

1. About this document

- (a) These are Live Connected's **Customer Terms**.
- (b) When we supply you with Telecommunications Products, our Customer Terms apply by agreement between us or, failing agreement, under section 479 of the Telecommunications Act.
- (c) When we supply you with non-Telecommunications Products, our Customer Terms apply as our standard terms of business.

2. About us

Live Connected or 'we' means Live Connected Pty Ltd ACN 140 094 113.

Part B – Customer Contracts

3. Your Customer Contract

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

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

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

4. Plans

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

5. Peak & Off-peak

- (a) A Plan may specify certain days and/or times as **Peak** or **Off-peak**.
- (b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. The Plan will indicate how that works in each case.

6. Periodic Entitlements

- (a) A Plan may include the right to use a certain amount of a Service during a certain period.
 - eg An Internet Plan might let you download 100 gigabytes of data each month at no extra cost.
 - eg A local call Plan might let you make 50 local calls each month at no extra cost.

We call these **Periodic Entitlements**.

- (b) Unused Periodic Entitlements do not carry forward and are not redeemable for cash or other credit.

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- (c) If you exceed your Periodic Entitlement, extra Charges may apply or a Service may be limited in some way. Your Plan will give details.

7. Prepaid Plans

For a Prepaid Plan:

- (a) Prepayments are not redeemable for cash or other credit.
- (b) The Plan may specify a **Use-by Date** ie a period after which any prepaid entitlements that are not used expire without refund. Unless a Plan specifies otherwise, a Use-By Date of one year applies to all Prepaid Plans.
- (c) Prepayments are not transferable between Plans – if you change Plans, there is no credit for unused prepaid entitlements (unless the Plan states otherwise).
- (d) We may specify minimum and/or maximum prepayments that you may make.
- (e) When your prepaid entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

8. Acceptable and Fair Use Policies

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

For additional information regarding our Acceptable Use Policies, please visit www.liveconnected.com.au or alternatively to obtain a copy of the applicable policy – write to our Customer Information and Compliance Officer at PO Box 402 Fortitude Valley QLD 4006.

9. Legal Compliance Policies

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

10. Operational Directions

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

11. Partner Requirements – General

- (a) Telecommunications services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- (b) Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Partner Requirements.

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- (c) You must comply with applicable Partner Requirements we notify.
- (d) Where a Partner Requirement states that a Partner has a certain right or power:
 - (i) the Partner itself may exercise that right or power; or
 - (ii) we may exercise the right or power on behalf of the Partner.
- (e) **ACL Consumers** If a new or amended Partner Requirement is materially detrimental to you, you may have Walk Away Rights under clause 50.

12. Fixed terms

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

- (a) A Contract for the Plan is a contract for at least that specified term.
- (b) Either you or we can terminate the Contract on or after the end of that specified term, by giving 30 days' termination notice.

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

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

14. Bundled Equipment

- (a) Under some of our Plans, you will be supplied with Equipment (eg 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 29(c) explains when ownership of Bundled Equipment passes to you.

15. Telecommunications Consumer Protections (TCP) Code

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

16. Australian Consumer Law (ACL)

- (a) Some provisions of the ACL apply to individuals who enter Consumer Contracts (as defined in the ACL). We call those persons **ACL Consumers** in our Customer Terms. Refer to the Dictionary for the detailed definition.
- (b) A term or note in our Customer Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.

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17. ACL Consumers and Unfair Contract Terms

- (a) Our Customer Terms apply to a wide variety of customers and circumstances, and must reasonably protect our interests across that wide variety.
- (b) If you are an ACL Consumer, and a term of your Contract would (except for this clause) be unfair (within the meaning of section 24 of the ACL) we will not apply or rely on that term without also taking steps to appropriately mitigate any unfairness.
- (c) Those steps will be tailored to the particular situation, but may include eg offering you Walk Away Rights and a reasonable period to exercise them.

18. Consumer Guarantees

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

19. Understanding and navigating our Customer Terms

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 107.
- (b) Rules for interpreting other expressions in our Customer Terms are set out in clause 106.
- (c) The Index is at the end.

Part C – General Terms

20. Application for Service

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

21. Processing an application

- (a) We do not have to accept an application.
- (b) Before we confirm that we can and will provide Service, if you take any step (eg 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.

22. Relevant dates

- (a) The date when you make an application is the **Application Date**.

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

23. Providing Service

- (a) We will commence Service as soon as reasonably practicable after the Contract Date, and we may commence billing you as soon as the service is provisioned.
- (b) We may provide Service using Our Facilities and/or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities our **Network**.

24. 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 credentials 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.

25. Using a Service

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

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- (viii) in a way that results, or is likely to result, in damage to property or injury to any person; or
- (ix) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.

26. Telephone numbers

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) We must comply with the Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.
- (c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.
- (d) You must not knowingly and deliberately:
 - (i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it; or
 - (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Contract ends.

27. IP addresses, email addresses and domain names

- (a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.
- (b) These Internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- (c) We are not responsible for anything done, or required to be done, by these authorities.
- (d) You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your Contract ends.

28. Dynamic IP addresses

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

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29. Supplied Equipment

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

30. Substituted Equipment

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

31. Delivery of Equipment

- (a) We will try to deliver Equipment to you on the delivery date (**Delivery Date**) and at the address (**Site**) indicated on your Application during normal business hours in that area.
- (b) Variations at your request to Delivery Date or Site:
 - (i) are at our discretion; and
 - (ii) may be subject to conditions, including extra Charges.

32. Installation and connection of Equipment

- (a) This clause only applies if we expressly agree to install or connect Equipment.

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- (b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
 - (i) appropriate electricity supply;
 - (ii) appropriate electrical and mechanical fittings;
 - (iii) appropriate environmental conditions;
 - (iv) a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
 - (v) all relevant facilities for the location of the Equipment;
 - (vi) access to all relevant personnel including your technical personnel;
 - (vii) where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- (d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- (e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis) in connection with such entry and installation, except to any extent that we cause or contribute to it by:
 - (i) our negligence, or
 - (ii) our breach of the Consumer Guarantees.
- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

33. Installation Charges

- (a) We will charge you installation Charges as stated (or indicated by) in your Contract.
- (b) We will try to inform you in advance of any installation fees that may be charged by our Partners.
- (c) If we find that installation will be more costly because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to revised Charges.

