



BYTEWAY PTY LTD  
Ph: 1300 298 392  
Level 1/206 Lorimer St  
Port Melbourne VIC 3207, Australia  
[www.byteway.com.au](http://www.byteway.com.au)

# STANDARD FORM OF AGREEMENT

## BYTEWAY PTY LTD

ACN: 634 293 066  
Email - [admin@byteway.com.au](mailto:admin@byteway.com.au)  
Website - [www.byteway.com.au](http://www.byteway.com.au)  
Ph: 1300 298 392  
Level 1, 206 Lorimer Street, Port Melbourne, VIC, 3207

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## GENERAL TERMS

### 1. ABOUT THIS AGREEMENT

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#### What is our SFOA?

- 1.1 These are our customer terms for consumers, otherwise known as a Standard Form of Agreement ("SFOA"). The meaning of any words which have been capitalized are set out at the end of this SFOA.
- 1.2 By entering into this SFOA, you're entering into a contract with us for the supply of Services and/or Equipment.

#### The Application Form

- 1.3 You may request that we supply Services and Equipment to you by completing and returning our approved application form ("**Application**").
- 1.4 If you complete the Application and we accept it, you will be bound by this SFOA.
- 1.5 We may refuse your Application if:
- (a) you do not provide satisfactory proof of identification or are not authorized to enter into this SFOA;
  - (b) you do not meet the eligibility criteria for the Service;
  - (c) the Service is not available at the location where you wish to acquire the Service; or
  - (d) you do not have an appropriate credit rating.

#### Structure of this SFOA

- 1.6 This SFOA is structured as follows:
- (a) These General Terms (comprising clauses 1 to 21), and which apply to each of the additional Parts;
  - (b) Parts A to C, which apply to the various Services which you are seeking to acquire under the Application;
  - (c) The Application;
  - (d) Critical Information Summaries, which specify the fees and charges for the relevant Services and/or Equipment; and
  - (e) Our Privacy Policy, Fair Use Policy and Financial Hardship Policy.
- 1.7 If anything in the General Terms is inconsistent with something in any other Part or document within this SFOA, then the particular Part or document applies instead of the General Terms to the extent of the inconsistency.

## 2. CHANGING THIS SFOA

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- 2.1 We can make changes to the SFOA in accordance with the following:
- (a) Where the change is likely to benefit or have a neutral or minor detrimental impact on you, the change will take effect as soon as we give written notice to you either directly or by way of an advertisement on our website;
  - (b) if we change this SFOA to your detriment, and that detriment is not minor or insignificant, we will give you 21 days' written notice of the change. Should you not agree with the change you will be entitled to terminate any Service within 42 days from the date of our notice.
- 2.2 If you choose to terminate Services under clause 2.1(b), you will be required to pay us all outstanding amounts in a lump sum for any Services or Equipment which you have not fully paid for at the date of termination and any outstanding amounts that cover installation costs
- 2.3 The parties may make changes to this SFOA through mutual consent.

## 3. PROVISION OF SERVICES & EQUIPMENT

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### Scope of Services and Equipment

- 3.1 We will provide you with the Services and Equipment selected by you in your Application.
- 3.2 We may also agree to provide you with other Services and Equipment from time to time, on the terms of this SFOA, provided that your request for the other Services and Equipment is made in writing.
- 3.3 We will provide the Service to you with due care and skill. In the event of unexpected faults we will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 3.4 You will ensure that you comply at all times with all laws and obligations, including licence conditions, directions by a regulator and any reasonable directions issued by us and which are applicable to the Services and their use.

### Limitations on use

- 3.5 You must not use, or attempt to use, the Service:
- (a) to break any law or to infringe another person's rights;
  - (b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (c) to expose us to liability;

- (d) in any way which damages, interferes with or interrupts the Service, our network or the Supplier's network used to supply the Service.
- (e) resupply the Services to anyone else without our prior written consent, which we may withhold in our absolute discretion.

3.6 We may ask you to stop doing something which we reasonably believe is contrary to clause 3.5. You must immediately comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with clause 3.5 or suspend or disconnect the Service pursuant to this SFOA.

3.7 You acknowledge that:

- (a) where the Service is a carriage service, we, or any Supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor your usage of the Service and communications sent over it; and
- (b) we may provide the Service using the underlying technology of our choice, provided that any such upgrade or amendment does not diminish the quality of the Service that you receive from us.
- (c) The Government owns service numbers such as telephone numbers and mobile numbers ("Service Numbers");
- (d) You do not own or have any legal interest or goodwill in any Service Number issued to you;
- (e) you are entitled to continue to use any Service Number we issue to you except in circumstances where the Number Plan allows us to recover the Service Number from you; and
- (f) you can transfer a Service Number to another person if you receive our consent.

#### **4. EQUIPMENT**

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4.1 You must ensure that all Equipment you use in connection with the Service and the way you use that Equipment complies with:

- (a) All laws;
- (b) All directions by a regulator;
- (c) All notices issued by authorization of or under law; and
- (d) Reasonable direction by us.

4.2 If you breach clause 4.1, we may suspend or disconnect the Service from the Equipment pursuant to this SFOA.

4.3 Depending on the Service being acquired, Equipment may either be:

- (a) purchased from us upfront;
- (b) purchased by making installment payments during the course of the Minimum Term; or
- (c) provided to you by us without payment.

#### **Equipment without charge**

4.4 If we provide you with the Equipment without the need for any payment:

- (a) the Equipment will remain our property;
- (b) upon receipt, you will be responsible if the Equipment is lost, stolen or damaged, except if it is caused by us or our personnel; and
- (c) you must not mortgage or grant a charge, lien or encumbrance over any of our Equipment.

#### **Upfront purchase of equipment**

4.5 If you purchase the Equipment from us upfront ("**Other Equipment**"):

- (a) you will own the equipment and be responsible for the Other Equipment from when you receive it, subject to your statutory rights as a consumer; and
- (b) you will be responsible for any outstanding payments for equipment that you have purchased from us, even when that equipment is lost, stolen or damaged, except if it is caused by us or our personnel.

#### **Purchase of equipment by installment**

4.6 If you acquire the Equipment by making installment payments during the course of the Minimum Term ("**Purchase Equipment**"):

- (a) you agree to pay the Purchase Equipment Charges (which may be included as part of the Minimum Monthly Spend) stated in your Application each month throughout the Minimum Term. The amount of Purchase Equipment Charges can be varied in accordance with this SFOA;
- (b) if the Services Agreement is terminated in, you must continue paying the Purchase Equipment Charge (which may be included as part of the Minimum Monthly Spend), at the same charges specified in your Application, for the remainder of the Minimum Term;
- (c) you acknowledge that in respect of any amounts we receive from you in relation to the Minimum Monthly Spend, we will attribute them to charges for Services initially and then to any charges for Purchase Equipment;

- (d) the Purchase Equipment is and remains our property (or the property of an entity related to us) and you hold it for us until you have paid for it in full in cleared funds;
- (e) you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Purchase Equipment will not pass to you until this residual amount is paid in accordance with your Application; and
- (f) if you damage or lose any Purchase Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Purchase Equipment.

