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# Standard Form of Agreement

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### 1. About this document

This is Australian Phone Company's Standard Form of Agreement under section 479 of the Telecommunications Act, called our 'Customer Terms'.

### 2. About us

**Australian Phone Company PTY LTD** or 'we' means Australian Phone Company, ABN: 93 635 635 102, ACN: 635 635 102

## Part B – Customer Contracts

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### 3. Your Customer Contract

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

- (a) this Part B,
- (b) the General Terms in Part C, and
- (c) any Service Terms for the Service.

Service Terms for our main Services are in Part D to Part E below.

**4. 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.

**5. Peak & Off-peak** (a) A Plan may specify certain days and/or times as **Peak** or **Off-peak**.

(b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. The Plan will indicate how that applies in each case.

**6. Periodic Entitlements** (a) A Plan may include the right to use a certain amount of a Service during a certain period.

eg A local call Plan might let you make 50 local calls each month at no extra cost.

We call these **Periodic Entitlements**.

(b) Unused Periodic Entitlements do not carry forward 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.

## 7. Prepaid Plans

- 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 applies to all Prepaid Plans.
- c) Prepayments are not transferable between Plans – if you change Plans, there is no credit for unused prepaid entitlements (unless the Plan states otherwise).
- d) We may specify minimum and/or maximum prepayments that you may make.
- e) When your prepaid entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

## 8. Acceptable Use Policies

- (a) We may publish an Acceptable Use Policy for a Service or Plan.
- (b) An Acceptable Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service.
- (c) You must comply with an applicable Acceptable Use Policy.

For additional information regarding our Acceptable Use Policies, please visit [www.australianphone.com.au](http://www.australianphone.com.au) or alternatively to obtain a copy of the applicable policy – write to our Customer Information and Compliance Officer at [support@australianphone.com.au](mailto:support@australianphone.com.au)

## 9. 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.

## 10. Operational Directions

- (a) Acting reasonably, 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.

## 11. Partner Requirements – General

- (a) Telecommunications services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- (b) Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Partner Requirements.
- (c) You must comply with applicable Partner Requirements we notify.
- (d) **ACL Consumers** If a new or amended Partner Requirement is materially detrimental to you, you may have Walk Away Rights under clause 49.

## 12. Fixed terms

A Plan may specify a particular, 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 as at the end of that specified term, by giving 30 days' termination notice.
- (c) If neither of us gives a termination notice, it becomes month-to-month after that specified term.

## 13. Month-to-month, casual or 'no contract' terms

If a Plan or Contract is described as **month-to-month**, **casual** or **no contract** or similar, you or we may terminate it on 30 days' notice without penalty.

## 14. Bundled Equipment

- (a) Under some of our Plans or as a part of Special Offer, you will be supplied with Equipment (eg a VoIP phone adaptor, VoIP phone) without paying its full purchase price on delivery (**Bundled Equipment**).
- (b) Bundled Equipment may be:
  - (i) free – in which case we absorb its full cost;
  - (ii) amortised – in which case you pay \$0 up-front and we recoup the cost from you as part of Charges over a minimum term; or
  - (iii) subsidised – in which case we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.
- (c) Clause 29(c) explains when ownership of Bundled Equipment passes to you.

## 15. 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.

## 16. Australian Consumer Law (ACL)

- (a) Some provisions of the ACL apply to 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.
- (b) A term or note in our Customer Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.

## 17. ACL Consumers 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, and a term of your Contract would (except for this clause) be unfair (within the meaning of section 24 of the ACL) we will not apply or rely on that term without also taking steps to appropriately mitigate any unfairness.

(c) Those steps will be tailored to the particular situation, but may include eg offering you Walk Away Rights and a reasonable period to exercise them.

## 18. 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).

## 19. Understanding and navigating our Customer Terms

(a) Expressions used in our Customer Terms are explained in the Dictionary in clause 102.

(b) Rules for interpreting other expressions in our Customer Terms are set out in clause 101.

(c) The Index is at the end.

## Part C – General Terms

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## 20. 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, correct, complete and not misleading.

## 21. Processing an application

(a) We do not have to accept an application.

(b) Before we confirm that we can and will provide Service, 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.

(c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 59.

## 22. 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**.

## 23. Providing Service

(a) We will commence Service as soon as reasonably practicable after the Contract Date, and we may commence billing you as soon as the service is provisioned.

(b) We may provide Service using Our Facilities and/or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities our **Network**.

(c) We own our own Network Infrastructure in Multiple Datacenters across Australia and overseas, and not resellers of any other Telco. Network Status Page is available: <https://status.australianphone.com.au/>

**24. Use of Service by others** Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward. A person who makes use of a Service with your consent or from your premises or using your equipment or log-in credentials is your **End User**. The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions. You must 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.