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34. Additional Equipment services

- (a) You may ask us to supply additional services in relation to Equipment eg repairs.
- (b) If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Partners at rates they determine).

35. Lost, stolen and damaged Equipment

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

36. Return of Equipment

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

37. PPS Law

37.1 Application of clause

- (a) This clause 37 applies to the extent that your Customer Contract provides for or contains a 'security interest' for the purposes of the PPS Law (or part of it).
- (b) The security interest granted to us is a 'purchase money security interest' to the extent that it can be under section 14 of the PPS Law.

37.2 Registration and rights

- (a) We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
 - (i) ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
 - (iii) enabling us to exercise rights in connection with the security interest.
- (b) Our rights under your 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 agreement and/or under such other law, as we see fit.

37.3 PPS Law exclusions and waivers

- (a) 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 your Customer Contract in respect of goods that are not used predominantly for personal, domestic or household purposes:
 - (i) section 95 (notice of removal of accession to the extent it requires us to give a notice to you);
 - (ii) section 96 (retention of accession);

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- (iii) section 125 (obligations to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - (v) section 132(3)(d) (contents of statement of account after disposal);
 - (vi) section 132(4) (statement of account if no disposal);
 - (vii) section 135 (notice of retention);
 - (viii) section 142 (redemption of collateral); and
 - (ix) section 143 (re-instatement of security agreement).
- (b) The following provisions of the PPS Law:
- (i) section 123 (seizing collateral);
 - (ii) section 126 (apparent possession);
 - (iii) section 128 (secured party may dispose of collateral);
 - (iv) section 129 (disposal by purchase); and
 - (v) 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 during its Security Period, not only under those sections but also, as additional and independent rights, under your 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.
- (c) 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.

37.4 Non-disclosure

We and you 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 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 clause.

37.5 No competing security interest

You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in Equipment during its Security Period other than with our express written consent.

37.6 Sub-hiring Equipment during Security Period

- (a) 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 agreement with you.
- (b) You must take all steps including registration under PPS Law as may be required to:

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- (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (ii) enable us to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
- (iii) enable each of us to exercise our respective rights in connection with the security interest.

37.7 Costs

We may recover from you the cost of doing anything under this clause 37, including registration fees and the costs of notification.

38. TCP Customers and Authorised Representatives

- (a) If you are a TCP Customer, you can appoint an Authorised Representative to act on your behalf if you require.
- (b) To be effective, we require that any such appointment:
 - (i) is in writing;
 - (ii) is signed by you (unless you are incapable of signing, in which case we shall work out a feasible and mutually acceptable alternative with you);
 - (iii) is verified by you in person or by telephone, including reasonable evidence of your identity (unless you are incapable of communicating with us in person or by telephone, in which case we shall work out a feasible and mutually acceptable alternative with you); and
 - (iv) states any limitations on the authority of your Authorised Representative (eg time limit; limit on access to your account or personal information; limit on authority to incur expense on your behalf).
- (c) If your appointment does not state any limitations, your Authorised Representative has the power to act on your behalf as if they are you.
- (d) If your appointment states any limitations, your Authorised Representative has powers, including access to your information, in accordance with your appointment and those limitations.

39. TCP Customers and Advocates

- (a) You can use an Advocate to communicate with us if you require.
- (b) We presume that an Advocate is not authorised to establish or make changes to your account or Services, unless the Advocate is also your Authorised Representative under clause 38.
- (c) A person acting as your Advocate has no power to act on your behalf and has no access to your information without you being present and agreeing to such action.

40. Rights and remedies for PDH goods and services

Important consumer information: Full details of the consumer rights and remedies referred to in clauses 40 and 41 can be obtained from the Australian Competition

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and Consumer Commission (ACCC) at www.accc.gov.au or from a local consumer protection agency.

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

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

If we supply you with goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and cost no more than \$40,000 you have important rights under the ACL including consumer guarantees and remedies but:

- (a) in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
 - (i) replacing the goods or supplying equivalent ones;
 - (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent ones;
or
 - (iv) paying the cost of having the goods repaired; and
- (b) in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:
 - (i) supplying the services again; or
 - (ii) paying the cost of having the services supplied again.
- (c) If we supply you with non-PDH Goods or Services that cost no more than \$40,000, and you are told they come with a 'manufacturer's warranty' or 'one year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

42. Personal injury or death

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

43. Service Level Agreements

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

- (a) we are liable for any remedy or rebate specified by the SLA; and
- (b) subject to clauses 40 to 42, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

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44. Exclusion of implied terms and limitation of liability

Important consumer information: Nothing in this clause 44 limits the consumer rights and remedies referred to in clauses 40 and 41.

Subject to clauses 40, 41, 42 and 43:

- (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.

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.

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

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

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.

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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 on notice to you but variations do not have retrospective effect.

ACL Consumers We shall give you reasonable notice, having regard to:

- (a) the nature of the variation; and
- (b) the means by which notice is to be provided; and
- (c) the length of time remaining before the variation is to occur; and
- (d) any other matter that is reasonably relevant –

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and we may also offer you Walk Away Rights as explained in clause 50.

50. ACL Consumers and Contract variations

This clause only applies to ACL Consumers.

(a) Reminder about ACL Consumers

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

(b) Beneficial or minor detrimental impact

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

- (i) we will not give you notice, and
- (ii) we will not give you Walk Away Rights.

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

If:

- (i) a Partner supplies a service to us, and
- (ii) we resupply that service to you (either as a separate service or as part of another service), and
- (iii) the Partner insists on a variation to a term of our agreement with it (either during the term of the agreement, or on a renewal or extension or renegotiation), and
- (iv) we believe in good faith and on reasonable grounds that the Partner has required or will require its wholesale customers or resellers generally to accept a term to the same or similar effect as the varied term, and
- (v) that variation gives rise to a variation of your Contract –
then:
 - (vi) we will give you notice of the variation, but
 - (vii) we will not give you Walk Away Rights.

(d) Other variations

In any other case:

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

51. When variations take effect

Contract variations take effect:

- (a) at the end of any applicable notice period; or

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- (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
 - (i) If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
 - (ii) If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – see clause 76.