4.7 If the Purchase Equipment is acquired with the assistance of third party finance:

- (a) You acknowledge that you will have entered into a separate agreement with that third party (**Third Party Finance**) and that we will not be liable in any way; and
- (b) In the event that you choose to terminate your Third Party Finance agreement, this Agreement will continue to remain on foot.

### Equipment guarantees

4.8 You agree that we do not represent or guarantee the extent to which the Equipment we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature.

4.9 Our Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law. We guarantee that all Equipment:

- (a) is of acceptable quality;
- (b) match the description, sample or demonstration model;
- (c) are fit for their disclosed purpose;
- (d) come with clear title, unless otherwise stated;
- (e) do not have undisclosed securities;
- (f) come with a right to undisturbed possession;
- (g) will have spare parts and repairs available for a reasonable amount of time after purchase; and
- (h) with express warranties, are honored.

4.10 If you have purchased the Equipment, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Equipment repaired or replaced if the Equipment fails to be of acceptable quality and the failure does not amount to a major failure.

## **Equipment Installation**

- 4.11 We may engage third party contractors to program and/or install any Equipment.
- 4.12 A third party contractor may preconfigure any Equipment, fully or partially, prior to installation.
- 4.13 Cabling will not be supplied as part of any Equipment which you may purchase unless you arrange so with us in advance.
- 4.14 Any installation and programming times notified to you are estimates only, and we will not be responsible for late or non-provision.
- 4.15 If you request that we postpone delivery, installation and programming of the Equipment beyond the delivery date we may agree to do so if you pay an additional fee for such postponement and for storage charges.
- 4.16 If you decide to cancel installation of Equipment at any time within 48 hours of installation, you agree to incur 50% of total value of the restocking fee for Equipment purchased in addition to installation cost specified at the time of sale.

## **5. BUNDLED PACKAGE**

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- 5.1 As specified by your Application, you may acquire Services and Equipment as a Bundled Package.
- 5.2 Any reference in this SFOA to a Service or Equipment is equally applicable to a Bundled Package, being one of its constituent components.
- 5.3 You agree that, if your Application specifies it, we may upgrade or amend the constituent Services or Equipment during the term of the SFOA, provided that any such upgrade or amendment does not diminish the quality of service that you receive from us.

## **6. FEES & CHARGES**

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- 6.1 You must pay:
  - (a) the fees and charges for the provision of the Services or the Equipment, as set out in the relevant Critical Information Summary or as notified to you from time to time; and
  - (b) any other charges incurred by you in accordance with this SFOA.
- 6.2 In addition to the charges you incur in the normal use of the Service, we may charge you for an administration fee and other similar charges. These costs may include suspension fees or cancellation fees, late payment fees, payment dishonour fees and reconnection or reactivation fees.



- 6.3 All fees, charges and other amounts payable under or in accordance with the terms of this SFOA will include the GST component within the total amount due.

## 7. BILLING

- 7.1 We will usually bill you monthly for fees and charges due under this SFOA. Our first invoice will be issued either in the month we begin provisioning Services to you or, at our discretion, in the following month. We may vary invoice frequency at our discretion.
- 7.2 We reserve the right to bill you for charges in later billing periods. As per the TCP Code, we will not bill charges older than 160 days from the date the charge was incurred by the customer.
- 7.3 We may ask you to make a pre-payment usage charge or request that you make an interim good-faith payment (including, for example, if there has been an unusually high use of the service or if you want to activate roaming).
- 7.4 You must pay all charges without any set off, counter claim or deduction.

### Due Date for payment

- 7.5 All charges are due and payable by the due date shown on the invoice ("**Due Date**"). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by us. If you are experiencing difficulties in making a payment by the Due Date and you qualify under our Financial Hardship Policy, you may seek to make alternate payment arrangements.
- 7.6 If an invoice is paid by cheque or direct debit from your bank account and that cheque or direct debit is dishonoured, cancelled or otherwise fails, you may be liable for a charge, which will be added to your next invoice.

### Late payment

- 7.7 If you do not pay to us any part of the fees and charges by the due date on any invoice, we may impose a late payment charge.
- 7.8 If we incur costs while recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing or pursuing dispute resolution, we may recover these amounts from you in addition to the overdue amounts.

### Billing Information

- 7.9 Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.
- 7.10 If you change your address, phone number or other billing contact details, you must notify us before the end of your billing period.

## 8. SPEND LIMITS

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- 8.1 We may from time to time set a dollar limit for the amount we will allow you to spend on the Services during a month ("**Spend Limit**"). The Spend Limit is only a guideline for our credit management action, which may include the following:
- (a) providing an update of your total cumulative charges;
  - (b) advising the value exceeding the spend limit; and
  - (c) an interim invoice, upon which payment must be received in order to continue supply of the Services or Equipment.
- 8.2 We may also monitor your Service for excessive or unusual usage or your level of liability for charges for such usage. You acknowledge and agree that we can suspend, cancel or Bar your Service upon reasonable verbal or written notice to you if we have reasonable grounds for believing that you represent a credit risk in relation to the Service, including:
- (a) where the Services are being used in an excessive or unusual way or an unusually high volume or spend for the relevant Service when compared with previous account activity for that Service;
  - (b) your failure to respond to notices from us about unusual high volume or spend;
  - (c) your failure to pay a current bill in circumstances where your payment history indicates a series of late payments, dishonored payments or failures to pay. If we do suspend, Bar or cancel your Service, you still have to pay for any charges incurred for any excessive or unusual usage, regardless of how caused.
- 8.3 We will not be responsible for any Equipment tampering or Service fraud. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to a Service or Equipment, please contact us and we will endeavor to provide such information or direct you to an appropriate source of information.

## 9. TERM

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### Commencement and expiry

- 9.1 This SFOA starts when:
- (a) you sign the Application;
  - (b) complete a voice recording authorizing the acquisition of Services or Equipment; or
  - (c) you first access our Services after receipt of this SFOA, and we accept your Application. Once we start providing you with Services, it is implied that we have accepted your Application.
- 9.2 The provision of Services commences:
- (a) if you are transferring from another Supplier, when your accounts are

transferred from your current Supplier to us and any other arrangements with another Supplier for the provision of the Services have been completed; or

- (b) if you are not transferring from another Supplier, within a reasonable period of the commencement of this SFOA.

9.3 The SFOA continues until terminated pursuant to the terms of this SFOA.

#### **Non-fixed length agreement**

- 9.4 If the Agreement is a non-fixed length agreement we will provide the service to you in accordance with the Agreement until the Service is cancelled in accordance with this SFOA.

#### **Fixed length agreement**

- 9.5 For fixed-length agreements, this contract will continue:
- (a) for the fixed term specified in the Application; or
  - (b) until it is terminated in accordance with this SFOA.
- 9.6 If the Application specifies a fixed-length agreement and neither you nor we cancel the service at the end of the fixed term the agreement becomes a non-fixed length agreement and we will continue to supply the Service to you on a month to month basis in accordance with this SFOA. If you do not wish to continue to use the Service after the end of the fixed term you must provide us with 30 days' written notice before the end of the fixed term.

