

## Part A – Introduction

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### 1. About this document

This document is:

- (a) Beagle’s Standard Form of Agreement under section 479 of the Telecommunications Act 1997 (where it applies); and
- (b) Beagle’s standard terms and conditions of trade (in all other cases); and
- (c) called our ‘Business Terms’.

### 2. Beagle

‘Beagle’, ‘Beagle Telecommunications’, ‘Beagle Telecom’, ‘us’, ‘our’ or ‘we’ means Beagle Internet Pty Ltd ACN 107 903 195.

## Part B – Customer Contracts

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### 3. Your Customer Contract

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

- (a) the General Terms in Part C;
- (b) any Service Terms for that Service; and
- (c) any Special Terms we agree on.

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

### 4. Special Terms

- (a) Special Terms are additional written terms set out in an order form, proposal or similar document that we agree to, when contracting with you for the provision of a Service.
- (b) Even if we agree to Special Terms, these Business Terms will always apply to your Contract except to the extent the Special Terms exclude or modify them, expressly or by necessary implication.
- (c) Despite clause 4(b), Special Terms can only modify or exclude clauses 40 to 47 of Part C if they reference those clauses by number and expressly modify or exclude them.

**5. Order of priority**

Subject to clause 4(c), to the extent of any inconsistency:

- (a) Service Terms override General Terms; and
- (b) Special Terms override General Terms and Service Terms.

**6. Plans**

- (a) Many Services are available under different Plans, each with its own features, entitlements, term of contract, Charges and special conditions.
- (b) Your Customer Contract includes the terms of any Plan you select.

**7. 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.
- (c) We may bill you, and Your Contract operates, accordingly.

**8. Periodic entitlements**

- (a) A Plan may include the right to use a certain amount of a Service during a certain period.  
  
e.g. An Internet Plan might let you download a gigabyte of data each month at no extra cost.  
  
e.g. A local call Plan might let you make 20 local calls a 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 the periodic entitlement, further Charges may apply or a Service may be limited in some way. Your Plan will give details.

**9. 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 are expired 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 entitlements (unless the Plan states otherwise);
- (d) we may fix minimum and/or maximum prepayments that you may make; and

- (e) when your prepaid entitlements are used up we may cease Service. We are not responsible for the consequences of Service ceasing.

**10. Fair Use Policies**

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

For additional information regarding any Fair Use Policy, please see our website.

**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. 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.

**13. 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.

*TCP Customers* If a new or amended Partner Requirement is materially detrimental to you, you may have Early Termination Rights under clause 50.

**14. Partner Requirements – Specific**

We notify you of the following Partner Requirements:

- (a) 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.
- (b) 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.

**15. Fixed terms**

A Plan may specify a particular, fixed or minimum term. If so:

- (a) A Contract for the Plan is a contract for at least that term.
- (b) It terminates as at the end of that term if you or we give 30 days termination notice.
- (c) If neither of us gives a termination notice, it becomes month-to-month after that term.

**16. 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 written termination notice without penalty.

**17. Bundled Equipment**

- (a) Under some of our Plans, you will be supplied with Equipment (e.g. a mobile handset or modem) 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 30(c) explains when ownership of Bundled Equipment passes to you.

**18. Telecommunications Consumer Protections ('TCP') Code**

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

**19. Consumer Guarantees**

- (a) Under some Australian laws, consumers (as defined in the laws) 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).

**20. Understanding and navigating our Business Terms**

- (a) Expressions used in our Business Terms are explained in the Dictionary in clause 99.
- (b) Rules for interpreting other expressions in our Business Terms are set out in clause 98.
- (c) The Index is at the end.

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**Part C – General Terms**

**21. Application for Service**

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

**22. 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 60.

**23. Relevant dates**

- (a) The date when you make an application is the 'Join 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'.

**24. 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'.

**25. 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 remuneration or reward.
- (b) A person who makes use of a Service with your consent or from your premises or using your equipment or log-in password is your 'End User'.
- (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
- (d) 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.

**26. Using a Service**

When using a Service, you must comply with:

- (a) your Customer Contract (including any applicable Fair Use Policy); and
- (b) any applicable laws, regulations, mandatory standards and industry codes and with the requirements or directions of any Regulator ('Laws').
- (c) 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 2003 (Cth)*;
  - (vii) in a way that is misleading or deceptive;
  - (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.

**27. Telephone numbers**

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

- (b) We must comply with Telecommunications 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.

**28. 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.

**29. Dynamic IP addresses**

- (a) Unless your Service specifies a static (i.e 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 a Service with a dynamic IP address. If you intend to operate such a server you should use a Service with a static IP address.

**30. 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 technical and interconnection standards and requirements, including those set by its supplier or the manufacturer;
  - (ii) you are responsible for ascertaining what those technical and interconnection 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:
    - our negligence; or
    - our breach of a Consumer Guarantee.

**31. PPS Law**

- 31.1 This clause applies to the extent that our customer contract provides for or contains a ‘security interest’ for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPS Law**) (or part of it).
- 31.2 The security interest granted to us is a ‘purchase money security interest’ (**PMSI**) to the extent that it can be under section 14 of the PPS Law.
- 31.3 We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
  - (a) Ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) Enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
  - (c) Enabling us to exercise rights in connection with the security interest.