53. Charges & payment (1): kinds of Charge

We have various kinds of Charge, including:

- (a) installation Charges eg for installing Equipment,
 - (b) set up Charges eg a one-off Charge when you start on an Internet Service,
 - (c) periodic Charges eg a fixed monthly Charge for an ADSL Service,
 - (d) usage Charges eg a Charge per call made on a local call Service,
 - (e) prepaid Charges eg a Charge for call credit on a mobile telephone service,
 - (f) call connection Charges eg a Charge incurred when a telephone call connects,
 - (g) miscellaneous Charges eg 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 eg an amount we must pay to a Partner to install a second telephone line in your premises,
 - (i) equipment Charges eg 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) Subject to clause 56, our prices are as stated in your Plan.
- (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.

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- (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 clauses 49, 50 and 51.

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).

eg We might offer bundled 'Home phone + Internet Access for \$89.95 a month' where our Charges for the individual Services would be \$99.95 a month.

- (b) Each Service in a bundle is subject to a separate but 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.

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.

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

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

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

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

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

60. Credit management (2): Credit checks

- (a) Credit checks

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At our discretion, we may obtain a credit report about you to help us decide whether to accept your application for service and to help us collect overdue amounts.

In the course of a credit check, we may disclose personal information about you to a credit reporting agency or other credit information provider. We may receive a credit report and other information about you, including personal information.

A credit reporting agency may include the fact that we obtained a credit report about you in its credit information file on you.

(b) Disclosure of information

We may disclose to a credit reporting agency:

- (i) information in your application;
- (ii) details of your account;
- (iii) that you have applied for credit with us;
- (iv) that we are a current credit provider to you;
- (v) payments that are more than 60 days overdue and are subject to collection processes;
- (vi) any cheque of yours for \$100 or more which has been dishonoured more than once;
- (vii) any serious credit infringement you have committed;
- (viii) that payments are no longer overdue.

(c) Other credit disclosures

We may disclose information about you and any debt you owe us to:

- (i) a debt collection service we engage; and
- (ii) anyone who takes, or is considering taking, an assignment of any debt you owe us.

(d) Your consents

- (i) If you are an individual, you agree that we can conduct a credit check and verify your personal details, in accordance with this clause.
- (ii) If you are self-employed, you agree that we can:
 - (A) obtain and use any report or information from a credit reporting agency, which contains information about your commercial activities or commercial credit worthiness;
 - (B) exchange with your other credit providers, any credit report or other report about your credit worthiness or history, or personal information contained in those reports –
in accordance with this clause.

(e) Further acknowledgments

You acknowledge that credit and other information about you may be used:

- (i) to assess your application,
- (ii) to assist you to avoid defaulting on your credit obligations,

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- (iii) to notify other credit providers of a default by you,
- (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 (eg you arrange an Internet Service for your children):

- (a) You are responsible for all use of the Service and all Charges incurred under the Contract.
- (b) If you give anyone else sufficient information about your Service (eg by giving them your user name, password or other credentials), they may be able:
 - (i) to uncap or unlimit any cap or other limits that apply to it,
 - (ii) to change Plans,
 - (iii) to disconnect Service, and
 - (iv) to do anything else that you could do.

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

- (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 reserve the right to vary it.
- (b) We can bill a part-period eg to align your Billing Period with the first day of each month or where your Contract ends part way through a month. In both cases:
 - (i) your Periodic Entitlements and Charges for them will be pro-rated; and
 - (ii) you will also be billed all Charges for usage not included in your Periodic Entitlements.
- (c) We may bill for Charges as follows:

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

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

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63. Optional billing cycle

For some Plans, we bill a SIM delivery Charge in the month when your Plan starts; and in the next month following, we bill:

- (a) your monthly access fee for that next month; and
- (b) your monthly access fee for the first month, pro-rated for the number of days of your Plan in that month; and
- (c) any Charges for usage in the first month not included in your Periodic Entitlements; and

and in each subsequent month, we bill:

- (d) your monthly access fee for that month; and
- (e) any Charges for usage in the previous month not included in your Periodic Entitlements.

64. Bills – General

- (a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.
- (b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- (c) If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

65. Supplying a bill – TCP Customers

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

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

66. Extra Charges for bills and information

- (a) We may charge you an extra Charge if:
 - (i) you request non-standard information about your bill or Charges, or
 - (ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.
- (b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is \$5 per bill, or as otherwise notified in our Price List.

67. Billing information – TCP Customers

67.1 Requesting information

If you are a TCP Customer and request it, we will provide all Billing information related to your Service (including, if you request it, itemised details of Charges

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associated with the Service) relating to up to 72 months prior to your request, provided that:

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

67.2 Electronic Billing data

If you are a TCP Customer and we make information from, or about, a Bill, available in an electronic form, we will offer at least one method of accessing that information that does not involve paying access Charges to us (but to avoid any doubt, this does not prevent us from making any Charge that is authorised by clause 67.1).

67.3 Itemised Billing

- (a) We require notice in order to supply itemised billing details to you.
- (b) Unless we advise you otherwise, the notice period is:
 - (i) 14 days where the information relates to Charges first billed within the last 12 months;
 - (ii) 21 days where the information relates to Charges first billed within 12 to 24 months; and
 - (iii) otherwise – 28 days.

68. Costs of telephone Billing Enquiries

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

69. 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.

70. GST

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

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- (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.

71. Late billing

- (a) We may late bill.
TCP Customers We shall only do so up to 160 days in arrears.
- (b) Some Charges in a Bill may relate to a previous Billing Period.

72. Due Date

- (a) If you do not use direct debit, you must pay the entire amount of your invoice on the due date as specified on your invoice (unless we agree otherwise, for example, because of a legitimately disputed invoice).
- (b) If you do use direct debit, we will charge your nominated payment method on the due date or the closest business day (unless we agree otherwise, for example, because of a legitimately disputed invoice).
- (c) If you choose to provide us with credit card or verified bank account details for the purpose of a one-off or recurring direct debit transaction, we will debit your nominated account, ten calendar (10) days from the issue date of your invoice (the Due Date). You acknowledge and agree that the Due Date may be less than the ten (10) working days prescribed in the TCP Code.

73. How you can Pay

- (a) If your Plan specifies 'Direct Debit only' (or similar) then:
 - (i) Direct Debit payment is a precondition to supply of Service to you.
 - (ii) We may suspend Service if Direct Debit arrangements are not maintained.