### **10. TRANSFERRING YOUR SERVICES TO US**

- 10.1 If in providing the Services we need to change your arrangements with your current Supplier, then we will do so in accordance with the following:
- (a) you authorize us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name;
  - (b) you agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request;
  - (c) you will immediately pay to your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to our name.
- 10.2 If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.
- 10.3 If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you must pay your previous Supplier that amount.

### **11. TRANSFERRING SERVICES FROM US TO ANOTHER SUPPLIER**

#### **Notice**

- 11.1 You agree to provide us with 30 days' notice in the event that you seek to transfer any of the Services to another Supplier, in order to allow us to arrange account

changes and any other modifications to your Service.

### **Liability**

- 11.2 If you (or a Supplier acting with your authority) ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services or Equipment up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.
- 11.3 We will endeavour to invoice you for Services which you transfer to another Supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.
- 11.4 We will not accept liability for any amounts owing by you to a Supplier or other person. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.

### **Credits**

- 11.5 We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer.

## **12. SERVICE NUMBER PORTABILITY**

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### **Transferring your number to us**

- 12.1 Provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.
- 12.2 If you acknowledge and agree to a transfer to us of your Service Number, you may lose value added services and other features provided by your current Supplier. When you are connected to the Voice Services you will use the Voice Services specified in your Application, which may be different to the service and features that you had with your current Supplier.

### **Obligations to current supplier**

- 12.3 You acknowledge that:
- (a) there may be costs and obligations associated with transferring your Service Number away from your current supplier;
  - (b) you may have an ongoing contract with your current supplier which requires the payment of cancellation and/or termination fees to your current supplier if you transfer to us; and
  - (c) that we reserve the right to charge for transferring your Service Number to and from us.
- 12.4 We do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to transfer the Service Number if the information you provide is incorrect or does not match

the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to transfer the Service Number or dispute the rejection with your current Supplier;

## 13. YOUR PERSONAL INFORMATION

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### Collection of Personal Information

- 13.1 We collect Personal Information directly from you, and also during our ongoing relationship with you. If you are a business customer we may collect information about your business ("business information").

### Use of Personal Information

- 13.2 You agree that we may use your Personal Information to supply products and services and for the other purposes described in our Privacy Policy. If you would like more information about our privacy practices, how to access or correct our records, or make a complaint, please review the Privacy Policy on our website.

- 13.3 You acknowledge and agree that:

- (a) if you do not supply the information we request on our Application, we may not be able to provide the Services or the Equipment to you;
- (b) we will use your Personal Information or business information:
  - (i) to assess any Application by you for Services to be provided by us;
  - (ii) to collect payments that are overdue in respect of any Services provided by us;
  - (iii) to provide the Services, including the investigation or resolution of disputes relating to any Services provided to you; and
  - (iv) to send commercial electronic messages, as defined under section 6 of the Spam Act 2003 (Cth);
- (c) we will disclose or transfer your Personal Information or business information:
  - (i) to our Suppliers for the purpose of enabling us to provide the Services or the Bundled Package to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services);
  - (ii) to our Suppliers about your account, including particulars of calls and call charges;
  - (iii) to any of our Related Body Corporate;
  - (iv) to government agencies, individuals appointed by a government, or law enforcement agencies as required by legislation or our regulatory obligations;
  - (v) to the operator of the Integrated Public Number Database ("IPND"); and

- (vi) in accordance with orders made by a court or if required or authorised by law.

13.4 Unless you ask us not to, you acknowledge that:

- (a) any calls you make to our customer call centers, may be recorded for quality assessment, administration and/or customer information purposes; and
- (b) we will use your Personal Information or business information to provide information to you about other goods or services which we or any of our Related Body Corporate may offer to you.

### Your rights to manage Personal Information

13.5 If you do not want us to use your Personal Information or business information in this way, you may ask us not to by contacting our customer service team.

13.6 We will provide you with access to most Personal Information or business information that we have about you, but sometimes that will not be possible, in which case we will tell you why. If you want to find out what information we have about you contact our privacy officer and/or customer service team.

13.7 If you think that any Personal Information or business information we hold about you is not accurate, complete and up-to-date, you may request us to correct that information. We will take reasonable steps to correct such Personal Information or business information unless we disagree with you about whether the information is accurate, complete and up-to-date.

## 14. CONFIDENTIAL INFORMATION

14.1 We retain all Intellectual Property Rights in any information developed by us and relating to the Services ("**Confidential Information**").

14.2 We may permit you to use this material, or other material licensed by us, as part of the service. This permission is subject to any conditions which we may impose from time to time and will cease when the service is cancelled.

## 15. YOUR RIGHT TO TERMINATE

15.1 You may terminate this SFOA or cancel the provision of any Service or Equipment by:

- (a) giving us 30 days' notice either in writing or oral notice; or
- (b) giving us notice, if:
  - (i) we breach a material term of this SFOA and we can remedy that breach, but we do not remedy that breach within 30 days after you give us notice requiring us to do so; or
  - (ii) we breach a material term of the agreement and we cannot remedy that breach, and the breach was not as a result of circumstances reasonably attributable to you or Equipment that we are not responsible for, such as equipment that is owned by you or is not provided by us for you to use in connection with the

Service.

### Unsolicited consumer agreements

15.2 If the agreement is an unsolicited consumer agreement regulated by the unsolicited consumer agreement provisions of the Australian Consumer Law, you may also cancel the service:

- (a) before the end of the cooling-off period which is:
  - (i) if the agreement was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after you signed your Application; or
  - (ii) if the agreement was negotiated by telephone - the period of 10 business days from and including the first business day after you received written confirmation from us of your Application;
- (b) in accordance with any additional termination rights you may have relating to unsolicited consumer agreements under the Australian Consumer Law.

15.3 If you have agreed to receive a Service for a fixed term and you cancel the Service after the cooling off period and before the expiry of the fixed term, you will be required to pay:

- (a) usage charges up to, and including, the cancellation date; and
- (b) any applicable Early Termination Fee if your termination was not the result of our breaching the agreement.

### Change of SFOA

15.4 If the Application represents a fixed term agreement, you may also terminate the Service in accordance with clause 2 which sets out the circumstances which give you the right to terminate the Service if we change the SFOA.

## 16. OUR RIGHT TO TERMINATE OR SUSPEND

16.1 We may terminate this SFOA, or suspend or limit the provision of any Service or Equipment by notice in writing to you if:

- (a) there is an emergency;
- (b) you breach any material provision of this SFOA and you cannot remedy the breach;
- (c) you breach a material term of the agreement and you can remedy that breach, and you do not remedy that breach within 30 days after we give you notice requiring you to do so,
- (d) we reasonably suspect fraud by you or any other person in connection with the service;
- (e) you fail to pay any amount due under this SFOA by the due date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within ten (10) business days after we give you that notice;



- (f) we reasonably consider you a credit risk because you have not paid amounts owing to us and which is not the subject of a valid dispute;
- (g) you are declared bankrupt or a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;
- (h) any Equipment or Service provided to you receive does not function because we are unable to enter your premises in order to update or rectify such equipment;
- (i) you vacate the premises to which we had been supplying Services to you;
- (j) we reasonably believe that your usage of the Services is unusually high;
- (k) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;
- (l) the physical infrastructure and site conditions for your Service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study;
- (m) without liability, suspend the provision of any Service for a reasonable period for operational reasons;
- (n) we are required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law; or
- (o) you die or if you are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due.