- 31.4 Our rights under our customer contract are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our customer contract, and/or under such other law, as we see fit.
- 31.5 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are “contracted out” of our customer contract in respect of goods that are not used predominantly for personal, domestic or household purposes:
- sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires us to give a notice to you); section 132(3)(d) (consents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 31.6 The following provisions of the PPS Law:
- Section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral),
  - Confer rights on us. You agree that in addition to those rights we shall if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any equipment, not only under those sections but also, as additional and independent rights, under our customer contract and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- 31.7 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 31.8 The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.
- 31.9 You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with our express written consent.
- 31.10 You must not lease, hire, bail or give possession of ('sub-hire') the equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our customer contract.
- 31.11 You may not vary a sub-hire without our prior written consent (in our absolute discretion).
- 31.12 You must ensure that we are provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and the state of accounts and payment under the sub-hire and the location and condition of our equipment.
- 31.13 You must take all steps including registration under PPS Law as may be required to:
- (a) Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS law;
  - (b) Enabling you to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
  - (c) Enabling each of us to exercise our respective rights in connection with the security interest.
- 31.14 To assure performance of your obligations, you give us an irrevocable power of attorney to do anything we consider you should do under our customer contract.
- 31.15 We may recover from you the cost of doing anything under this clause, including the registration fees and the costs notification.

## **32. 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 original 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.

**33. 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.

**34. 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 issued by us) 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:
  - our negligence; or
  - 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.

**35. Installation Charges**

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

**36. 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).

**37. 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 it is caused by us or our personnel.

**38. Return of Equipment**

On the termination of your Contract for any reason, you must immediately return all our Equipment.

**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.

If we supply you with goods or services of a kind ordinarily acquired for personal, domestic or household ('PDH') use or consumption you have extensive rights under the Australian Consumer Law ('ACL') including consumer guarantees and remedies.

Nothing in your Contract limits those rights and remedies in any way.

**40. Rights and remedies for non-PDH goods costing no more than \$100,000**

If we supply you with goods or services *not* of a kind ordinarily acquired for personal, domestic or household use or consumption but costing no more than \$100,000 you have extensive 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.

**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 allowed to you under 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. Liability of our Partners**

You release our Partners from any liability to you, whether in contract, tort (including negligence) or otherwise, in relation to any Service or any delay in providing or any failure to provide a Service to you.

**45. 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.
- (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.

**46. 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.

**47. 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.

**48. 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.

**49. 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.

*TCP Customers* We may both give you notice and offer you Early Termination Rights as explained in clause 50.

## **50. TCP Customers and Contract variations**

This clause only applies to TCP Customers.

### **(a) Reminder about TCP Customers**

'TCP Customers' means consumer and some business customers. 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 do not have to give you notice.
- (ii) We do not have to give you Early Termination Rights.

### **(c) Variations arising from our Partner agreements**

If a variation results from an amendment to our agreement with a Partner whose service we resell to you:

- (i) We shall give you written notice of the variation.
- (ii) We shall give the notice (a) by delivering it in person or by (b) pre-paid post to your address in the our records or (c) by email, with your prior consent or (d) by including the information on or in a bill, including electronically where you have expressly consented to receiving an electronic bill and (e) for pre-paid telecommunications services, by otherwise making it available and informing you how to obtain it.
- (iii) We will also offer you the right to terminate your Contract within 42 days of the date of the notice without incurring charges other than:
  - 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.

### **(d) Content and premium services**

If a variation results from an increase in the price we are charged by a third party supplier of content or premium service that we resupply to you:

- (i) we will give you reasonable notice of the change if you have used the service within the previous 6 months; and
- (ii) you may elect to not use that service without attracting any additional Charges.

(e) Other variations

In any other case:

- (i) We shall give you at least 21 days written notice of the variation.
- (ii) We shall give the notice (a) by delivering it in person or by (b) pre-paid post to your address in the our records or (c) by email, with your prior consent or (d) by including the information on or in a bill, including electronically where you have expressly consented to receiving an electronic bill and (e) for pre-paid telecommunications services, by otherwise making it available and informing you how to obtain it.
- (iii) We will also offer you the right to terminate your Contract within 42 days of the date of the notice without incurring charges other than:
  - 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.

**51. 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.

**52. 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

If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.

**53. 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 we sell to you –
- and other Charges that we state as part of a Plan.

**54. Charges & payment (2): Prices**

- (a) Our prices are as stated in your Plan – subject to clause 56.
- (b) Our current prices at any time are referred to as our ‘Price List’.

**55. 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.

**56. Varying Charges**

We may vary the Charges or add new Charges from time to time in accordance with clause 49.

**57. 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.

**58. 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 \$129.95 a month' where our Charges for the individual Services would be \$149.95 a month.

- (b) Each Service in a bundle is subject to a separate but dependant 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; or
  - (iii) We may charge you the Early Termination Fee for the Service.

**59. 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.
- (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.
- (c) We notify you that we may use a security payment to offset any undisputed amount that you owe us.

*TCP Customers:* We will only require security if there are reasonable grounds to believe you to be a credit risk.

**60. 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 1988* 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; and
- (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; and
  - (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; or
- (iv) to assess your creditworthiness.

**61. 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):

- (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:
  - to uncap or unlimit any cap or limits that apply to it,;
  - to change Plans;
  - to disconnect Service; and
  - to 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.