**25. Using a Service**

(a) When using a Service, you must comply with:

- (i) your Customer Contract (including any applicable Acceptable Use Policy); and
- (ii) any applicable Laws.

(b) You must not use a Service:

- (i) in breach of any Law;
- (ii) to breach the rights of any person;
- (iii) to copy, download, supply to anyone else or communicate to the public copyright material without permission; (iv) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute; (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;
- (vii) in a way that is misleading or deceptive, where that is contrary to Law;
- (viii) in a way that results, or could result, in damage to property or injury to any person; or (ix) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.

**26. Telephone numbers**

(a) In connection with a Service, you may be allocated with telephone numbers.

(b) We must comply with Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.

(c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.

(d) You must not knowingly and deliberately:

- (i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it, or
- (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

(e) You do not own any number allocated to you, and (except where Law 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.



### **27. 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.
- (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.

### **28. Dynamic IP addresses**

- (a) Unless your Internet Service specifies that we shall provide you with a static (ie non-changing) 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.

### **29. Supplied Equipment**

- (a) This clause applies if we supply Equipment to you.
- (b) You assume risk in Equipment upon 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 completion of the minimum term; 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 in a fiduciary capacity as bailee for us.
- (e) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- (f) If you use in connection with a Service any Equipment we have not approved or provided:
  - (i) it must comply with all applicable Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
  - (ii) you are responsible for ascertaining what those technical standards and requirements are, since we will not be familiar with the Equipment; and
  - (iii) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
    - (A) our negligence, or
    - (B) our breach of the Consumer Guarantees.

### **30. Substituted Equipment**

- (a) On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may supply substitute Equipment that is substantially equivalent to the advertised Equipment.
- (b) On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may supply substitute or modified Equipment that is more suitable.

### **31. Delivery of Equipment**

(a) We will try 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.

(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.

### **32. 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 a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.

(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 relevant facilities for the location of the Equipment;

(vi) access to all relevant 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 to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.

(e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis) 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) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

### **33. Installation Charges**

(a) We will charge you installation Charges as stated (or indicated by) in your Contract.

(b) We will try to inform you in advance of any installation fees that may be charged by our Partners.

(c) If we find that installation will be more costly because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to revised Charges.

### **34. Additional Equipment services**

(a) You may ask us to supply additional services in relation to Equipment including without limitation, e.g. repairs.

(b) If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Partners at rates they determine).

### **35. Lost, stolen and damaged Equipment**

- (a) You are responsible for any lost, stolen and damaged Equipment owned by us, except if it is caused by us or our personnel.
- (b) You must pay for Equipment that is lost, stolen or damaged, except if that is caused by us or our personnel.

### **36. Return of Equipment**

On the termination of your Contract for any reason, you must return all our Equipment without delay.

### **37. TCP Customers and Authorised Representatives**

- (a) If you are a TCP Customer, 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 incapable of signing, in which case we shall work out a feasible and mutually acceptable alternative with you);
  - (iii) is verified by you in person or by telephone, including reasonable evidence of your identity (unless you are incapable of communicating with us in person or by telephone, in which case we shall work out a feasible and mutually acceptable alternative with you); and
  - (iv) states any limitations on the authority of your Authorised Representative (eg time limit; limit on access to your account or personal information; limit on authority to incur expense on your behalf).
- (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.

### **38. TCP Customers and 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 37.
- (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.

### **39. Rights and remedies for PDH goods and services**

Important consumer information: Full details of the consumer rights and remedies referred to in clauses 39 and 40 can be obtained from the Australian Competition and Consumer Commission (**ACCC**) at [www.accc.gov.au](http://www.accc.gov.au) or from a 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.

### **40. Rights and remedies for non-PDH goods costing no more than \$40,000**

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 \$40,000 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; and
- (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.
- (d) If we supply you with non-PDH Goods or Services that cost no more than \$40,000, 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.

#### **41. Personal injury or death**

To the extent that our negligence causes personal injury or death, we accept liability on normal principles of law.

#### **42. Service Level Agreements**

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 39 to 41, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

#### **43. Exclusion of implied terms and limitation of liability**

Important consumer information: Nothing in this clause 43 limits the consumer rights and remedies referred to in clauses 39 and 40. Subject to clauses 39, 40, 41 and 42:

- (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) 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.
- (c) We are never liable to you for, and you release us from any Claim for, any Contract Loss.

#### **44. Your liability to us – 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.
- (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) You must indemnify us for any loss or damage we suffer as a result of or in connection with: (i) your breach of your Contract;

- (ii) your use of a Service or Equipment; or
- (iii) a claim against us by an End User in relation to a Service we supply to you.