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- (iii) You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

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

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

74. Late payment (1)

If a Bill is not paid on time:

- (a) you are in breach of your Contract, and
- (b) we may also charge:
 - (i) interest at 1.5% a month from the Bill Date until it is paid in full, or
 - (ii) a reasonable late fee, and
 - (iii) any collection fees and expenses that we incur.

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

75. 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 74(b)(iii) may:
 - (i) include the external agency's collection fee and/or
 - (ii) include a minimum recovery charge.

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

76. Early Termination Fees

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

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- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) if the relevant Plan does not specify an amount or a calculation – in accordance with Part J; or
- (c) if clauses 76(a) or (b) do not apply:
 - (i) any amount we remain liable to pay to a third party (eg a wholesale supplier) for goods or services we cannot resell or resupply to other customers; and
 - (ii) a reasonable estimate of our lost profit as a result of early termination.

77. Billing disputes

- (a) Our records of what you owe us are deemed to be right unless you show them to be wrong.
ACL Consumers This does not apply to you.
- (b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.
TCP Customers We will not take Credit Management action in relation to a disputed amount that is the subject of an unresolved complaint, if we are aware that the complaint has not been resolved to your satisfaction and is being investigated by us, the TIO or a relevant recognised third party but:
 - (i) you must still pay all undisputed portions, and
 - (ii) if it is determined that some or all of the disputed portion is payable, you must pay that amount within 5 days.
- (c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

78. 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.

79. Billing agents

- (a) We may bill you via a billing agent (eg another company in our group).
- (b) Payment to our billing agent constitutes payment to us.
- (c) Failure to pay our billing agent constitutes failure to pay us.

80. Calls to Mobiles

- (a) Unless otherwise expressly stated, our prices for usage of mobile phones (eg calls, messaging, data transfers) are always quoted on the basis that:
 - (i) you are using the phone in Australia, and
 - (ii) any phone you are calling or messaging is in Australia.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

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81. 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.

82. 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.

83. Complaints – General (but see clause 84 if you are a TCP Customer)

- (a) If you have any complaints in connection with the Service (including complaints about your invoice) you should contact us first to resolve the complaint via the contact details available on our website.
- (b) We will handle your complaint in accordance with our complaints procedure. You can get information on our complaints procedure by contacting us.
- (c) You are also entitled to make a complaint to the Telecommunications Industry Ombudsman and possibly to the Consumer Affairs office (however described) in your state. We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- (d) We may bill you a reasonable complaint handling Charge.

84. TCP Customers and Complaints

If you are a TCP Customer:

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

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

Subject to clause 87, we may terminate a Contract, or suspend or restrict Service if, in relation to that or any other Contract or Service:

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

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

86. Termination & suspension by us (2): Other events

Subject to clause 87:

- (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

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- (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.

87. TCP Customers – Disconnection, Suspension and Restriction

If you are a TCP Customer:

- (a) We will not disconnect, suspend or restrict a Service for credit and/or debt management reasons, without first informing you unless:
 - (i) we assess that you or the account status presents an unacceptably high credit risk to us; or
 - (ii) we reasonably suspect fraud or attempted fraud; or
 - (iii) you have nominated to us an agreed point at which Service will be limited and that point has been reached.
- (b) Except where clause 87(a) applies, we will give you at least 5 working days' notice prior to disconnecting, suspending or restricting your Service, including an indication of the earliest date disconnection, suspension or restriction could occur and the date of issue of correspondence if you are informed in writing –

and we shall otherwise comply with the rules in the TCP Code about disconnection, suspension or restriction of the Service.

88. Early termination by you

- (a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.
- (b) Our Plans are priced on the basis that you will complete your Contract.
- (c) Where you are entitled to terminate your Contract early (eg because we have offered you that option following a variation to your Contract) we may bill you for:
 - (i) any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers; and
 - (ii) usage or network access charges incurred up to the date on which the Contract ends.
- (d) If we agree that you may terminate it early in any other circumstances, we may bill you:

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- (i) an Early Termination Fee;
 - (ii) any applicable amounts under clause 88(e);
 - (iii) a reasonable administration Charge;
 - (iv) usage or network access charges incurred up to the date on which the Contract ends; and
 - (v) any other Charge that is specified in the applicable Plan or the Price List.
- (e) Some of our Plans discount, defer or waive normal equipment or installation costs (eg include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and if we agree that you may do so) we may also bill you an additional Charge for those items representing their reasonable value *pro-rated* against the portion of the minimum or fixed term that is to be truncated.

89. Termination by you

- (a) You may terminate your Contract:
 - (i) (except during a fixed or minimum term) at any time, on 30 days' written notice; or
 - (ii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 30 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.

90. Post-termination

If your Contract ends:

- (a) Our obligations to you under that Contract are at an end.
- (b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract.
- (c) All bills are payable immediately.
- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.
- (e) You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)
- (f) Any cause of action that either of us had against the other predating the termination is not affected,

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- (g) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,
 - (h) No other Contract is affected unless we also terminate it.
- Otherwise, that Contract is at an end for all purposes.

91. Suspension of Service

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

- (a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Customer Contract (which is not the subject of a *bona fide* dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
- (c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are the subject of an Insolvency Event;
- (f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
- (g) we reasonably believe that you may be a credit risk in relation to the Service;
- (h) you are a natural person (and not a company) and you die;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Service or integrity of the Network;
- (k) the Service may cause death, personal injury or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Customer Contract.

92. 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.

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93. 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.

94. Carrier or Carriage Service Provider

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

95. 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.

96. Assignment

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

97. Notices

97.1 How we give notices

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

- (a) in person;
- (b) by fax;
- (c) by email;
- (d) by post;
- (e) by Instant Messaging; or
- (f) in any other way allowed by law –

or by sending you (by one of the above means) notice of the address of a web page where the notice can be read.

97.2 Address or number for notices

We may direct a notice to:

- (a) a number or address that we reasonably believe to be current;

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

97.3 A notice is taken to have been received:

- (a) if we deliver it to you in person – at the time of delivery;
- (b) if we fax it during business hours in your locality – two hours later, subject to our fax machine receiving a successful transmission confirmation;
- (c) if we fax it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to our fax machine receiving a successful transmission confirmation;
- (d) if we email it during business hours in your locality – two hours later, subject to a ‘delivery failure’ message not being received;
- (e) if we email it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to a ‘delivery failure’ message not being received;
- (f) if we post it – at noon on the second Business Day after posting;
- (g) if we send it by Instant Message – two hours later;
- (h) if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
- (i) if there is evidence that you received it at an earlier time – that earlier time.