**62. When we can bill**

- (a) Your 'Billing Period' is the period between bills. Our standard Billing Period is monthly, but we reserve the right to vary it.
- (b) We can bill a part-period e.g. to align your Billing Period with the Join Date , Contract Date or the Service Start Date.
- (c) We may bill for Charges as follows:

Type of Charge:	payable:
• set up Charge	immediately
• periodic Charge	14 days before the start of the period it relates to or immediately where your periodic Charge is fixed and varies by no more than 10% each month
• usage Charge	at the end of each Billing Period
• prepaid Charge	when you buy a prepaid Service
• call connection Charge	at the end of each Billing Period
• miscellaneous Charge	at the end of each Billing Period
• third party Charge	immediately
• Equipment Charge	when or before we dispatch the Equipment

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

**63. How we can send you a bill**

- (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.

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

We may charge you an extra Charge if:

- (a) you request non-standard information about your bill or Charges; or

- (b) you ask us to deliver a bill by a method that is not the standard method for a Plan.

*TCP Customers:* We will only make such a Charge when and as permitted by the TCP Code e.g. We will not levy it without first informing you of the amount or how it will be calculated.

**65. 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.

**66. 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.

**67. Late billing**

- (a) We may late bill.
- (b) We shall only do so up to 190 days in arrears.

**68. When you must pay**

- (a) Where a direct debit or credit card arrangement applies, we may debit any Charge when it is billed or billable.
- (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.

**69. How you can Pay**

- (a) If your Plan specifies 'credit card' or similar (**Direct debit**) then:
  - (i) Direct debit payment is a precondition to supply of Service to you.
  - (ii) We may suspend Service if it is not maintained.  
*TCP Customers: We will not suspend all Services indefinitely. If a suspension continues for 14 days, we will terminate your Contract or lift the suspension within another 30 days.*
  - (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.
- (b) In any other case:
  - (i) Direct debit is our preferred payment method and incurs no surcharges.
  - (ii) You *may* pay by a direct deposit, but must pre-pay six (6) increments of your regular monthly charge.
- (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.

**70. 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.

**71. 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 70(b)(iii) may:
  - (i) include the external agency's collection fee; and/or
  - (ii) include a minimum recovery charge.

**72. 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, a reasonable estimate of our loss and damage and lost profit as a result of an early termination.

**73. Billing disputes**

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

*TCP Customers:* 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:* You may defer payment of a genuinely disputed amount while your dispute is being investigated but:

- (i) we can require written evidence that your dispute is genuine;
- (ii) you must still pay all undisputed portions; and
- (iii) if we determine that some or all of the disputed portion is payable, you must pay that amount within 5 days.

*TCP Customers:* We will not take credit management action in relation to a genuinely disputed amount while it is being investigated by us, the TIO or a relevant recognised agency but:

- (iv) we can require written evidence that your dispute is genuine;
- (v) you must still pay any undisputed portion; and
- (vi) 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.

**74. 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.

**75. Billing agents**

- (a) We may bill you using a billing agent (which may be another company associated with us).
- (b) Payment to our billing agent constitutes payment to us.
- (c) Failure to pay our billing agent constitutes failure to pay us.

**76. Calls to Mobiles**

- (a) Our prices for calls to mobile phones are always quoted on the basis that the mobile telephone you are calling has its home network in Australia and is located in Australia when you call.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

**77. 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.

**78. Commissions**

We may pay a commission to:

- (a) any of our employees, agents, contractors or other representatives,
- (b) the employees, agents, contractors or other representatives of any company in our corporate group –

in connection with a Service to you.

**79. 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.

**80. 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 complaints procedure. Information on our complaints procedure may be obtained from our website.
- (c) You are also entitled to make a complaint to the Telecommunications Industry Ombudsman (**TIO**) and possibly to the Consumer Affairs office (however described) in your state. However, you must first notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- (d) A complaint made to the TIO prior without giving us a reasonable opportunity to resolve your complaint constitutes a breach of your Contract.
- (e) We may bill you a reasonable complaint handling Charge.

*TCP Customers:* We will not impose a complaint handling Charge unless (a) we can justify that the investigative / handling process for a complaint is sufficiently onerous on us (b) we have referred to you and discussed it with you (c) we have informed you of the Charge in writing (d) we have provided You with the option to (i) pursue the complaint and pay the Charge (ii) discontinue the complaint or (iii) take the matter to the TIO.

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

We may terminate a Contract, or suspend or limit a 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);
- (p) you have breached our Acceptable Use Policy or Fair Use Policy;
- (q) it is no longer commercially viable for us to provide you with the Service because continuing to do so would be overly onerous or cause us loss and damage; or
- (r) in any other circumstances stated elsewhere in our Business Terms.

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

*TCP Customers:* We will only suspend or limit Service under this clause if (a) there is a material breach of your Contract (b) there are reasonable grounds to suspect fraud or other illegal conduct in relation to the Service (c) an Acceptable Use Policy provides for it (d) there are reasonable grounds for believing you represent a credit risk in relation to the Service and we take reasonable steps to give you notice of the suspension or rationing or (e) where suspension or rationing is based on breach of another Contract: (i) the Contracts are not separate and independent or (ii) there are reasonable grounds for believing you are a credit risk.

*TCP Customers:* We will not suspend all Services under a Contract indefinitely. If a suspension continues for 14 days, we will terminate your Contract or lift the suspension within another 30 days.