**TCP Customers:** We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

- (e) You indemnify us for any loss or damage we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment.
- (f) Your obligations under this clause survive termination of your Contract.

#### **45. Your liability to us – 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 expenses on request.

#### **46. 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 loss and reimburse our expenses on request.

#### **47. 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, we may charge you the reasonable cost of repairing it.

#### **48. General power to vary your Contract**

We may vary your Contract from time to time but:

(a) Variations do not have retrospective effect.

(b) If a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:

(i) the nature of the variation; and

(ii) the means by which notice is to be provided; and

(iii) the length of time remaining before the variation is to occur; and

(iv) any other matter that is reasonably relevant.

**ACL Consumers** We may both give you notice and offer you Walk Away Rights as explained in clause

#### **49. ACL Consumers and Contract variations**

This clause only applies to ACL Consumers.

(a) Reminder about ACL Consumers

**ACL Consumers** means individuals who enter certain kinds of contracts. Refer to the Dictionary for the detailed definition.

(b) Beneficial or minor detrimental impact

If a Contract variation will have a beneficial, or only a minor detrimental, impact on you:

(i) we will not give you notice, and

(ii) we will not give you Walk Away Rights.

(c) Variations arising from general amendments of our Partner agreements

If:

(i) a Partner supplies a service to us, and

(ii) we resupply that service to you (either as a separate service or as part of another service), and

(iii) the Partner insists on a variation to a term of our agreement with it (either during the term of the agreement, or on a renewal or extension or renegotiation), and

(iv) we believe in good faith and on reasonable grounds that the Partner has required or will require its wholesale customers or resellers generally to accept a term to the same or similar effect as the varied term, and

(v) that variation gives rise to a variation of your Contract –

then:

(vi) we will give you notice of the variation, but

(vii) we will not give you Walk Away Rights.

(d) Other variations

In any other case:

- (i) We will give you notice of the variation.
- (ii) We will also offer you the right to terminate your Contract within 14 days of the date of the notice without incurring charges other than:
  - (A) usage or network access charges to the date your Contract ends; and
  - (B) outstanding amounts for installation of Equipment; and
  - (C) outstanding amounts for Equipment that is compatible with other suppliers' services.

## **50. When variations take effect**

Contract variations take effect:

- (a) at the end of any applicable notice period; or
- (b) if no notice period applies, immediately.

## **51. Customer transfers**

### **(a) Transfer to us**

- (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) By making an application for Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.
- (iii) You must promptly pay your current supplier all amounts you owe it.

### **(b) 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 74.

## **52. Charges & payment (1): kinds of Charge**

We have various kinds of Charge, including:

- (a) installation Charges e.g. for installing Equipment,
- (b) set up Charges e.g. a one-off Charge when you start on an Internet Service,
- (c) periodic Charges e.g. a fixed monthly Charge for an ADSL Service,
- (d) usage Charges e.g. a Charge per call made on a local call 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 a second telephone line in your premises,
- (i) equipment Charges e.g. the price of a modem, VoIP adaptor, VoIP phone we sell to you – and other Charges that we state as part of a Plan.

## **53. Charges & payment (2): Prices** (a) Subject to clause 55, our prices are as stated in your Plan.

- (b) Our current prices at any time are referred to as our 'Price List'.

#### **54. Charges & 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 are spot priced Services.

#### **55. Varying Charges**

We may vary the Charges or add new Charges from time to time in accordance with clauses 48, 49 and 50.

#### **56. 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.

#### **57. 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 'Home phone + Internet Access for \$89.95 a month' where our Charges for the individual Services would be \$99.95 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.

#### **58. 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.

**TCP Customers:** We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.

- (b) If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction.

**TCP Customers:** We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.

- (c) We may use a security payment to pay any billed Charge that is overdue, where you have not disputed the Charge.

**TCP Customers:** Before we access a security payment, we will advise you that it will be accessed within 5 working days and provide you an opportunity to pay within that period.

#### **59. Credit management (2): Credit reports**



(a) Acknowledgment and authority that credit information may be given to a credit reporting agency

You acknowledge that section 18E(8)(c) of the Privacy Act allows us to give a credit reporting agency certain personal information about you, and you authorise us to do so. The information which may be given to a credit reporting agency is listed by Section 18E(1) of the Privacy Act and includes:

- (i) the fact that you have applied for credit, and the amount,
- (ii) the fact that we are a credit provider to you,
- (iii) payments which become overdue more than 60 days,
- (iv) advice that payments are no longer overdue,
- (v) in specified circumstances, that in our opinion, you have committed a serious credit infringement,
- (vi) that the credit provided to you by us has been discharged.