98. 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 Queensland and the Commonwealth of Australia.

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

99. Entire agreement

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

- (a) your Contract does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it, other than a Consumer Guarantee to the extent it may not lawfully be excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Contract.

100. Delays

- (a) Time is not of the essence in the performance of our obligations, including the provision of Service, under your Contract.
- (b) We are not liable to you for any delay in the provision of any Service.
- (c) You may not cancel or amend an order for a service on the grounds of any delay in providing it.

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

101. 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.

102. 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.

103. 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.

104. Complaints and assistance services

Our contact details are available on our website.

You may contact us and make any complaint by contacting us or the following assistance services:

- (a) Customer Service – [TO BE SUPPLIED]
- (b) National Relay Service – 133 677
- (c) Translating and Interpreting Service – 131 450

105. Commercial Electronic Messaging

- (a) Subject to this clause, we may send you Commercial Electronic Messages regarding telecommunications goods and services, and ancillary goods and services, and you consent to us doing so.
- (b) You consent under clause 105(a):
 - (i) applies while your Contract is in force and for a year afterwards; and
 - (ii) is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 16(2) of the Spam Act; but
 - (iii) terminates if you give us reasonable written notice that it is withdrawn.
- (c) Any Commercial Electronic Message we send you does not have to comply with section 18(1) of the Spam Act.
- (d) This clause 105 survives the termination of your Contract.

106. Interpreting your Contract

- (a) If an expression is defined in the Dictionary in clause 107, that is what it means.

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- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint blue', then 'coloured' means 'painted blue'.)
- (c) Expressions like 'includes', 'including', 'eg' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) There is no significance in the use of gender-specific language.
- (h) A 'person' includes any entity which can sue and be sued.
- (i) A 'person' includes any legal successor to or representative of that person.
- (j) A reference to a law includes any amendment or replacement of that law.
- (k) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (l) Anything we can do, we may do through an appropriately authorised representative.
- (m) Any matter in our discretion is in our absolute and unfettered discretion.
- (n) A reference to a document includes the document as modified from time to time and any document replacing it.
- (o) 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.
- (p) The word 'month' means calendar month and 'year' means 12 months.
- (q) 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.
- (r) 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.
- (s) Money amounts are stated in Australian currency unless otherwise specified.
- (t) A reference to a 'notice' means a notice that can be read, unless stated otherwise.

107. Dictionary

<i>The expression:</i>	<i>means:</i>
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	a policy so titled and issued under clause 8
ACL	Australian Consumer Law, which is set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i>

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<i>The expression:</i>	<i>means:</i>
ACL Consumer	an individual who enters a Customer Contract for goods and/or services wholly or predominantly for personal, domestic or household use or consumption
Application Date	see clause 22(a)
Advocate	as in the TCP Code
Authorised Representative	as in the TCP Code
Automatic Direct Debit	a periodic payment that is automatically deducted by us from your nominated financial institution account
Bill	an invoice from us which advises you of the total of each Charge that is due for payment
Billing Period	see clause 62(a)
Bundled Equipment	see clause 14
Business Day	Monday to Friday excluding statutory holidays
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)
Commercial Electronic Message	same as in the <i>Spam Act 2003</i>
Consumer Contract	same as in the ACL
Consumer Guarantee	same as in the ACL
Contract	same as Customer Contract
Contract Date	see clause 22(b)

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<i>The expression:</i>	<i>means:</i>
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: <ul style="list-style-type: none">• 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
Credit Management	the process by which we: <ul style="list-style-type: none">• help customers to manage their expenditure on Services;• manage any credit risk to us; and• collect outstanding debts from customers and former customers
Customer Contract	see clause 3
Customer Terms	see clause 1
Delivery Date	see clause 31
Dictionary	this table of defined terms
Direct Debit	a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit
Early Termination Fee	see clause 76
End User	see clause 24(b)
Equipment	a handset, modem, router or other hardware
Extract	deduct an amount by Direct Debit
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service

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<i>The expression:</i>	<i>means:</i>
Fair Use Policy	a policy so titled and issued under clause 8
General Terms	the terms in Part C
GST	Goods and Services Tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
Inbound Number	a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answer points
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
Instant Messaging	SMS, iMessage and any similar instant messaging service by which you and we can exchange text or voice messages
Internet Service	a Service that provides access to the Internet
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Partners, any disruption to our or our Partners' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster
Law	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)
Network	see clause 23
Numbering Plan	the Telecommunications Numbering Plan
Off-peak	see clause 5
Operational Directions	see clause 10
Optus	Optus Networks Pty Ltd ACN 008 570 330

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<i>The expression:</i>	<i>means:</i>
Our Facilities	Facilities we own and/or operate
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content or (c) a service – that we resupply to you
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	see clause 11
PDH	personal, household or domestic
Peak	see clause 5
Periodic Entitlements	see clause 6
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
PMSI	a purchase money security interest under the PPS Law
Post-Paid Plan	a Plan where you can use all or part of the Service before you pay for it
PPS Law	<i>Personal Property Securities Act 2009</i>
Prepaid Plan	a Plan where you must pay in full for Service before you use it
Price List	see clause 54
Privacy Act	<i>Privacy Act 1988</i>
Product	goods and / or services
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or statutory body or authority and the Telecommunications Industry Ombudsman and Communications Compliance Limited
Security Period	in respect of any Equipment means the applicable period, if any, under clause 29(c)
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 <i>Telecommunications Regulations 2001</i> (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the <i>Telecommunications Regulations 2001</i>
Service Level Agreement	a written service quality assurance titled as such

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<i>The expression:</i>	<i>means:</i>
Service Start Date	see clause 22(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	see clause 31
SLA	a Service Level Agreement
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Spam Act	<i>Spam Act 2003</i>
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Telephone Service	as in section 6 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
TCP Code	Industry Code C628:2012 <i>Telecommunications Consumer Protections Code</i>
TCP Customer	(a) a person who acquires a Telecommunications Product from us for the primary purpose of personal or domestic use and not for resale; or (b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into a contract with us: (i) does not have a genuine and reasonable opportunity to negotiate the terms of the contract; and (ii) has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000
Telecommunications Act	<i>Telecommunications Act 1997</i>
Telecommunications Goods	any goods we supply for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service
Telecommunications Product	Telecommunications Goods and/or a Telecommunications Service

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

Part D – ADSL Internet Service Terms

108. Partner Requirements – ADSL Services

Where we supply you with an ADSL Internet Service:

- (a) The Service can only be provided over a copper wire pair approved by Telstra Corporation where Telstra Corporation or a reseller of Telstra Corporation supplies an operational standard telephone service over that copper wire pair.
- (b) You warrant to us that you are the same 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 108(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;

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- (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 the you using that copper wire pair – a complete list of incompatible products is available upon request).
- (j) You acknowledge and must ensure that any provider of a monitoring service used by you has been notified that:
 - (i) installation and operation of an ADSL Service may cause temporary disruption in the standard telephone services or a monitoring service received by you; and
 - (ii) installation of equipment at your premises such as central splitters and network termination devices may be required under clause 108(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.