**82. 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.

*TCP Customers:* We will not suspend all Services under a Contract indefinitely. If a suspension continues for 14 days, We will terminate your Contract or lift the suspension within another 30 days.

**83. Early termination by you**

- (a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless our Business 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, 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 83(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 Charge) 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 we agree that you may do so), we may 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.

#### **84. 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 we breach a term of your Contract and:
    - the breach is material and we cannot remedy it; or
    - the breach can be remedied, but we do not remedy it within 30 days of receipt of a written notice from you requiring it to be remedied; or
  - (iii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 28 continuous 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.

#### **85. 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.

*TCP Customers:* We shall notify you of a due date for amounts that constitute Early Termination Fees or previously unbilled Charges. It will allow a reasonable period.
- (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 Business Terms continue,
- (h) No other Contract is affected unless we also terminate it.

*TCP Customers:* We will only terminate a Contract solely on the basis of a breach of another Contract if the Contracts are not separate and independent.

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

## **86. 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 should we include - which has been communicated to us, it wouldn't be bona fide if they didn't communicate it to us) 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 a material term of your Customer Contract, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair Use Policy, and that breach cannot be remedied;
- (d) you breach a material term of your Customer Contract, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair 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.

**87. 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.

**88. 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.

**89. Carrier or Carriage Service Provider**

- (a) You represent 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.

**90. 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.

**91. Assignment**

- (a) We may assign or novate all or part of our rights and obligations under your Contract to any of our Partners 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.

**92. Notices**

We may give any written notice to you in connection with, or as required by our Business Terms, by sending the notice to you via email, post or fax (as indicated on your Service application) or by otherwise sending an SMS to your mobile device.

**93. 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.

*TCP Customers:* 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.

**94. 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.

**95. 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.

**96. 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.

**97. 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) National Relay Service – 133 677
- (b) Translating and Interpreting Service – 131 450

**98. Interpreting your Contract**

- (a) If an expression is defined in the Dictionary in clause 99, 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 Business 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.  
*TCP Customers* We will not unilaterally determine or enforce a right or obligation under your Contract without stating, in reasonable detail, the act, omission, condition, event or legislation which affords us the right to do so.
- (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 word "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.

**99. Dictionary**

The expression:	means:
Account Page	a web page or facility we may provide that permits you to view and/or manage details of your account
Acceptable Use Policy	an acceptable use policy made under our Business Terms
ACL	Australian Consumer Law
Join Date	see clause 23(a)
Bundled Equipment	see clause 17
Business Day	Monday to Friday excluding statutory holidays
Business Terms	see clause 1
Carriage Service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	as in the Telecommunications Act
Charge	a charge applicable under your Customer Contract
Claim	any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim and a claim for contribution or indemnity)
Consumer Product	(a) a Carriage Service; (b) any other telecommunications related goods or services we supplied under a contract for supply of a Carriage Service; and (c) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service within the meaning of the Broadcasting Services Act 1992) that we provide in connection with the supply of the Carriage Service
Consumer Guarantees	as in the ACL
Contract Date	see clause 23(b)
Contract Loss	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;
- loss of profits;
- loss of data;
- indirect or consequential loss;
- an obligation to indemnify another person;
- an obligation to contribute to the compensation of loss or damage suffered by another person

Customer Contract	see clause 3
Delivery Date	see clause 33
Early Termination Fee	see clause 72
Early Termination Rights	the right to terminate your Customer Contract early, in the circumstances described in clause 50
End User	see clause 25(b)
Equipment	a handset, modem, router or other hardware
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
Fair Use Policy	see clause 10
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (Cth)
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 other analogous event or circumstance occurs under the laws of any jurisdiction
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	see clause 26
Network	see clause 24
Numbering Plan	the Telecommunications Numbering Plan
Operational Directions	see clause 12
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 13
Periodic entitlements	see clause 8
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
Price List	see clause 54
Privacy Act	Privacy Act 1988 (Cth)
Product	goods and / or services
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, Communications Alliance Limited and any other relevant government or statutory body or authority
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 23(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	see clause 33

Spam	an unsolicited commercial electronic message within the meaning of the Spam Act 2003
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Special Terms	see clause 4
Standard Telephone Service	as in section 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999
TCP Code	Industry Code C628:2007 Telecommunications Consumer Protections Code
TCP Customer	(a) a person who acquires a Consumer Product for the primary purpose of personal or domestic use; or (b) a business or non-profit organisation which 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 – other than a person acquiring a Consumer Product for resale
Our Facilities	Facilities that we manage and maintain
Telecommunications Act	Telecommunications Act 1997 (Cth)
Use-by Date	see clause 9(b)
Wholesaler Supplier	any wholesale supplier whose facilities we use in providing a Service to you

## Part D – ADSL Service Terms

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### 100. Partner Requirements – ADSL/ADSL2+ (ADSL) Services

Where we supply you with an ADSL 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 end 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 100(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.
- (f) 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.
- (g) 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.
- (h) You acknowledge that the installation and operation of a monitoring service may cause temporary disruption to the ADSL Service.
- (i) 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 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 100(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.
- (l) You acknowledge that the performance of the service and any associated repairs, rectifications of faults or maintenance are provided on a best efforts basis with no Service Level Agreement.
- (m) You acknowledge that in the event the ADSL service develops any faults or impairments, we will engage Telstra Corporation to attend to the issue.
- (n) You acknowledge that as far as the law allows, we do not guarantee that your ADSL Service will achieve any specific availability specifications, specific data transfer speed or latency at any given time as variables such as signal strength, distance from exchange, traffic and load have an effect on the connection speed which are beyond our control.
- (o) You acknowledge that the False Alarm fee for is \$220.00 for an on-site call out by a Telstra technician or \$25.00 if no call out is required.