### **Obligations on termination**

16.2 On termination of this SFOA, you must:

- (a) pay all charges incurred by you under this SFOA up to the time of termination which will become immediately due and owing upon termination;
- (b) pay all outstanding amounts in a lump sum for any Equipment which you have purchased and not fully paid for at the date of termination;
- (c) if we request and at our option, either immediately return all of our Equipment (at your cost) or make such Equipment available for our, or our Suppliers, collection; and
- (d) pay the applicable Early Termination Fee (if any) to us.

### **Suspension terms**

16.3 If the Service is suspended, you will have to pay access fees for the Service while it is suspended.

16.4 If the Service is suspended and the suspension was not as a result of circumstances reasonably attributable to you or equipment that we are not responsible for, such as equipment that is owned by you or is not provided by us for you to use in connection with the Service, you will be entitled to a refund or a rebate of any access fees for the period of suspension. You should contact customer service for your refund or rebate.

16.5 If the Service is suspended as a result of circumstances reasonably attributable



to you, you may have to pay us a suspension fee. You should check the relevant standard pricing table for the service concerned to see if a suspension fee applies.

16.6 If you wish to lift the suspension you should contact us.

### **Unpaid charges**

16.7 We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.

16.8 If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (except if our action resulted from our or a Supplier's mistake or manifest error).

## **17. Creditworthiness**

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### **Credit Reports**

17.1 We may review your creditworthiness:

- (a) prior to the activation or provision of any of the Services;
- (b) if we have reasonable grounds for believing that you represent a credit risk in relation to your ability to pay for the Service; or
- (c) if in our reasonable opinion there has been a material change in your financial position.

17.2 You consent to our:

- (a) providing and exchanging your details with a credit reporting agency; and
- (b) obtaining a Credit Report from any credit reporting agency for the purpose of assessing your commercial credit or ongoing creditworthiness.

17.3 If necessary, you agree to co-operate with us, in the preparation of a Credit Report and promptly provide all financial information and non-financial information reasonably requested for the purpose of preparing the Credit Report.

## **18. LIABILITIES**

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### **Your liabilities**

18.1 You are liable to us for any breach of the SFOA by you that causes foreseeable substantial loss to us.

18.2 You are not liable to us for any consequential losses we suffer or for any costs, expenses, loss or charges that we incur which are not a direct result of something you have done

18.3 Nothing in this SFOA removes or limits any rights that you have under existing laws or regulations, including under the Telecommunications Act 1997 (Cth); the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth); the Competition and Consumer Act, including the Australian Consumer Law; and all applicable laws, regulations and codes.

### **Our liabilities**

- 18.4 Under the Australian Consumer Law, if the Services or Equipment we supply fails to meet a consumer guarantee, you may have rights against us. This may include the right to a repair, replacement or refund. In certain circumstances we may choose how we remedy our failure. In other circumstances, you may choose how the failure should be remedied.
- 18.5 You may not be entitled to a refund or replacement under the Australian Consumer Law if the good is not rejected within a reasonable period; you have lost, destroyed or disposed of the good; or the good has been damaged after delivery. You may be entitled to recover reasonably foreseeable loss or damage suffered for our failure to meet a consumer guarantee.
- 18.6 We are liable to you for:
- (a) any damage to your property which has been caused by the fault, negligence or fraud by us or our personnel during installation, repair or maintenance;
  - (b) death or personal injury caused by us or our personnel.
- 18.7 Subject to your statutory rights as a consumer, we are not liable to you for:
- (a) any delay in installing, or correcting any fault in any Service or Equipment; or
  - (b) any consequential losses you suffer, or for any costs, expenses, loss or charges that you incur.

## **19. ASSIGNMENT**

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- 19.1 We may transfer some or all of our obligations under the SFOA to any Related Body Corporate that is able to perform those obligations.
- 19.2 We may perform any of our obligations under this SFOA by arranging for them to be performed by another person, including a Supplier or Related Body Corporate. We will still be responsible for the performance of the obligations.
- 19.3 You may assign your rights under this SFOA (where those rights are assignable) so long as you have our prior written consent.
- 19.4 You represent that you are not a carrier or a carriage service provider (as those terms are defined in the Act). If you are or become a carrier or carriage service provider, you must promptly notify us of that fact and we may immediately terminate this SFOA by notice to you.

## **20. GENERAL**

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### **Governing law**

- 20.1 This SFOA and your Application are governed by the laws of the Commonwealth of Australia and the laws of the state of New South Wales and you and we submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

### **Promotions**

- 20.2 From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this SFOA and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.

### **Waiver**

- 20.3 The failure by either party to exercise any right or remedy under this SFOA in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.

### **Severance**

- 20.4 If a provision of this SFOA is void or voidable or unenforceable or the invalid part severed, the remainder of this SFOA will not be affected.

### **Merger**

- 20.5 The covenants, conditions, provisions and warranties contained in this SFOA shall not merge or terminate upon completion of the transactions contemplated herein but to the extent that they have not been fulfilled and satisfied or are capable of having effect shall remain in full force and effect.

### **Financial hardship**

- 20.6 Our Financial Hardship Policy contains information about how we can assist customers who are experiencing financial hardship. You can see and print a copy on our website which is noted on the Application form.

### **Complaints**

- 20.7 You may submit complaints in writing or orally by calling our Customer Service number or the contact number located at our website. We will comply with our Customer Complaints Policy located at our website, when attempting to resolve your complaint. If we are not able to resolve your complaint to your satisfaction, you may refer your complaint to the Telecommunications Industry Ombudsman or the ACMA.

### **Notices**

- 20.8 Any notice, demand, consent or other communication required to be given to either of us must be delivered personally or sent by prepaid mail, email or by facsimile to the address of the other last notified.

## **21. DEFINITIONS**

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

**Act** means the Telecommunications Act 1997 (Cth).

**Agreement** means this Standard form of Agreement as described in Clause 1.

**Application** has the meaning given to it in clause 1.2 of the General Terms.

**Barring or Bar** means restricting the supply of one or more (where possible) or all eligible Services on a Service so that the customer is unable to acquire the restricted eligible Services.

**Bundled Package** means a bundled offering of any or all Services and/or Equipment and as

described in your Application.

**Business Hours** means 9am to 5pm on a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**Credit Report** means a report including your financial and non-financial information, and summarising your creditworthiness, credit standing, credit history and/or credit capacity.

**Critical Information Summary** set out key information about the Service being offered, including:

- (a) a clear description of the service;
- (b) the minimum term for the contract;
- (c) any exclusions or important conditions, limitations or restrictions; and
- (d) relevant pricing information.