(b) Authority for us to obtain certain credit information

If you apply to us for personal or commercial credit, you authorise us:

- (i) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us,
  - (ii) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us,
  - (iii) to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by us,
  - (iv) to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.
- (c) Authority to exchange information with other credit providers

In accordance with Section 18N(1)(b) of the Privacy Act, you authorise us to give to and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about your credit arrangements. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. You acknowledge that the information may be used for the following purposes:

- (i) to assess your application,
- (ii) to assist you to avoid defaulting on your credit obligations,
- (iii) to notify other credit providers of a default by you,
- (iv) to assess your creditworthiness.

**60. 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 children):

- (a) You are responsible for all use of the Service and all Charges incurred under the Contract.
- (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:
  - (i) to uncap or unlimit any cap or other limits that apply to it,

- (ii) to change Plans,
- (iii) to disconnect Service, and
- (iv) to do anything else that you could do.

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

- (b) 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.

**61. When we can bill**

(a) Your **Billing Period** is the period between bills. Our standard Billing Period is monthly, but reserve the right to vary it.

(b) We can bill a part-period e.g. to align your Billing Period with the first day of each month.

(c) We may bill for Charges as follows:

Type of Charge:	payable:
(i) set up Charge	immediately
(ii) periodic Charge	14 days before the start of the period it relates to
(iii) usage Charge	at the end of each Billing Period
(iv) prepaid Charge	when you buy a prepaid Service
(v) call connection Charge	at the end of each Billing Period
(vi) miscellaneous Charge	at the end of each Billing Period
(vii) third party Charge	immediately
(viii) Equipment Charge	when or before we dispatch the Equipment

- (c) In any case, we may bill you for any Service we have already provided.

**62. Bills – General**

(a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.

(b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.

(c) 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.

**63. Supplying a bill – TCP Customers**

If you are a TCP Customer, we will supply a Bill to you for each current Billing Period, except where:

- (a) you pay by Automatic Direct Debit and the Charges for that Billing Period are for the same fixed amount in each Billing Period – and in that case you and we agree that, although a Charge for that fixed amount will be payable by you, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount; or
- (b) your Service is Prepaid.

#### **64. Extra Charges for bills and information**

(a) We may charge you an extra Charge if:

- (i) you request non-standard information about your bill or Charges, 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 \$2.50 per bill, or as otherwise notified in our Price List.

#### **65. Billing information – TCP Customers**

##### **65.1 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:

(a) for information relating to the 24 months prior to your request:

- (i) we shall provide it through at least one medium (of our choice) free of charge; and
- (ii) otherwise we may impose a Charge for providing the information, limited to the cost of the providing it;

(c) for information relating to a period between 24 and 72 months prior to your request, we may impose a Charge for providing the information, limited to the cost of the providing it;

(d) you may request provision of Billing information via other mediums and formats normally available from us and we may impose a Charge for providing the information in that way, limited to the cost of the providing it.

##### **65.2 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 65.1).

##### **65.3 Itemised Billing**

(a) We require notice in order to supply itemised billing details to you.

(b) Unless we advise you otherwise, the notice period is:

- (i) 14 days where the information relates to Charges first billed within the last 12 months;
- (ii) 21 days where the information relates to Charges first billed within 12 to 24 months; and
- (iii) otherwise – 28 days.

## **66. 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).

## **67. 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 notify you that a Partner may charge us if you report a fault and 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. You must pay or reimburse all such amounts.

## **68. GST**

(a) In this clause, an expression within a pair of asterisks means the same thing as in the GST Act.

(b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.

(c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any \*taxable supply\* for which that amount is paid. Otherwise:

(i) The \*consideration\* payable by you represents the \*value\* of any \*taxable supply\* for which payment is to be made.

(ii) If we make a \*taxable supply\* for a \*consideration\*, which represents its \*value\*, then you must pay immediately the amount of any GST payable in respect of the \*taxable supply\*.

(d) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an \*acquisition\* of a \*taxable supply\* from a third party, the amount you must pay, reimburse or contribute will be the value of the \*acquisition\* by us less any \*input tax credit\* to which we are entitled plus, if our recovery from you is a \*taxable supply\*, any GST payable under this clause.

(e) We may recover any GST payable under this clause in the same manner as our Charges.

## **69. Late billing**

(a) We may late bill.

**TCP Customers** We shall only do so up to 160 days in arrears.

(b) Some Charges in a Bill may relate to a previous Billing Period.

## 70. When you must pay

(a) Where a Direct Debit or credit card arrangement applies, we may Extract payment for Charges:

- (i) after it is billed (if we issue a Bill for the Service); or
- (ii) after the end of the current Billing Period (if we do not issue a Bill for the Service).

**TCP Customers** All Billing information will be accessible before we do so, but you agree that we need not allow 10 working days before Extraction.