## **Part E– Dial-Up Service Terms**

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### **101. Partner Requirements – Dial-Up Services**

Where we supply you with a Dial-Up 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 acknowledge that a telephone call is required to utilise the Dial-Up Service and that you will be charged a fee for that telephone call by your standard telephone service provider.
- (c) You acknowledge that you are liable for any and all telephone call charges irrespective of the circumstances under which they are accrued.
- (d) You acknowledge that the operation of the Dial-Up Service will cause temporary disruption to the standard telephone services.
- (e) You acknowledge that unless we agree otherwise, you may not simultaneously access the Dial-Up Service from multiple locations.

- (f) You acknowledge that as far as the law allows we do not guarantee that your Dial-Up Service will achieve any specific data transfer speed or latency at any given time as variables such as signal strength, distance from exchange, traffic and load have an effect on the connection speed which are beyond our control;

## Part F– Phone Service Terms

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### 102. Partner Requirements – Phone Services

Where we supply you with a Phone Service:

- (a) The Phone Service can only be provided over a copper wire pair approved by Telstra Corporation where Telstra Corporation or a reseller of Telstra Corporation has previously installed an operational standard telephone service over that copper wire pair or where you engage us to do so for you.
- (b) You acknowledge that if you engage us to install a standard telephone service that you are liable for all charges levied by Telstra Corporation on us to you in the provision of the Phone Service. We will pass these charges to you at our cost.
- (c) The Phone Service is a Telstra Corporation service resupplied or resold by us to you that allow you to make telephone calls to destinations included but not limited to the local area, nationally, internationally, emergency services and premium telephone services on the public switched telephone network.
- (d) You acknowledge that you will be liable for all charges levied by Telstra Corporation to us to you for your usage of the Phone Service.
- (e) You acknowledge that if you have an existing standard telephone service and you transfer it to us, any value added features (such as silent number, caller number display, voicemail, etc) associated to that service with your current provider will be transferred to us and you will be charged for those services at our nominated rates automatically.
- (f) You acknowledge that some network or premium features of the Phone Service may attract charges which are unknown or unpublished by us and in the event you accrue such charges, these will be passed to you at cost plus 10%.
- (g) To the extent that we provide you with a standard telephone service as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999 (**CSG Act**), you acknowledge that we only provide such a service on the basis that you wholly waive your protections and rights pursuant to section 120 of the CSG Act (**Waivers**).
- (h) You acknowledge that you will agree to Waivers provided to you at point of sale as a condition of receiving the Phone service.

- (i) You acknowledge that you agree to provide access to your premises to our staff or persons nominated by us (such as Telstra technicians) for the purposes of the installation, repair and maintenance of the Phone service.
- (j) You acknowledge that we are only responsible for the provision of the Phone service to the Network Boundary Point as defined by section 22 of the Telecommunications Act (1997) which is:
  - (i) The first socket in a single dwelling premises (e.g. detached home);
  - (ii) The main distribution frame (**MDF**) in a multi-dwelling premises (e.g. an apartment, villa or commercial office suite)
- (k) You acknowledge that it is your responsibility to connect the Phone service to your equipment from the Network Boundary Point and that you are liable for any charges you accrue in doing so.
- (l) You acknowledge that we may suspend the Phone service in accordance with this agreement if we reasonably believe your usage is unusual or suspicious.
- (m) You acknowledge that the False Alarm fee for is \$220.00 for an on-site call out by a Telstra technician or \$25.00 if no call out is required.

## **Part G – Mobile Broadband Service Terms**

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### **103. Partner Requirements – Mobile Broadband Services**

Where we supply you with a Mobile Broadband Service:

- (a) The Mobile Broadband Service provides access to the Internet over portions of a wireless network from either Telstra Corporation or Optus Mobile depending on which particular Plan you purchase.
- (b) Coverage for the Mobile Broadband Service is not available in all areas and you acknowledge that you are responsible for performing coverage checks on our website prior to the ordering the service.
- (c) You acknowledge that to receive the service, your equipment such as your computer or your modem if you are supplying your own must meet certain minimum requirements regarding specification of software and hardware. You further acknowledge that you are responsible for determining that your equipment meets these requirements.
- (d) Unless expressly stated otherwise, we do not warrant or guarantee that any hardware we supply will be compatible with any particular hardware or software.
- (e) We do not guarantee that your connection will achieve any specific speed at any specific time. Actual speeds will vary due to factors such as but not limited to the distance from you to the nearest wireless tower, topography, weather and the number of individual end users using the Mobile Broadband Service at the same time.

- (f) You acknowledge that this is a mobile service which will predominately be used at multiple locations. You acknowledge that in the event you experience a problem, you may be asked to utilise your service in a different location from your principle place of usage.
- (g) If we supply you with a positive result that there is coverage for the Mobile Broadband Service at a particular location and upon ordering and receiving the Mobile Broadband Service you coverage related issues prevent you from utilising the Mobile Broadband Service, you may:
  - (i) Return the service to us within 10 days at your cost; and
  - (ii) Receive a refund for all charges except postage or excess usage.