Part E – Mobile Telephone Service Terms

109. Partner Requirements – Mobile Telephone Services

Where we supply you with a Mobile Telephone Service:

- (a) If arrangements between our Wholesale Supplier and us are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Mobile Telephone Services to you may be altered to the nearest applicable rate plan of our Wholesale Supplier in the event that our rights and obligations under your Contract are assigned or novated to our Wholesale Supplier so that our Wholesale Supplier provides the Mobile Telephone Services directly to you.
- (b) You may not resell or resupply the Mobile Telephone Services provided by us.
- (c) We shall have the right to assign or novate all or part of its rights and obligations under your Contract to our Wholesale Supplier without your consent. You cannot assign or novate all or part of your rights and obligations under your Contract other than in accordance with this clause 109(c).

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

- (d) You consent to allow us to disclose to our Wholesale Supplier or Optus Mobile Pty Ltd ACN 054 365 696 (or its Related Bodies Corporate) your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you.
You consent to allow our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by us, our Wholesale Supplier or by Optus Mobile Pty Ltd. Without the express permission of us, our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.
- (e) Our Wholesale Supplier and Optus Mobile Pty Ltd are not liable to you (in contract, tort (including negligence) or otherwise) in relation to any Mobile Telephone Service resupplied to you by us, any delay or any failure to provide Mobile Telephone Services.
- (f) You promise that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).
- (g) If you become a Carrier or Carriage Service Provider, then we, our Wholesale Supplier or Optus Mobile Pty Ltd may immediately cancel the Mobile Telephone Service by notice to you. If we, our Wholesale Supplier or Optus Mobile Pty Ltd does so, that party will negotiate in good faith with you to enter into an agreement governing supply of the Mobile Telephone Service, on terms to be agreed.

110. Definitions

In this Part F, unless the context requires otherwise:

- (a) **Calls** means the relevant 13 inbound services provided to you by us.
- (b) **1300 Calls** means the relevant 1300 inbound services provided to you by us.
- (c) **1800 Calls** means the relevant 1800 inbound services provided to you by us.
- (d) **Data Calls** means a call enabling carriage of voice, data, text or image by means of digital data.
- (e) **Eligible Calls for Voice Services** are Local Calls (voice not data), National Calls (voice not data), International Calls (voice not data), Fixed to Mobile Calls (voice not data), 13, 1300, 1800 Inbound Services. For clarity, they do not include PSTN Data Calls, calls to 13, 1300, 1345, calls to international mobiles, calls to time and weather and or any other call type not specifically identified as being an Eligible Call (including where so identified under a Rate Sheet).
- (f) **Fixed to Mobile Call** means a call made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.
- (g) **International Call** means a call made from a PSTN or ISDN telephone service from Australia to another country; from Australia (excluding Norfolk Island) to Norfolk Island; from Norfolk Island to the rest of Australia; or from Australia's bases in the Antarctic to Australia and other countries.
- (h) **Local Call** means a call between a telephone service and a telephone service where: the A-Party and the B-Party are in the same Standard Charging Zone; the A-Party and the B-Party are in adjoining Standard Charging Zones; or either the A-Party or the B-Party is located in a Charging Precinct and the other is in its designated Standard Charging Zone, as defined in the Act, the Numbering Plan, and the Telstra PSTN SFOA.
- (i) **Long Distance Preselection Option** means that we will be your default provider for your International Calls, National Calls and Fixed to Mobile Calls.
- (j) **National Call** means a call made within Australia from a PSTN or ISDN telephone service to a PSTN or ISDN telephone service, which is not a Local Call or a Fixed to Mobile Call.
- (k) **ToIP** means Telephony over internet protocol as specified in your Application.
- (l) **VoIP** means Voice over internet protocol as specified in your Application.

111. Application of this Part

This Part G 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.

112. Provision of data & internet services

We will provide the Data & Internet Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) 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 or when your account with us has been established. 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. For certain Data & Internet Services, coverage may only be available in selected metropolitan and regional areas 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. 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. You agree that we may not supply a 'standard telephone service' (for the purposes of the Act) under this Part G with the internet access component and as such the Data & Internet Services are not subject to the Customer Service guarantee standard administered by the ACMA.

113. Period of agreement

You must take the Data & Internet Services for the Minimum Term if specified in your Application, and the Minimum Term commences when:

- (a) if you are arranging for self-installation of the required equipment and:
 - (i) you supply the required equipment yourself – on the date we activate your Data & Internet Services; or
 - (ii) if we supply you with the required equipment – on the date of delivery of the required equipment; or
- (b) if we are installing equipment for you, and:

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- (i) the equipment is being installed at a single Site – the date that we install the equipment at the Site; or
- (ii) the equipment is being installed at multiple Sites – the date we install the equipment at the second Site.

Unless you notify us in writing prior to the expiration of the Minimum Term that you wish to cease receiving the Data & Internet Services at the expiration of the Minimum Term, the Minimum Term of your Contract will be automatically extended from month to month (**Holding Over Period**) at the same rate, including the same Minimum Monthly Spend, and on the same terms and conditions.

114. Data & Internet Services Charges

- (a) The charges applicable to the Data & Internet Services are specified in the Price List and the applicable Schedule attached to your Application. The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and the Price List. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise. 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.
- (b) We may vary any charges for the Data & Internet Services in accordance with this agreement.

115. Shifts/ Moves/ Upgrades

If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule attached to your Application. If Data & Internet Services cannot be provided at your new address, we may terminate your Contract by notice to you. You may be able to change your Data & Internet Service if it is specified in the applicable Schedule attached to your 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.