(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 14 days after its Bill Date.

## 71. 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. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

**TCP Customers:** We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

(b) In any other case:

- (i) Direct Debit is our preferred payment method and incurs no surcharges.
- (ii) You may pay by MasterCard or Visa or any other card we notify you that we accept.
- (iii) Payments made using credit cards may be subject to a surcharge as notified on our website

(c) If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

## 72. 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 1.5% a month from the Bill Date until it is paid in full, or
- (ii) a reasonable late fee, and
- (iii) any collection fees and expenses that we incur.

**TCP Customers:** We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

## 73. 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 72(b)(iii) may:

(i) include the external agency's collection fee (which was 17.5% of the amount to be recovered as at 1 January 2012) and/or

(ii) include a minimum recovery charge.

**TCP Customers:** We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

#### **74. 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 (eg 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 an early termination.

#### **75. Billing disputes**

(a) Our records of what you owe us are deemed to be right unless you show them to be wrong.

**ACL Consumers** This does not apply to you.

(b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.

**TCP Customers** 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 days.

(c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

#### **76. Billing for unauthorised use of your account**

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of Consumer Guarantees.

#### **77. Billing agents**

(a) We may bill you using a billing agent (which may be another company in our group).

(b) Payment to our billing agent constitutes payment to us.

(c) Failure to pay our billing agent constitutes failure to pay us.

#### **78. Calls to Mobiles**

(a) Unless otherwise expressly stated, our prices for usage of mobile phones (eg calls, messaging, data transfers) are always quoted on the basis that:

(i) you are using the phone in Australia, and

(ii) any phone you are calling or messaging is in Australia.

(b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

#### **79. 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 a dial up internet Service, you must have a telephone line, and your modem will make calls using it.
  - (ii) In order to use a local call Service, you must have a suitable handset.
- (b) You are solely responsible for the costs of all third party goods and services you acquire.

#### **80. Your cooperation**

- (a) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving 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 a Partner may be required:
- (i) to intercept communications over the Service, and
  - (ii) monitor usage of the Service and communications over it.

#### **81. Complaints – General (but see clause 82 if you are a TCP Customer)**

- (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 complaints procedure. Information on our complaints procedure may be obtained by contacting us.
- (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) We may bill you a reasonable complaint handling Charge.

#### **82. TCP Customers and Complaints**

If you are a TCP Customer:

- (a) We will handle complaints in accordance with the Complaint Handling Procedure on our website, and the TCP Code.
- (b) Our Complaint Handling Procedure will be free of charge other than for:
- (i) call costs at local rates or low cost when calling from our network;
  - (ii) a costs recovery levy of providing access to information we hold about you that we collected more than 2 years earlier;
  - (iii) a costs recovery levy of providing information that is not in the standard form generated by our customer records and billing systems or is equivalent to more than 50 A4 pages.



### **83. Termination & suspension by us (1): Early termination**

We may terminate a Contract, or suspend or restrict Service if, in relation to that or any other Contract or Service:

- (a) you fail to pay us any money that is due,
- (b) you threaten not to pay us money that you owe us, or will owe us in the future,
- (c) you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement),
- (d) you are in material breach of your Contract,
- (e) you become insolvent,
- (f) we reasonably believe that you have vacated your Premises without notice to us,
- (g) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm,
- (h) it becomes technically infeasible for us to continue Service,
- (i) you use a Service in a way that places unreasonable demands on our Network,
- (j) we are unable to obtain access to your Premises as required to provide, maintain or repair the Service,
- (k) there is an emergency that warrants it,
- (l) you have told us that you no longer require the Service,
- (m) if we reasonably suspect fraud or attempted fraud involving the Service,
- (n) we become entitled to suspend the Service, and the suspension continues for more than a month,
- (o) 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
- (p) in any other circumstances stated elsewhere in our Customer Terms.

We may charge a reconnection Charge following action under this clause unless it resulted from our mistake.

### **84. Termination & suspension by us (2): Other events**

(a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or become bankrupt, insolvent or subject to a winding-up order or similar insolvency event, if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract.

(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.

## **85. 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 assess 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.

(b) Except where clause 85(a) applies, we will give you at least 5 working days' notice prior to disconnecting, suspending or restricting your Service, including an indication of the earliest date disconnection, suspension or restriction could occur and the date of issue of correspondence if you are informed in writing – and we shall otherwise comply with the rules in the TCP Code about disconnection, suspension or restriction of the Service.

## **86. Early termination by you**

(a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.

(b) Our Plans are priced on the basis that you will complete your Contract.

(c) Where you are entitled to terminate your Contract early (eg 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,
- (ii) any applicable amounts under clause 86(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 (including an Early Termination Fee) that is specified in the applicable Plan or the Price List.