**Data & Internet Services** means our internet access, e-mail facilities, wide area networking services, web-page facilities, broadband, digital subscriber line, frame relay, fibre services other than NBN, and any other related facility or services that we may provide from time to time, including any technical and other advice provided by us, to be provided to you under Part B and as specified in your Application.

**Data & Internet Services Related Equipment** means any equipment as specified in your Application and which is related to the provision of Data and Internet Services..

**Data & Internet Equipment** means equipment which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services and as specified in your Application.

**Early Termination Fee** means the fee payable by you if our Agreement with you is terminated before its Minimum Term has expired, the calculation of which is set out in the appropriate Critical Information Summary.

**Equipment** means all or any of the Voice Services Related Equipment, Data & Internet Equipment, NBN Services Related Equipment or other equipment specified in your Application but does not include Other Equipment.

**Equipment Charge** means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA.

**Financial Hardship Policy** means the hardship policy available to customers on our website which is indicated on the Application form.

**GST** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including but not limited to any copyright, trade mark, domain name, business name, design, patent, circuit layout, semi-conductor or other similar proprietary rights and licences and sub-licences of such rights, customer lists, supplier lists and other proprietary lists, names, addresses or information not generally known; techniques, diagrams, data, proofs, prints, particulars, inventions and prototypes.

**Minimum Monthly Spend** means the Minimum Monthly Spend as specified in your

Application and as varied from time to time in accordance with this SFOA.

**Minimum Term or Minimum Term Contract** means the term of this SFOA as specified in your Application.

**Mobile Equipment** means equipment which is provided to you by us or our supplier for use in connection with the provision of Mobile Services and as specified in your Application.

**Mobile Network** means a 3G or 4G network or any other mobile communications network which we choose to provide Mobile services.

**Mobile Premium Service** means a premium SMS or MMS service; or a proprietary network service.

**Mobile Premium Services Determination** means the Telecommunication Service Provider (Mobile Premium Services) Determination 2005 (No.1) including any amendments to the determination.

**Mobile Services Related Equipment** means any equipment as specified in your Application and which is related to the provision of Mobile Services.

**Mobile Services** means the mobile telecommunications service which we provide you under Part D and as specified in your Application.

**Monitoring Service** means a monitoring service used or installed at, or in respect of, the relevant premises, including, but not limited to a remote alarm service or a back-to-base alarm or monitoring service.

**National Broadband Network** means the Australian national, wholesale-only, open-access data network provided by NBN Co.

**NBN Broadband Service** means a Broadband Service that is supplied by NBN Co and is delivered using the National Broadband Network.

**NBN Co** means NBN Co Limited (ACN 136 533 741).

**NBN Fibre Network** means the optical fibre network that is owned or controlled by, or operated by or on behalf of, NBN Co (or any Related Body Corporate of NBN Co), other than the NBN Co FTTB Network and the NBN Co FTTN Network, as defined in the NBN Co Supply Terms.

**NBN Services Related Equipment** means any equipment as specified in your Application and which is related to the provision of NBN Services.

**NBN Services** means the telecommunications services provided over the National Broadband Network and to be provided to you under Part C and as specified in your Application. The NBN Services is for the supply of the NBN Voice Service, or the NBN Broadband Service or both.

**NBN Co Supply Terms** means the terms and conditions in connection with the supply of services by NBN, as published in NBN Co's 'Wholesale Broadband Agreement' (and associated documents) and made available from time to time by NBN Co on its website.

**NBN Voice Service** means a Voice Service that is delivered using the National Broadband Network whether or not that Voice Service is supplied to us by NBN Co.

**Numbering Plan** means the *Telecommunications Numbering Plan 2015* (Cth) as

amended from time to time.

**Other Equipment** means equipment that is not Equipment provided by us.

**Part** refers to any section of this SFOA so described.

**Personal Information** means any information or document referred to in section 276(1) of the Act and any personal information within the meaning given in section 6 of the Privacy Act.

**Priority Assistance** has the meaning given to that term in the Priority Assistance for Life Threatening Medical Conditions Code ACIF C609:2007.

**Priority Customer** has the meaning given to that term in the Priority Assistance for Life Threatening Medical Conditions Code ACIF C609:2007.

**Privacy Act** means the Privacy Act 1988 (Cth).

**Privacy Policy** means the privacy policy available to customers on our website which is indicated on the Application form.

**PSU** means power supply unit.

**Purchase Equipment** means the equipment specified in your Application and supplied to you in accordance with this SFOA, in which ownership of that equipment transfers to you on the expiry of the Minimum Term.

**Purchase Equipment Charge** means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA, including any residual amounts owing to us at the expiry of the Minimum Term (such amounts which must be paid by you before ownership transfers to you, in accordance with this SFOA).

**Related Body Corporate** has the same meaning as in section 9 of the Corporations Act 2001 (Cth).

**Services** means the Data & Internet Services, Mobile Services, Mobile Premium Services, Voice Services or other services specified in your Application that we supply to you under this SFOA.

**Services Agreement** means the contract with us for the supply of Services under this SFOA.

**Service Levels** means the service levels applicable to the Data & Internet Service you have chosen in your Application and details of such Service Levels are available on our website or available from us on request.

**Service Level Agreement** means the Service Level Agreement available at our website and applicable to selected Services.

**Service Number** means an identifying number associated with a Service such as a telephone number or a mobile number.

**Site** means the site described in your Application.

**standard customer agreement and SFOA** mean each of the contracts described in **Clause 1** of these General Terms.

**Supplier** means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.

**Value Added Features** means any of the Services value added features as specified in your Application.

**Voice Services** means the telecommunications services to be provided to you under Part A and as specified in your Application.

**Voice Services Related Equipment** means any equipment as specified in your Application and which is related to the provision of Voice Services..

**we, us** means the entity defined as 'The Company' on our Application Form.

**you, your** means the customer, as specified in your Application.

## 22. INTERPRETATION

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- 22.1 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.
- 22.2 The singular includes the plural and conversely.
- 22.3 A gender includes all genders.
- 22.4 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 22.5 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- 22.6 A reference to a clause or schedule is a reference to a clause of or a schedule to, this SFOA.
- 22.7 A reference to an agreement or document (including a reference to this SFOA) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this SFOA or that other agreement or document.
- 22.8 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 22.9 A reference to dollars and \$ is to Australian currency.
- 22.10 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

## PART A – VOICE SERVICES

### 1. APPLICATION OF THIS PART

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- 1.1 This Part A applies if you have requested in your Application that we supply you with Voice Services and sets out the terms and conditions on which we will supply you with Voice Services.
- 1.2 To the extent relevant, the General Terms apply to the Voice Services as though



specified in full in this Part A.

1.3 Voice Services consist of telecommunications services specified in your Application, including:

- (a) Local Calls, National Calls, International Calls;
- (b) Fixed to Mobile Calls, Data Calls;
- (c) 13 Calls, 1300 Calls and 1800 Calls; and
- (d) VoIP, SIP and other call types specified from time to time.