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## Part H – Mobile Voice Service Terms

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### 104. Partner Requirements – Mobile Voice Services

Where we supply you with a Mobile Voice Service:

- (a) The Mobile Broadband Service provides access to make telephone calls and access the Internet over portions of a wireless network from either Telstra Corporation or Optus Mobile depending on which particular Plan you purchase (**Mobile Network Suppliers**).
- (b) The Mobile Voice Service allow you to make telephone calls to destinations included but not limited to the local area, nationally, internationally, emergency services and premium telephone services on the public switched telephone network.
- (c) The Mobile Voice Service allows send text and picture messages to destinations on the public switched telephone network.
- (d) The Mobile Voice Service allows you to utilise the functions of the service both in Australia and overseas where additional Global Roaming charges will apply;
- (e) You acknowledge that you understand Global Roaming charges are several orders of magnitude higher than your standard charges and are not included in any entitlements included in your Plan. Such charges may be delayed from your regular monthly Bill by up-to 90 days.
- (f) You acknowledge that any mobile telephone number issued to you in accordance with this agreement is supplied as a license and may be withdrawn, re-assigned, disconnect or suspended as required by any regulatory authority pursuant to the Telecommunications Act or in accordance with the Contract.
- (g) You may transfer (port) your mobile telephone number to us if it is active with another provider. Alternatively, we may assign one to you.
- (h) You acknowledge that you may experience a service interruption if you port your mobile telephone number to us. To the extent permissible by

law, you indemnify us in tort and contract from any loss or damage occurred as a result of this transfer process.

- (i) You acknowledge that we may pass charges to you from our Mobile Network Supplies for porting your service if you supply us with incorrect information. You agree to pay these charges.
- (j) You acknowledge that we are not liable to you for any expense or loss incurred by you due to any variation, withdrawal, suspension, disconnection or reassignment of your mobile telephone number.
- (k) You acknowledge that all calls on your Plan are timed and that you will be charged based upon the time the call is connected. You acknowledge that if you do not properly hang-up or disconnect a call on your telephone handset, you may be charged for the complete time of that call.
- (l) You acknowledge that it is possible to subscribe to mobile premium services which are provided by 3<sup>rd</sup> parties and receive the charges on your Bill. Such premium services include things such as ringtones, games, voting lines and exam results. You agree to pay us all costs related to these services irrespective if you dispute these charges with the ultimate provider of the service.

## **Part I– Hardware Terms**

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### **105. Partner Requirements – Hardware**

Where we supply you with Hardware:

- (a) You cannot return or exchange hardware if you change your mind, ordered the wrong item, found the hardware cheaper elsewhere or damaged the hardware.
- (b) All hardware is provided with the minimum statutory warranty as required by law unless stated otherwise.
- (c) For some types of hardware, we may nominate an agent to perform our obligations for exchange or repair of faulty hardware. In the event we nominate an agent, you agree to deal directly with that agent.
- (d) We publish a Hardware Policy on our website which we may vary from time to time which may contain additional processes and procedures which you acknowledge you must follow.

**106. Partner Requirements – nbn**

106.1 nbn™ is a registered trademark of nbn co limited (A.B.N 86 136 533 741) ('nbn', 'nbn co').

106.2 nbn Service conditions

- (a) We can only supply you with an nbn Service if and for as long as your Service Address is serviced by the nbn and we have connectivity to nbn and available capacity in that area.
- (b) After you switch to an nbn Service, you will not be able to access or switch back to non-nbn Services at that Service Address.

106.3 Connecting your premises to the nbn

- (a) If your Service Address is serviced by the nbn but not already connected to it, you may have to pay an extra connection charge for connection to the nbn.
- (b) We may invoice the connection charge in full in advance when you sign up for an nbn Service.
- (c) If we invoice the connection charge by monthly installments, the unpaid balance of the connection charge can be included in an Early Termination Fee if the nbn Service terminates before the end of your minimum or fixed term.
- (d) If you do not own the premises at your Service Address:
  - (i) you must obtain the owner's approval for connection to the nbn and the location of any associated equipment at the Service Address;
  - (ii) whether or not you and the owner share the costs of connection is up to you and them; we will invoice you, and you must pay the invoice and recover any agreed contribution from the owner; and
  - (iii) if that consent is withdrawn for any reason, you must notify us promptly.

106.4 nbn equipment

- (a) nbn is an independent entity, responsible for installing all nbn Equipment.
- (b) Our role is to request installation on your behalf. nbn manages and controls the process and its timing after that.
- (c) You must:
  - (i) provide nbn and us with reasonable assistance to allow nbn to complete installation; and
  - (ii) if reasonably requested, be present personally or by an authorised adult representative during installation.
- (d) nbn will determine its preferred position for an nbn Connection Box.