116. Service Levels

We will use reasonable endeavours to meet the Response Target where response target/SLA's are advertised and/or advised by us as specified in the Terms and conditions. We will use our reasonable endeavours to meet the Restore Target and the Availability Target. The Availability Target will be calculated in accordance with the formula set out: $(\text{Available Hours during month} \times 100) / \text{hours in month}$. The Available Hours are measured at a point in the relevant network designated by us to be indicative of the availability experienced by you. At your request, we will calculate the Available Hours in a calendar month. If a Service is unavailable to you for any period of time as a result of an outage, this period of time will only be excluded from your Available Hours if you notify our Help Desk within five days of the outage. Availability Guarantee:

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- (a) If the Availability Target is not met then, for each hour of Service unavailability or fraction thereof in any calendar month above the Service unavailability time which meets the Availability Target, at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for the Service with respect to which the Availability Target has not been met.
- (b) If the Restore Target is not met then, for each day the Restore Target is not met, at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for the Service with respect to which the Restore Target has not been met. You may obtain no more than one credit per day, irrespective of how often in that day we failed to meet the Restore Target.
- (c) Notwithstanding anything to the contrary, the maximum total amount of credit issued in any calendar month as the Availability Guarantee remedy shall not exceed the total of the monthly Charges and the start-up Charges (if any) which, absent the credit, would have been charged for that month for the Service with respect to which the Availability Guarantee has not been met.
- (d) The Availability Guarantee in respect of the Availability Target and Restore Target is applicable only if you complete our "Service Level Agreement Rebate Form", which is available on request from our Corporate Support department. You are solely responsible for providing us with accurate and current contact information for your account administrator. We will be relieved of our obligations under the Availability Guarantee in respect of an Availability Target and a Restore Target if our contact information for your account administrator is out of date or inaccurate due to your action or omission.
- (e) We will use all reasonable endeavours to provide you with information regarding the progress of resolving any reported fault before the end of each Customer Update Period, but you acknowledge that we are only required to do so if any new information is available.

117. Acceptable Use Policy

If you are receiving Internet Services, you agree to comply with our Acceptable Use Policy

118. Software

Except for Software provided as part of the Data & Internet Services Related Equipment, or Maintenance, we will not provide you with any Other Software in order to access and use the Data & Internet Services or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Data & Internet Services or Purchase Equipment, but you must first get our prior written permission. We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

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119. Provision of Data & Internet Services Related Equipment

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. 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.

120. Installation of Data & Internet Services Related Equipment

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. You are responsible for all costs of delivery (as specified in the applicable Schedule attached to your Application) 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. If requested by us, you will execute an acknowledgment of delivery in an acceptable form. 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 unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time. You are responsible for all additional installation service charges where the work required on Site is greater than two hours unless otherwise stated in your Application. The installation charge is payable on commencement of the Service (pro-rated where the network is delivered to you in stages). You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services. Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Schedule attached to your Application. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application. 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. Telephone line configuration changes are only available for our supported modems and routers. Changes made by you to the supplied configuration are at your risk and will not be supported by us.

121. Your Obligations in relation to Data & Internet Service Related Equipment

- (a) We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of your Contract.
- (b) The Data & Internet Services Related Equipment is and remains our property unless specified by us (or the property of our Suppliers or of an entity related to us or our Suppliers) and you hold it for us or our Suppliers (as the

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case may be). We may change the Data & Internet Services Related Equipment at any time by giving you three days' notice.

- (c) 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.
- (d) You must not do anything to give rise to an adverse claim to our rights (or the rights of our Suppliers or of an entity related to us or our Suppliers) in or ownership of the Data & Internet Services Related Equipment.
- (e) The Data & Internet Services Related Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Data & Internet Services Related Equipment without our written permission.

122. Fault Reporting and Maintenance

- (a) If we have a Service Level agreement with you then the Service Level nominated in your Application 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 your invoice and on our website. 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.
- (b) We are:
 - (i) 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;
 - (ii) not responsible for any fault which is on your side of the network termination point; and
 - (iii) not responsible for any fault which is within the network of a Supplier and we will notify that Supplier of the fault and request that the fault be corrected promptly.
 - (iv) If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am to 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.
 - (v) We reserve the right to charge you in accordance with the relevant Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time. Regional services may attract an additional charge which is also specified in the relevant Schedule attached to your Application. A charge may be due where line fault requires an on-site visit to rectify.
 - (vi) You are responsible for the supply and maintenance of any additional hardware required to make the Data & Internet Services operational as a result of incompatible services being used.

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123. Termination

The services described in this Part may be terminated in accordance with this agreement.

124. Definitions

In this Part, unless the context requires otherwise:

- (a) **Acceptable Use Policy** means the policy relating to your use of the Internet Services which can be accessed on our website.
- (b) **Internet Services** means that part of the Data & Internet Services which is accessible via the public internet. This includes internet access, email facilities, web-page facilities and any other related internet facility or services that we may provide from time to time. This specifically does not refer to wide area networking services that are not accessible via the public internet.
- (c) **Minimum Monthly Spend** means the total monthly recurring charge specified in the Price List or your Application for the Data & Internet Service.
- (d) **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. In this Part, any references to 'standard' or 'regional' coverage, is to such coverage as determined by us from time to time.

Part H – Mobile Services and Mobile Equipment

125. Application of this Part

- (a) This Part 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 sets out the terms and conditions on which we will supply you with Mobile Services and (if applicable) Mobile Equipment.
- (b) To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Voice Services, or Purchase Equipment.
- (c) The Minimum Term, the Minimum Monthly Spend, the Mobile Equipment, as varied in accordance with this Part. 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 in accordance with the MNP process and any other arrangements with another Supplier for the provision of the Mobile Services have been completed or when your account with us has been established. 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. We will provide the required Mobile Services 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 to which the GSM Network, 3G network or GPRS Network is

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connected. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Mobile Services where capacity, geography or technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G Network or GPRS Network is connected affect the Mobile Services or Mobile Equipment. If you require a coverage map or further information you may telephone Customer Service.

- (d) 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 (as the case may be):
 - (i) within the limitations of the GSM Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable;
 - (ii) within the limitations of the 3G Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
 - (iii) within the limitations of the GPRS Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
- (e) You acknowledge and agree:
 - (i) that the Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
 - (ii) that 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.