## **2. PROVISION OF VOICE SERVICES**

- 2.1 We will provide the Voice Services to you, as specified in your Application, once your services are transferred from your current Supplier to us and upon completion of installation of any necessary Equipment and any other arrangements with another Supplier for the provision of the Voice Services have been completed.
- 2.2 We will provide the Voice Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.
- 2.3 We will provide the required Voice Services subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Voice Services where capacity, geography, or technical capability, affect the application or installation of the Service to your premises. We do not warrant that the Voice Services will be free of interruption, delays, or fault.
- 2.4 We will provide you with the relevant Voice Services, unless you dial another override code or, if required for access, you dial our override code as notified to you from time to time.
- 2.5 If you are on a Minimum Term Contract the term specified in your Application commences on the date that you sign your Application.
- 2.6 Provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us subject to the terms of this SFOA.
- 2.7 We do not warrant that the VoIP and SIP Services will be free of interruption, delays or faults. You acknowledge and agree that:
  - (a) VoIP or SIP Services may not be reliable services in an emergency
  - (b) VoIP or SIP Services are not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
  - (c) that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

## **3. VOICE SERVICES CHARGES**

- 3.1 The charges applicable to the Voice Services are specified in the Critical Information Summary and your Application.



- 3.2 We may vary any of the charges applicable to the Voice Services in accordance with clause 2 of the General Terms.

#### **4. PROVISION OF VOICE SERVICES RELATED EQUIPMENT**

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- 4.1 For the avoidance of doubt, this clause applies to any Equipment provided by us that is Purchase Equipment and is not Data & Internet Services Related Equipment and may include Equipment supplied by a Supplier.
- 4.2 If you purchase any Voice Services Related Equipment from us, risk in the Equipment passes to you on delivery to the delivery address you nominate in your Application.
- 4.3 You are responsible for maintaining any Voice Services Related Equipment supplied by us or a Supplier. You indemnify us or the Supplier against any loss or damage to the Voice Services Related Equipment unless it is due to fair wear and tear.
- 4.4 You will ensure that any Voice Services Related Equipment supplied to you or facilities and connections used in providing the Voice Services, are not altered, maintained, repaired or connected to or disconnected from any power source or line except by a person approved by us.
- 4.5 We, or a person approved by us, or our Supplier may require access to your premises from time to time in connection with the provision, inspection and maintenance of Voice Services Related Equipment or Voice Services, including the installation, replacement or modification of necessary telecommunications connection, facilities, wiring or cabling in order for you to receive the Voice Services, noting that:
- (a) if you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission;
  - (b) you indemnify us, or any contractor, agent or representative approved by us, and our Supplier against a claim by the owner of the premises in relation to entry on the premises;
  - (c) if you do not provide access as we reasonably request, which must be during Business Hours, we may limit, suspend or cancel the Voice Services; and
  - (d) we reserve the right to charge you, at our standard rates, should we, or our Suppliers, not be able to access your premises at the agreed appointment time (regional services will attract an additional charge).

#### **5. FAULT REPORTING**

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- 5.1 We are responsible for correcting faults in supplying the Voice Services. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
- 5.2 We are not responsible for any fault which is on your side of the network termination point, except in relation to Purchase Equipment, or Other Equipment that we are maintaining.
- 5.3 We are not responsible for any fault which is within the network of a Supplier. However, we will notify that Supplier of the fault and request that the fault be corrected

## **PART B – DATA & INTERNET SERVICES**

### **1. APPLICATION OF THIS PART**

- 1.1 This Part B applies if you have requested in your Application that we supply you with Data & Internet Services and sets out the terms and conditions on which we will supply you with Data & Internet Services.
- 1.2 To the extent relevant, the General Terms apply to the Data & Internet Services as though specified in full in this Part B.

### **2. PROVISION OF DATA & INTERNET SERVICES**

- 2.1 We will provide the Data & Internet Services to you, as specified in your Application, when your services are transferred from your current Supplier to us and upon completion of installation of any necessary Equipment and any other arrangements with another Supplier for the provision of the Data & Internet Services have been completed.
- 2.2 We will provide the required Data & Internet Services and its coverage subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Data & Internet Service is connected. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with Data & Internet Services where capacity, geography or technical capability, affect the application or installation of the Service to your premises. Certain Data & Internet Services, coverage may only be available in selected metropolitan and regional areas.
- 2.3 We do not warrant that the Data & Internet Services will be free of interruption, delays or faults. You acknowledge and agree:
- (a) that certain Data & Internet Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
  - (b) that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.
- 2.4 We are not obliged to provide Data & Internet Services to you if the physical infrastructure of your premises or site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.
- 2.5 You agree to receive the Data & Internet Services for the Minimum Term specified in your Application, subject to your rights specified in this SFOA. The Minimum Term commences on the date we activate your Data & Internet Services.
- 2.6 We will use reasonable endeavours to meet the response target where Service Level Agreements are advertised and/or advised by us.
- 2.7 We will use all reasonable endeavours to provide you with information regarding the progress of resolving any reported fault, but you acknowledge that we are only required to do so if any new information is available.

2.8 If you are receiving Data & Internet Services, you agree to comply with our Fair Use Policy.

2.9 Provided that any relevant Service Number is capable of being transferred, you may transfer it from your current Supplier to us subject to the terms of this SFOA.

### **3. DATA & INTERNET SERVICES CHARGES**

3.1 The charges applicable to the Data & Internet Services are specified in the Critical Information Summary.

3.2 The Minimum Monthly Spend is payable in advance. In addition, you may be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and/or the Critical Information Summary. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.

3.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.

3.4 We may vary any charges for the Data & Internet Services in accordance with this SFOA.

### **4. MOVES & UPGRADES**

4.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable. If Data & Internet Services cannot be provided at your new address, we may terminate this SFOA by notice to you.

4.2 You may be able to change your Data & Internet Service if it is specified in the Application. Changes to your plan involving a downgrade on the Data & Internet Service or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

### **5. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

5.1 In order to access the Data & Internet Services, we or our Suppliers may provide you with Data & Internet Services Related Equipment or you may use your own equipment, as nominated in your Application and approved by us.

5.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

5.3 We may either install your Data & Internet Services Related Equipment at the Site or you may install the Data & Internet Services Related Equipment yourself as specified in your Application.

5.4 You are responsible for all costs of delivery and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.

5.5 If we are installing your Data & Internet Service Related Equipment, you must

provide us or our Suppliers with reasonable access to your premises during Business Hours, if required. We reserve the right to charge you, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

- 5.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- 5.7 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the Data & Internet Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.
- 5.8 Risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

## **6. FAULT REPORTING AND MAINTENANCE**

- 6.1 If we have a Service Level Agreement with you then the nominated Service Level applies and details of such Service Levels are available at our website or available from us on request. You should notify any faults regarding your Data & Internet Services to our help desk, the contact number for which is located on our website.
- 6.2 Before reporting a fault to us, you should ensure that the fault is not due to hardware, software or networks that are not being managed by us. We reserve the right to charge you our standard on-site visit fee if no fault is found.
- 6.3 We are:
- (a) responsible for correcting faults in the Services and you must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility;
  - (b) not responsible for any fault which is on your side of the network termination point; and
  - (c) not responsible for any fault which is within the network of a Supplier in which case we will notify that Supplier of the fault and request that the fault be corrected promptly.
- 6.4 If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays) or if Service Levels apply to your Data & Internet Service, at the times specified in the Service Level Agreement. We reserve the right to impose a charge if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

## **PART C – NBN SERVICES**

### **1. APPLICATION OF THIS PART**

- 1.1 This Part C applies if you have requested in your Application that we supply you with NBN Services and sets out the terms and conditions on which we will supply you with NBN Services.