- (e) If you request a different position:
  - (i) nbn will determine whether it can or will comply; and
  - (ii) if it does comply, it may deem your installation to be non-Standard, and additional costs may apply.
- (f) For nbn FTTC Services where your building has an MDF, you must procure that NBN Co has all necessary consents to use any in-premises or in-building wiring, cabling or equipment (including common property) at the building to supply your service. You must tell us immediately if any such consent is withdrawn.
- (g) For nbn FTTB services where your building has an MDF:
  - (i) nbn will require access to the Service Address including its telecommunications infrastructure to make the Service Address FTTB-ready; and
  - (ii) you must arrange that access with your building management.
- (h) nbn may offer you a choice of appointment times through us, but we do not manage their schedule.
  - (i) We rely on nbn to tell us about rescheduling your appointment and will give you as much warning as we reasonably can.
  - (ii) Subject to the Consumer Guarantees:
    - (A) we do not promise that nbn will keep its appointments; and
    - (B) we exclude liability for any loss or inconvenience you may suffer if it does not.
  - (iii) If you miss an nbn installation appointment, you may be charged a missed appointment fee.
  - (iv) If you do not give us as much notice as possible (and at least one clear Business Day's notice) that you need to reschedule an nbn installation appointment, you may be charged a late cancellation fee.
  - (v) If nbn or its installer requests or agrees, they may reschedule an appointment directly with you.
  - (vi) At the time of installation, nbn will assess whether it is:
    - (A) a Standard Installation;
    - (B) a Non-Standard Installation; or
    - (C) a Subsequent Installation.
- (i) A Non-Standard Installation or a Subsequent Installation may incur additional costs; before starting a Non-Standard Installation or Subsequent Installation, nbn will:
  - (i) provide you with a quote for any additional costs; and

- (ii) only perform the installation if you agree to pay those costs (billed through us).
- (j) All cabling, equipment and works on your side of the nbn Boundary are your responsibility.
- (k) Where you engage anyone to carry out works associated with an nbn Service, you must ensure that they are registered cablers, hold all relevant industry certifications and otherwise comply with all Laws.

#### 106.5 nbn Mains Power Requirements

- (a) Normal operation of nbn Services requires the availability of mains power, which you must provide and maintain at your own cost.
- (b) For an nbn FTTP Service or an nbn Fixed Wireless Service, you must provide an unobstructed double power point located within 3 metres of the nbn Connection Box.

#### 106.6 nbn Back-up Power

- (a) For an nbn FTTP Service or an nbn Fixed Wireless Service, you may ask nbn to supply and install a back-up battery and power supply unit with the nbn Connection Box for an extra charge.
- (b) The back-up battery:
  - (i) for a limited time – will allow you to make voice calls using the UNI-V (voice) port of the nbn Connection Box using a suitable handset connected to that port;
  - (ii) will not supply power to the UNI-D (data) port of the Connection Box; and
  - (iii) will not supply power to devices that require their own power supply eg modems and cordless phones. Unless you make your own arrangements to supply these with a back-up power system, they will cease working during a power outage.
- (c) nbn publishes instructions on checking the condition and status of a back-up battery. If you have one, you must check it regularly in accordance with nbn's instructions.
- (d) An SLA (if any) for an nbn Service does not apply where the nbn Service is disrupted due to a power outage at the Service Address or to a flat or faulty back-up battery.

#### 106.7 Effects of power failure

- (a) If your nbn Service suffers a mains power outage:
  - (i) You cannot use data services eg the internet, email or VOIP calling.
  - (ii) If you have a FTTP service and a back-up battery that is not flat or faulty, you can make voice calls for a limited time via a handset that

is compatible with the UNI-V port of your Connection Box and can draw sufficient power from it.

- (iii) If you do not have a back-up battery, or it is flat or faulty, you cannot make or receive telephone calls (including to emergency numbers) using the nbn Service.

#### 106.8 Priority Assistance Services

- (a) We do not offer priority assistance services. If anyone at your Service Address has a life threatening medical condition, please seek a provider that can offer you a priority assistance service.
- (b) For your information, we advise that nbn will only support priority assistance services if you have a back- up battery and power supply unit.

#### 106.9 nbn Services using existing copper wiring

- (a) Some nbn Services make use of the copper wiring that may already be connected to or within your Service Address (eg nbn FTTN Services or nbn FTTB Services). These services require you to install a compatible VDSL2 modem inside your premises.
- (b) As part of the set up of these Services, nbn will disconnect that wiring from the existing telephone network and connect it to the nbn. During that process:
  - (i) nbn will notify your existing telecommunications service provider when disconnection has occurred.
  - (ii) You will no longer be able to use any phone, fax, internet service etc that was supplied over that wiring.
  - (iii) There will be a period when your previous service/s are disconnected but nbn Services are not yet available.
  - (iv) If possible, you should have access to a mobile phone to make calls with during that period.

#### 106.10 nbn Services using HFC technology

- (a) Some nbn Services make use of the Hybrid Fibre Coaxial (HFC) service that may already be connected to your Service Address.
- (b) As part of the set up of these Services, nbn will install and activate its own equipment. During that process:
  - (i) nbn will install an HFC radio frequency (RF) splitter so your existing services will work after the installation.
  - (ii) There will be a period when your existing HFC service/s (eg internet or pay TV) are not available.
- (c) If you do not require any of your existing services after the installation, you must arrange to cancel them.

#### 106.11 Incompatible services

- (a) Our nbn Services may not support specialised third party services like medical alarms, security alarms, elevator emergency phones, fire indicator panels or EFTPOS machines.
- (b) If you use a specialised service, please contact the provider of that service to discuss your needs and, if possible, how to migrate the service to the nbn. We do not provide support for these specialised services.

