including but not limited to:

- (a) a Standard Telephone Service; or
- (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or
- (c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001.

**Service Schedule** means terms and conditions that apply to particular Services, usually as set out in a document titled as such.

**Service Start Date** – see clause 25(c).

**SLA** means a Service Level Agreement.

**Smart Number Rules** means the rules and requirements that govern Inbound Numbers and their use, and any binding directions of ACMA under them.

**Spam** means an unsolicited commercial electronic message within the meaning of the Spam Act.

**Spam Act** means the Spam Act 2003.

**Special Promotion** means a special promotion we may offer from time to time, on terms we notify in connection with the offer.

**Standard Form Contract** means a Customer Contract that is a standard form contract within the meaning of the ACL.

**Standard Phone Service** means the same as Standard Telephone Service as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999

**TCP Code** means Industry Code C628:2012 Telecommunications Consumer Protections Code.

**TCP Consumer** means the same as TCP Customer.

**TCP Customer** has the meaning given in the TCP Code, and includes:

- (a) an individual who acquires a Telecommunications Product from us for the primary purpose of personal or domestic use and not for resale; or
- (b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into a contract with us:
  - i. does not have a genuine and reasonable opportunity to negotiate the terms of the contract (other than terms relating to price, quantity, or the identity of the parties); and

- ii. has or will have an annual spend with us which is or is estimated on reasonable grounds to be, no greater than \$40,000 (adjusted annually for CPI).

**Telecommunications Goods** means any goods we supply for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service.

**Telecommunications Service** means:

- (a) a Carriage Service or any service we supply in connection with that service; and
- (b) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a Carriage Service.

**Term** means from the Contract Date until your Contract ends.

**Unfair** in relation to a term in a Consumer Contract or a Small Business Contract means the same as in section 24 of the ACL.

**Use-by Date** – see clause 8(b).

**Walk Away Rights** means the right to cancel your Contract (even during a minimum or fixed term) without penalty and you pay only:

- (a) usage or network access charges incurred up to the date your Contract ends;
- (b) outstanding amounts for installation of Equipment (calculated on a reasonable cost basis); and
- (c) outstanding amounts for Equipment calculated on a pro-rata basis reflecting the depreciated value of such Equipment using a straight-line depreciation method over the useful life of the Equipment (not to exceed 3 years for mobile devices and 5 years for other Equipment).

**We, us, etc** – see clause 2.

**Wholesale Supplier** includes Partners and any third party that supplies us with goods or services that we resupply to you.