- 1.2 To the extent relevant, the General Terms apply to the NBN Services as though specified in full in this Part C.

## **2. PROVISION OF NBN SERVICES**

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- 2.1 The NBN Service is for the supply of:
- (a) a NBN Broadband Service; or
  - (b) a NBN Voice Service; or
  - (c) both a NBN Broadband service a NBN Voice Service
- over the National Broadband Network and Supplier network whether as a layer 2 service or a layer 3 service.
- 2.2 We will provide the NBN Services to you, as specified in your Application, when your services are transferred from your current Supplier to us and upon completion of installation of any necessary Equipment and any other arrangements with another Supplier for the provision of the NBN Services have been completed.
- 2.3 We will provide the required NBN Services subject to availability, geographical and technical capability. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with NBN Services where availability, geography or technical capability affect the application or installation of the Service to your premises.
- 2.4 We do not warrant that the NBN Services will be free of interruption, delays or faults. You acknowledge and agree:
- (a) that certain NBN Services may not suitable for (and is not supplied for the purpose of) supporting any application which need continuous fault free services, mission critical purposes, or in circumstances where life-threatening emergencies can occur; and
  - (b) that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.
- 2.5 You acknowledge and agree:
- (a) to receive the NBN Services for the Minimum Term specified in your Application, subject to your rights specified in this SFOA, and which commences on the date we activate your NBN Services;
  - (b) that the connection of, or migration to, a NBN Service at the Site that is serviced may ultimately result in all fixed telephone and broadband services at the Site being provided, or being only capable of being provided, over the same communications line as the NBN Service;
  - (c) the NBN Service which is supplied by means of the National Broadband Network cannot be supplied over the same line as a data carriage service supplied by means of a copper network and each such service will be automatically disconnected;
  - (d) to provide us, our Suppliers or NBN Co with safe, timely and reasonable access to your premises during Business Hours to ensure the supply of the NBN Service, if required. We reserve the right to charge you, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time;
  - (e) to provide, when required by our Suppliers, written consent from the owner of the End User premises for the activation of, or migration to, the NBN Services and the installation of the Related Equipment; and
  - (f) that our Supplier or NBN Co may use your details, including full name, billing address and street address, to the extent necessary or desirable in connection with the supply of the NBN Services and Related Equipment.

- 2.6 We will use all reasonable endeavors to provide you with information regarding the progress of resolving any reported fault, but you acknowledge that we are only required to do so if any new information is available.
- 2.7 Provided that any relevant Service Number is capable of being transferred, you may transfer it from your current Supplier to us subject to the terms of this SFOA.
- 2.8 You acknowledge and confirm that:
- (a) there is no person at the premises who requires Priority Assistance or is a Priority Customer;
  - (b) in relation to migrations, you may experience an outage on all existing services while the NBN Services are being provisioned, and that you will not be able to receive or make any telephone calls (including to the 000 emergency service) for the duration of the outage;
  - (c) to the extent permitted by law, you agree to a complete waiver from Part 5 of the Telecommunications (Consumer Protections and Service Standards) Act 1999 (Cth) for all the existing and proposed fixed line voice services at the premises for the duration of the outage caused by the activation of, or migration to, the NBN Service;
  - (d) the activation of, or migration to, an NBN Service may mean that incompatible products may not function as expected; and
  - (e) the installation and operation of a Monitoring Service may cause temporary disruptions to the NBN Service.
- 2.9 In using the NBN Services you agree to comply with our Fair Use Policy.

### **3. NBN SERVICE CHARGES**

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- 3.1 The charges applicable to the NBN Services are specified in the Critical Information Summary.
- 3.2 The Minimum Monthly Spend is payable in advance. In addition, you may be charged in arrears for your usage of the NBN Services in accordance with the charges specified in your Application and/or the Critical Information Summary. Your usage of the NBN Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.
- 3.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.
- 3.4 We may vary any charges for the NBN Services in accordance with this SFOA.

### **4. MOVES & UPGRADES**

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- 4.1 If you request your NBN Services to be moved to a new address at any time, there may be a charge payable. If NBN Services cannot be provided at your new address, we may terminate this SFOA by notice to you.
- 4.2 Either party may be able to change your NBN Service if it is specified in the Application.
- 4.3 Changes to your plan involving a downgrade on the NBN Service or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

### **5. PROVISION OF NBN SERVICE RELATED EQUIPMENT**

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- 5.1 In order to access the NBN Services, we or our Suppliers may provide you with NBN Service Related Equipment as indicated in your Application.



- 5.2 If you purchase any NBN Services Related Equipment from us or our Suppliers then risk in the NBN Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.
- 5.3 We may either install your NBN Services Related Equipment at the Site or you may install the NBN Services Related Equipment yourself as specified in your Application.
- 5.4 You are responsible for all costs of delivery and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.
- 5.5 If we are installing your NBN Service Related Equipment, you must provide us, our Suppliers or NBN Co with safe, timely and reasonable access to your premises during Business Hours, if required. We reserve the right to charge you, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.
- 5.6 You acknowledge that installation of the NBN Services may cause temporary disruption to your standard telephony services.
- 5.7 We will use reasonable endeavours to configure the Equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the NBN Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.
- 5.8 Risk in the NBN Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

## **6. SERVICES PROVIDED OVER AN NBN FIBRE NETWORK**

- 6.1 You acknowledge and agree that if your premises is serviced by means of the NBN Fibre Network:
  - (a) the NBN Voice and NBN Broadband Services may be unavailable if there is a failure of the power supply;
  - (b) if you do not have a back-up battery PSU, the back-up battery PSU is not installed, or is installed but flat or faulty, you and each other person at the premises will not be able to receive or make any telephone calls (including calls to 000 emergency services) over the fixed line voice service for the duration of the power failure;
  - (c) if a back-up battery PSU is supplied, it is your responsibility to check that the back-up battery PSU is operational and to report actual or suspected faults to us; and
  - (d) the installation and operation of a Monitoring Service may cause temporary disruptions to the NBN Services.

## **7. FAULT REPORTING AND MAINTENANCE**

- 7.1 If we have a Service Level Agreement with you then the nominated Service Level applies and details of such Service Levels are available at our website or available from us on request. You should notify any faults regarding your NBN Services to our help desk, the contact number for which is located on our website.
- 7.2 Before reporting a fault to us, you should ensure that the fault is not due to hardware, software or networks that are not being managed by us. We reserve the right to charge you our standard on-site visit fee if no fault is found.