(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.

## **87. Termination by you**

(a) You may terminate your Contract:

- (i) (except during a fixed or minimum term) at any time, on 30 days written notice; or

(ii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 14 days.

(b) You may also terminate your Contract:

- (i) in any other circumstances where your Contract provides for it; or
- (ii) (in a case where you have a non-excludable legal right to do so) by transferring the Service from us to another supplier. We will cancel the Service and terminate your Contract immediately once the other supplier has informed us that you have elected to transfer the Service from us to that other supplier.

## **88. Post-termination**

If a Contract ends:

- (a) Our obligations to you under that Contract are at an end.
- (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, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.
- (e) You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)
- (f) Any cause of action that either of us had against the other predating 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.

## **89. Suspension of Service**

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency or your death), 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 Customer Contract (which is not the subject of a *bona fide* dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
- (c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are the subject of an Insolvency Event;
- (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 that you may be a credit risk in relation to the Service;
- (h) you are a natural person (and not a company) and you die;

- (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 Customer Contract.

## **90. 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.

## **91. 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, price lists, 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.

## **92. Carrier or Carriage Service Provider**

- (a) You promise that you are not a carrier or a Carriage Service Provider.
- (b) If you do become a Carrier or a Carriage Service Provider, then we or our Partners may immediately cancel the Service and terminate your Contract by notice to you.

## **93. 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, you acknowledge that the rate plan and Charges applicable to the provision of the Service may be altered to the nearest applicable Partner rate plan.

## **94. Assignment**

- (a) We may assign or novate all or part of our rights and obligations under your Contract without your consent.
- (b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

## **95. Notices 95.1 How we give notices**

We may give notice to you in connection with, or as required by our Customer Terms:

- (a) in person;

- (b) by fax;
- (c) by email;
- (d) by post;
- (e) by SMS; or
- (f) in any other way allowed by law – or by sending you (by one of the above means) notice of the address of a web page where the notice can be read.

#### 95.2 Address or number for notices

We may direct a notice to:

- (a) a number or address that we reasonably believe to be current;
- (b) in any event, the most recent number or address that you have notified to us; and
- (c) if you are a company, your registered office.

#### 95.3 A notice is taken to have been received:

- (a) if we deliver it to you in person – at the time of delivery;
- (b) if we fax it during business hours in your locality – two hours later, subject to our fax machine receiving a successful transmission confirmation;
- (c) 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;
- (d) if we email it during business hours in your locality – two hours later, subject to a ‘delivery failure’ message not being received;
- (e) 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;
- (f) if we post it – at noon on the second Business Day after posting;
- (g) if we SMS it – two hours later;
- (h) if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
- (i) if there is evidence that you received it at an earlier time – that earlier time.

### 96. Governing law

Your Contract is governed by and must be construed in accordance with the laws of Victoria. You and we submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia. **ACL Consumers** 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 exclusive jurisdiction of the courts of that State or Territory and the Commonwealth of Australia.

### 97. No waiver

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Contract (such as a right that we have due to your breach of your Contract) does not operate as a waiver of the power or right.

### 98. Commission

We may pay a commission to any agent, employee, contractor or dealer in connection with the acquisition of the Services and your Customer Contract.

## 99. 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.

## 100. 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 – 03 9999 82 89
- (b) National Relay Service – 133 677
- (c) Translating and Interpreting Service – 131 450

## 101. Interpreting your Contract

- (a) If an expression is defined in the Dictionary in clause 102, 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 red', then 'coloured' means 'painted red'.)
- (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) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) Where one thing is said to include one or more other things, it is not limited to those other things.
- (h) There is no significance in the use of gender-specific language.
- (i) A 'person' includes any entity which can sue and be sued.
- (j) A 'person' includes any legal successor to or representative of that person.
- (k) A reference to a law includes any amendment or replacement of that law.
- (l) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (m) Anything we can do, we may do through an appropriately authorised representative.
- (n) Any matter in our discretion is in our absolute and unfettered discretion.
- (o) A reference to a document includes the document as modified from time to time and any document replacing it.
- (p) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (q) The word **month** means calendar month and the **year** means 12 months.
- (r) The words **in writing** include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- (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.