#### 106.12 Setting up your in-premises equipment

- (a) As well as an active nbn Connection Box, you will need in-premises equipment (eg a modem) to use an nbn Service.
- (b) Unless we expressly agree to supply and/or set up your modem or other in-premises equipment, you are responsible for doing so, using instructions we will supply.
- (c) We do not have to agree to supply and/or set up your modem or other in-premises equipment but if we do, extra Charges will apply.

#### 106.13 nbn Service speed

- (a) Predicting actual nbn Service speeds is difficult, as they depend on several factors such as your distance from an exchange (where applicable), the network connecting the exchange, your equipment and software and internet traffic. Devices that connect to your modem by wi-fi may operate at slower speeds than those connected by cable.

#### 106.14 NBN Co liability

- (a) This clause has effect to the fullest extent allowed by Law.
- (b) You must not make, and you release nbn, its Related Bodies Corporate and/or their respective Personnel from, any Claim against any of them in connection with or arising out of the nbn Wholesale Broadband Agreement (**Excluded Claim**).
- (c) You indemnify nbn, its Related Bodies Corporate and their respective Personnel against any Losses any of them may suffer or incur arising from or in connection with an Excluded Claim.
- (d) If you make an Excluded Claim, you must indemnify us against any Losses we may suffer or incur by virtue of our obligation under the nbn Wholesale Broadband Agreement to indemnify NBN Co, its Related Bodies Corporate and/or their respective Personnel in respect of any Losses they may suffer or incur arising from or in connection with the Excluded Claim.
- (e) Our liability If:
  - (i) you would, but for this clause, have a Claim against us; and
  - (ii) we would, but for the nbn Wholesale Broadband Agreement, have a right to claim contribution or indemnity from nbn in relation to your Claim; and

- (iii) the nbn Wholesale Broadband Agreement precludes us from claiming such contribution or indemnity – then you must not make, and you release us from, the Claim to the extent of the contribution or indemnity for which nbn would have been liable but for the nbn Wholesale Broadband Agreement.

#### 106.15 nbn compliance

- (a) You must ensure that the equipment, networks or systems you use with the nbn are technically compatible with the nbn; and comply and are used in accordance with all Laws.
- (b) You must not use or attempt to use any nbn Service in a way that causes, or would cause, us or nbn to breach the nbn Wholesale Broadband Agreement.
- (c) You must not (and must not allow anyone else to) damage, threaten, interfere with, cause the deterioration or degradation of the operation or performance of, nbn, an nbn Service, our Network, systems, facilities or equipment or those of another person, or the provision by us or another person of services to you or anyone else.
- (d) You must not relocate an nbn Connection Box to a Service Address other than that where it was originally installed. An nbn Service connected to a relocated Service Address may be terminated without notice.
- (e) Providing assistance and complying with directions You must reasonably assist us:
  - (i) to supply or maintain your nbn Service; and
  - (ii) to comply with our obligations to nbn.
- (f) If you become aware that any nbn Equipment used to supply your nbn Service is damaged or faulty, you must notify us.
- (g) You must ensure your equipment used with your nbn Service is maintained in good repair and working condition.

#### 106.16 Changes and repairs to nbn Equipment

- (a) Except for work carried out under a Consumer Guarantee, if you want nbn to change or repair nbn Equipment, nbn will:
  - (i) give you a quote for the work; and
  - (ii) only perform work if you agree to pay for it.
- (b) Alternatively, nbn may give us a quote for the work, and we will only direct nbn to proceed with it if you agree to pay for it.

#### 106.17 nbn Fair Use Policy

- (a) You must comply with the nbn Fair Use Policy, including:
  - (i) not using the nbn in a way that causes or may cause interference, disruption, or congestion;

- (ii) not undertaking (or attempting to undertake) any of the following without permission:
- (iii) accessing material or data or logging in to a server or account unlawfully;
- (iv) disabling, disrupting or interfering with the regular working of any service or network, including, without limitation, via means of overloading it, denial or service attacks or flooding a network;
- (v) probing, scanning or testing the vulnerability of a system or network; or
- (vi) breaching the security or authentication measures for a service or network;
- (vii) not using your nbn Service to support:
  - (A) any substantial carrier or service provider data aggregation applications, (such as backhaul for mobile base stations or multiplexed access systems and/or networks) that result in substantial and continuous network throughput; or
  - (B) connections for the purpose of providing or enabling carrier or service provider interconnection;
- (viii) ensuring that the networks, systems, equipment and facilities you use in connection with the nbn are technically compatible with the nbn network and comply with and are used in accordance with:
  - (A) all reasonable procedures notified to you by us or nbn; and
  - (B) all Laws; and
  - (C) not using or attempting to use your nbn Service, or allow it to be used in any way which:
    - (D) would cause us to breach our obligations to nbn;
    - (E) would damage, threaten, interfere with, cause the deterioration or degradation of the operation or performance of the nbn, our Network, or any third party network, or the provision of services to you or anyone else on the nbn.
- (b) Severe or persistent breaches of the nbn Fair Use Policy may result in the suspension or termination of your nbn Service by nbn.

#### 106.18 nbn Operations Manual

- (a) You must comply with the nbn Operations Manual as far as it is relevant to your use of an nbn Service or nbn Equipment.

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