**7.3 We are:**

- (f) responsible for correcting faults in the Services and you must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility;
- (g) not responsible for any fault which is on your side of the network termination point; and
- (h) not responsible for any fault which is within the network of a Supplier in which case we will notify that Supplier of the fault and request that the fault be corrected promptly.

**7.4** If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays) or if Service Levels apply to your NBN Service, at the times specified in the Service Level Agreement. We reserve the right to impose a charge if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

**7.5 You acknowledge and agree**

- (i) that NBN Co and the Supplier do not have a contractual relationship with you in respect of the supply of NBN Services; and
- (j) not to contact NBN Co or a relevant Supplier in connection with technical support or any other issues in connection with the NBN Services.

**PART D – MOBILE SERVICES AND MOBILE EQUIPMENT****1. APPLICATION OF THIS PART**

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- 1.2** This Part D applies if you have requested in your Application that we supply you with Mobile Services, and if nominated in your Application, Mobile Equipment. This Part D sets out the terms and conditions on which we will supply you with Mobile Services and (if applicable) Mobile Equipment.
- 1.3** To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part D.

**2. PROVISION OF MOBILE SERVICES**

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- 2.1** We will provide the Mobile Services to you, for the Minimum Term specified in your Application, when your accounts are transferred from your current Supplier to us for the provision of the Mobile Services have been completed.
- 2.2** We will provide the Mobile Services using such of our facilities and services or those of other Suppliers as we may determine from time to time and subject to availability, geographical and technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks.
- 2.3** We do not warrant that the Mobile Services or Mobile Equipment will be free of interruption, delays or faults. The Mobile Service is only available within the limitations of the Mobile Network and within that coverage area there may be areas where coverage is limited or unavailable.
- 2.4** You acknowledge and agree that:
  - (a) The Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service
  - (b) You are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative telecommunications services suitable for such purposes.



- 2.5 If you are on a Minimum Term Contract the fixed minimum term specified in your Application commences on the provision of the Mobile Services or when the SIM is activated.
- 2.6 At the end of the Minimum Term we will continue providing the Mobile Service to you until you notify us that you no longer require the Mobile Service. After we receive your notice we will stop providing the Mobile Service from the date received or future date that you advise us.
- 2.7 You warrant that while using the Mobile Services or the Mobile Equipment you or anyone else will not engage in conduct which affects the Mobile Network or another person's network including the sending of commercial electronic messages as defined under the SPAM Act 2003 (Cth).
- 2.8 While receiving Mobile Services, you agree to comply with our Fair Use Policy set out on our website or available from us on request.

### **3. PROVISION OF MOBILE SERVICES RELATED EQUIPMENT**

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- 3.1 To be eligible to receive Mobile Equipment you must:
  - (a) Apply for Mobile Services and Mobile Equipment in your Application
  - (b) Agree to our Minimum Term and Minimum Monthly Spend requirements
  - (c) Use the Mobile Services and Mobile Equipment for business or personal use only and
  - (d) Meet our minimum credit requirements.
- 3.2 You are responsible for maintaining and repairing any Mobile Equipment supplied by us or our Supplier and complying with the manufacturer's instructions relating to the Mobile Equipment and SIM (where applicable) and its use.
- 3.3 You indemnify us and our Supplier against any loss, damage, malfunction or failure resulting from misuse, neglect, abuse, use for a purpose for which the Mobile Equipment was not designed or is not suited, in connection with the Mobile Equipment.
- 3.4 If your Mobile Equipment is lost or stolen you must contact Customer Service to request that your SIM card and/or Mobile Equipment be blocked.
- 3.5 Provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us subject to the terms of this SFOA.

### **4. SIM**

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- 4.1 You will receive only one SIM card for one Mobile Service.
- 4.2 We may charge you a SIM card replacement fee or a fee for a new sim card.
- 4.3 You must inform us immediately if the SIM card is lost, stolen or damaged by calling Customer Service. We will then disconnect or Bar your connection (you will be responsible for all charges up to this time) until the SIM card is replaced or repaired. We may charge you a SIM replacement fee unless we were at fault.

### **5. MOBILE SERVICE CHARGES**

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- 5.1 Each monthly payment will comprise the amount of the Minimum Monthly Spend for Mobile Services and Mobile Equipment as specified in your Application (the "Minimum Monthly Spend").

- 5.2 There may also be charges which are identified in your Application and any other charges which we can charge under this SFOA. We will invoice you in advance for the Minimum Monthly Spend.
- 5.3 Minimum Monthly Spend:
- (a) You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.
  - (b) You agree to pay the Minimum Monthly Spend even if your actual spend on Eligible Calls, which is a component of this Minimum Monthly Spend, is less than the Minimum Monthly Spend specified in your Application.
  - (c) If you do not reach your Eligible Call spend in a month, this amount will not accrue and will not roll-over into the following month, unless we agree in your Application to roll-over.
  - (d) Your Eligible Call spend is calculated based on all Eligible Calls made by you using the Mobile Services which are captured and recognised by us within a billing period, regardless of when the Eligible Call was actually made.
  - (e) You agree to pay, if any, the charges for Mobile Services used in excess of the Eligible Call spend and charges relating to non-Eligible Calls each month throughout the Minimum Term.
  - (f) In calculating the charges for Mobile Services included in your Minimum Monthly Spend, we may include other charges which are additional to the Minimum Monthly Spend.
  - (g) The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of Service supply in the relevant month.
- 5.4 Your Minimum Term Contract or plan will be calculated by us based on your Minimum Monthly Spend commitment.
- 5.5 Your right to vary the Minimum Monthly Spend:
- (a) At any time during the Minimum Term you can choose to increase the Minimum Monthly Spend, with our agreement.
  - (b) If the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the Minimum Monthly Spend based on the Critical Information Summary (at the commencement of your Minimum Term).
  - (c) You may not decrease your minimum monthly commitment during the agreement period.
- 5.6 We may allow you to change your original Minimum Monthly Spend or move to another plan during your Minimum Term if it is specified in your Application or if agreed by us in writing. We may require you to commit to a new Minimum Term from the date of change, and a fee may apply.
- 5.7 If you wish to cancel the Mobile Service before the end of the Minimum Term you must give us notice and pay all Charges under this SFOA. Subject to you having paid all Charges and complying with all other obligations under the SFOA with you, this SFOA will terminate.
- 5.8 Only calls captured and recognized by us within the bill period are included in Minimum Monthly Spend calculation. Certain call types such as international calls may take up to 3 months to appear on your bill.

## **6. LOST AND STOLEN AND FAULT REPORTING**

- 6.1 We will provide seven days a week lost and stolen reporting service. You should

notify our customer service team for this.

- 6.2 We will provide a fault reporting service via our help desk during Business Hours.
- 6.3 We are responsible for correcting faults in the Mobile Service. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
- 6.4 We are not responsible for any fault which is within the network of a Supplier. We will notify that Supplier of the fault and request that the fault be corrected promptly