## 102. Dictionary

*The expression:*

Account Page

Acceptable Use Policy

ACL

ACL Consumer

Application Date

Advocate

Authorised Representative

Automatic Direct Debit

Bill

Billing Period

Bundled Equipment

Business Day

Carriage Service

Carriage Service Provider

Carrier

Charge

Claim

Consumer Guarantee

Contract Loss

*means:*

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

see clause 8

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

an individual who enters a Customer Contract for goods and/or services wholly or predominantly for personal, domestic or household use or consumption

see clause 22(a)

as in the TCP Code

as in the TCP Code

a periodic payment that is automatically deducted by us from your nominated financial institution account

an invoice from us which advises you of the total of each Charge that is due for payment

see clause 61(a)

see clause 14

Monday to Friday excluding statutory holidays

as in the Telecommunications Act

as in the Telecommunications Act

as in the Telecommunications Act

a charge applicable under your Customer Contract

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

as in the ACL

loss or damage suffered by a party and arising 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 whether or not loss or damage the risk of which another party was or should have been aware), including but not limited to:

- economic loss;
- business interruption;
- loss of revenue, profits, actual or potential business opportunities or contracts;
- anticipated savings;

	<ul style="list-style-type: none"> <li>• loss of profits;</li> <li>• loss of data;</li> <li>• indirect or consequential loss;</li> <li>• an obligation to indemnify another person;</li> <li>• an obligation to contribute to the compensation of loss or damage suffered by another person</li> </ul>
Customer Contract	see clause 3
Contract	same as Customer Contract
Contract Date	see clause 22(b)
Customer Terms	see clause 1
Credit Management	<p>the process by which we:</p> <ul style="list-style-type: none"> <li>• help customers to manage their expenditure on Services;</li> <li>• manage any credit risk to us; and</li> <li>• collect outstanding debts from customers and former customers</li> </ul>
Delivery Date	see clause 31
Dictionary	this table of defined terms
Direct Debit	a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit
Early Termination Fee	see clause 74
End User	see clause 24(b)
Equipment	a handset, modem, router or other hardware
Extract	deduct an amount by Direct Debit
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
General Terms	the terms in Part C
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999
Inbound Number	a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answerpoints
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts when they are due, you are wound up or become bankrupt, or any



Internet Service	other analogous event or circumstance occurs under the laws of any jurisdiction a Service that provides access to the Internet
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Suppliers, any disruption to our or our Suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster
Law	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)
Network	see clause 23
Numbering Plan	the Telecommunications Numbering Plan
Off-peak	see clause 5
Operational Directions	see clause 10
Our Facilities	Facilities we own and/or operate
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content that we resupply to you
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	see clause 11
PDH	personal, household or domestic
Peak	see clause 5
Periodic Entitlements	see clause 6
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
Post-Paid Plan	a Plan where you can use all or part of the Service before you pay for it
Prepaid Plan	a Plan where you must pay in full for Service before you use it
Price List	see clause 53
Privacy Act	Privacy Act 1988
Product	goods and / or services
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or

	statutory body or authority and the Telecommunications Industry Ombudsman and Communications Compliance Limited
Service	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 Level Agreement	a written service quality assurance titled as such
Service Start Date	see clause 22(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	see clause 31
SLA	a Service Level Agreement
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Spam Act	Spam Act 2003
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Telephone Service	as in section 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999
TCP Code	Industry Code C628:2012 Telecommunications Consumer Protections Code
TCP Customer	(a) a person 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; and (ii) has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000

Telecommunications Act	Telecommunications Act 1997
Telecommunications Goods	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 Product	Telecommunications Goods and/or a Telecommunications Service
Telecommunications Service	<ul style="list-style-type: none"> <li>• a Listed Carriage Service or any service we supply in connection with that service; and</li> <li>• a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a Listed Carriage Service</li> </ul>
Unfair	in relation to a term in a Consumer Contract means the same thing as in section 24 of the ACL
Use-by Date	see clause 7(b)
Walk Away Rights	the right to cancel your Contract (even during a minimum or fixed term) and pay only usage or network access charges to the date your Contract ends, and outstanding amounts for installation of Equipment, and outstanding amounts for Equipment that is compatible with other suppliers' services
We, us, etc	see clause 2
Wholesaler Supplier	unless stated otherwise – Telstra and/or Optus

## Part D – ADSL Internet Service Terms

### 103. Partner Requirements – ADSL Services

Where we supply you with an ADSL Internet Service:

- (a) The Service can only be provided over a copper wire pair approved by Telstra Corporation where Telstra Corporation or a reseller of Telstra Corporation supplies an operational standard telephone service over that copper wire pair.
- (b) You warrant to us that you are the same user to whom Telstra Corporation or a reseller or agent of Telstra Corporation supplies such a standard telephone service over that copper wire pair.

- (c) You acknowledge that the ADSL Internet Service will only be supplied for so long as you continue to acquire such a standard telephone service over that copper wire pair.
- (d) You acknowledge that the ADSL Internet Service may be terminated where you cease to acquire, or suspend or terminate, such a standard telephone service over that copper wire pair;
- (e) You acknowledge that if an ADSL Internet Service has been terminated under clause 103(d):
  - (i) our Wholesale Supplier may charge an early termination fee in respect of the ADSL Internet Service;
  - (ii) we may recoup that early termination fee from you;
  - (iii) if you want the ADSL Internet Service reconnected, our Wholesale Supplier may charge us a connection fee; and
  - (iv) we may recoup that connection fee from you.
- (e) You acknowledge that, in some instances such as where you are acquiring a monitoring service (meaning a service for the monitoring of your premises such as remote alarm services), additional equipment at your premises such as central splitters and network termination devices must be installed by you at your own cost before the ADSL Service can be provided. This additional equipment must be installed prior to ADSL Service activation.
- (f) You acknowledge that the installation and operation of the ADSL Service may cause temporary disruption in the standard telephone services received by you or a monitoring service.
- (g) You acknowledge that the installation and operation of a monitoring service may cause temporary disruption to the ADSL Service.
- (h) You acknowledge that the installation and operation of the ADSL Service may mean that some incompatible products that might have been available from Telstra Corporation to you will not be supplied to the you using that copper wire pair – a complete list of incompatible products is available upon request).
- (j) You acknowledge and must ensure that any provider of a monitoring service used by you has been notified that:
  - (i) installation and operation of an ADSL Service may cause temporary disruption in the standard telephone services or a monitoring service received by you; and
  - (ii) installation of equipment at your premises such as central splitters and network termination devices may be required under clause 103(f).
- (k) As far as the law allows, you release our Wholesale Supplier and its third party supplier(s) from all liability to the you, and you indemnify them against all costs, expenses, liability, loss or damage incurred or suffered by them in conjunction with any claims, actions or proceedings against them (including third party claims or claims by you or Telstra Corporation) arising out of the following (to the extent that the liability is caused by the provision or cancellation of the ADSL Service):
  - (i) disruption of your telephone service or monitoring service;
  - (ii) cancellation of the ADSL Service;
  - (iii) suspension of the provision of the ADSL Service or to a particular internet address(es);
  - (iv) cancellation of, or refusals to provide, any incompatible products; and
  - (v) possible breaches of the Telecommunications (Customer Service Guarantee) Standard in respect of you.

**104. Partner Requirements – Mobile Telephone Services**

Where we supply you with a Mobile Telephone Service:

- (a) If arrangements between our Wholesale Supplier and us are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Mobile Telephone Services to you may be altered to the nearest applicable rate plan of our Wholesale Supplier in the event that our rights and obligations under your Contract are assigned or novated to our Wholesale Supplier so that our Wholesale Supplier provides the Mobile Telephone Services directly to you.
- (b) You may not resell or resupply the Mobile Telephone Services provided by us.
- (c) We shall have the right to assign or novate all or part of its rights and obligations under your Contract to our Wholesale Supplier without your consent. You cannot assign or novate all or part of your rights and obligations under your Contract other than in accordance with this clause 104(c).

For the purposes of novation, you agree to novate your Contract to our Wholesale Supplier on receipt of a notice from either us or our Wholesale Supplier, such novation to be on terms no less favourable than the terms of your Contract in existence immediately prior to the novation.

- (d) You consent to allow us to disclose to our Wholesale Supplier or Optus Mobile Pty Ltd ACN 054 365 696 (or its Related Bodies Corporate) your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you.

You consent to allow our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by us, our Wholesale Supplier or by Optus Mobile Pty Ltd. Without the express permission of us, our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.

- (e) Our Wholesale Supplier and Optus Nobile Pty Ltd are not liable to you (in contract, tort (including negligence) or otherwise) in relation to any Mobile Telephone Service resupplied to you by us, any delay or any failure to provide Mobile Telephone Services.
- (f) You promise that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).
- (g) If you become a Carrier or Carriage Service Provider, then we, our Wholesale Supplier or Optus Mobile Pty Ltd may immediately cancel the Mobile Telephone Service by notice to you. If we, our Wholesale Supplier or Optus Mobile Pty Ltd does so, that party will negotiate in good faith with you to enter into an agreement governing supply of the Mobile Telephone Service, on terms to be agreed.

**105. We notify you of the following Partner Requirements:**

- (a) If our Wholesale Supplier has not been paid for a Service we have provided to you, and if you have not paid us for it, you must pay the amount you owe us to the wholesale supplier on demand.
- (b) You consent to us and our Wholesale Supplier exchanging your details and information about or in connection with your personal credit, commercial activities or commercial creditworthiness.
- (c) Our Wholesale Supplier may provide a Service that we resupply to you by means of a different carrier from time to time and as it sees fit.

**If you have any questions call us on**

**03 9999 82 89**

**[www.australianphone.com.au](http://www.australianphone.com.au)**