126. Approved Equipment

You may only access the Mobile Service and the Value Added Feature with equipment, SIM cards and other devices approved by us. You may only use the Mobile Service and the Value Added Feature with a handset or other device as being compatible with the Value Added Feature. However, you agree that:

- (a) we do not represent or guarantee the extent to which a handset, Mobile Equipment or other device we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature; and
- (b) your ability to use a Value Added Feature and each of its features will depend upon the features and functionality of your handset or Mobile Equipment.
- (c) The use of Optus network sim cards on an untimed or timeless voice plan in any device other than a mobile handset device is strictly prohibited. For further information please refer to the reason use section of our Fair use policy.

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127. Minimum Term

- (a) 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.
- (b) The reference in this Part to a Minimum Term Contract relates to one SIM only and (where applicable) one handset and/or other Mobile Equipment. As nominated in your Application, you may acquire as a Bundle more than one Minimum Term Contract by which you will enter into one or more separate contracts with us.
- (c) 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. 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 your Contract. Subject to you having paid all Charges and complying with all other obligations under your Contract, your Contract will terminate.

128. Minimum Monthly Spend

- (a) Each monthly payment will comprise:
 - (i) the amount of the Minimum Monthly Spend for Eligible Calls (Mobile Services), Mobile Equipment as specified in your Application (the "Minimum Monthly Spend"); and
 - (ii) charges for Mobile Services relating to non-Eligible Calls and calls above the Eligible Call spend.
- (b) There may also be charges which are identified in your Application and any other charges which we can charge under your Contract. We will invoice you in advance for the Minimum Monthly Spend.
- (c) Minimum Monthly Spend:
 - (i) You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.

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- (vi) 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.
- (vii) 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.
- (d) Your Minimum Term Contract or plan will be calculated by us based on your Minimum Monthly Spend commitment.
- (e) Your right to vary the Minimum Monthly Spend:
 - (i) At any time during the Minimum Term you can choose to increase the Minimum Monthly Spend, with our agreement.
 - (ii) If the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the Minimum Monthly Spend based on the Rate Sheet (at the commencement of your Minimum Term).
 - (iii) You may not decrease your minimum monthly commitment during the agreement period.

129. SIM

You will receive only one SIM card for one GSM or 3G Mobile Service. We may charge you a SIM card replacement fee or a fee for a new sim card. 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.

130. Value Added Features and Mobile Premium Service

- (a) The Mobile Service has the Value Added Features specified in your Application or at the time of provisioning.
- (b) We may vary the Value Added Features in accordance with your Contract.
- (c) The Mobile Service has the Mobile Premium Service nominated in your Application. You agree and acknowledge:
 - (i) that the amount of charges for the Mobile Premium Service component of your Mobile Service, including requests for Content from content providers and charges for Content purchased from content providers, will be included in your invoice for the Mobile Service;
 - (ii) we will not charge you for our provision of credit in relation to the Mobile Premium Service Content charges;
 - (iii) we may prevent, suspend or terminate your access to the Mobile Premium Services in certain circumstances, including in response to notices issued by ACMA under the Mobile Premium Services Determination;
 - (iv) that you must direct any queries or complaints about the Content supplied by a content provider directly to that content provider in the first instance. Alternatively, you may complain to Customer Service;
 - (v) unless otherwise advised by us, access to age-restricted services by way of the Mobile Premium Service is not permitted or available;

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- (vi) resupply or resale of Content obtained from content providers and by using the Mobile Premium Service is prohibited;
- (vii) unlawful use of Content obtained from content providers and by using the Mobile Premium Service is prohibited.

131. Mobile Services Charges

The charges applicable to the Mobile Services are specified in the Rate Sheets and your Application. 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. International call rates and international roaming rates are subject to variation. Please contact Customer Service to confirm any prices before calling or travelling overseas.

132. Mobile Number Portability

- (a) 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.
- (b) If in providing the Mobile Services to you, we need to change your arrangements with your current Supplier, then we will do so in accordance with your Contract. By signing the Mobile Number Portability Customer Authorisation ("MNP Authorisation") which forms part of your Application, you acknowledge and agree:
 - (i) to your current Supplier transferring to us your Service Number;
 - (ii) that we are only transferring your Service Number not your mobile service. This means you may lose value added services and/or Value Added Features provided by your current Supplier. When you are connected to the Mobile Services you will use the Mobile Services and Value Added Features specified in your Application, which may be different to the features that you had with your current Supplier;
 - (iii) that by transferring your Service Number, the Mobile Service and/or any Value Added Features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
 - (iv) that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. 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 your Service Number to us;
 - (v) that your current Supplier may or may not disconnect your existing service and/or value added services;
 - (vi) if you are porting between GSM and 3G or any other mobile platform, you may need to purchase new handset and/or Mobile Equipment;
 - (vii) if you intend to use your existing handset and/or Mobile Equipment, you may need to get it unlocked or reprogrammed prior to porting. You may also need to get new Mobile Equipment;

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- (viii) that you may need to purchase approved Mobile Equipment to access the Mobile Service;
- (ix) that you have not cancelled your existing mobile service with your current Supplier;
- (x) that you can only withdraw your MNP Authorisation prior to the port cutover notification being received by us from your current Supplier. Withdrawing MNP Authorisation does not change your contractual obligations to us under your Application and your Contract;
- (xi) that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to port, if the information you provide in the MNP Authorisation 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 port or dispute the rejection with your current Supplier;
- (xii) that if your Service Number cannot be transferred then you may accept a new Service Number from us; that your authorisation to transfer your Service Number to the Mobile Services is valid for 30 days from the date of the Mobile Number Portability Authorisation Form;
- (xiii) that in the event of a reversal, we:
 - (A) are not responsible for any period of outage of Mobile Service or Value Added Features or your current service or any value added service provided by your current Supplier;
 - (B) do not warrant that your Service Number will be transferred to us within any specified timeframe; and
- (xiv) to the extent permitted by law, including statutory warranties that apply under the CCA, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of your Service Number to us, port, withdrawal or reversal, including a negligent act or omission by us;
- (xv) that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and
- (xvi) that we reserve the right to charge for transferring your Service Number to and from us. We will not accept any liability for any amounts owing by you to another Supplier for services which the other Supplier provided to you prior to the commencement of the Mobile Services. You agree to indemnify us against any claims made on us by your previous Supplier in relation to such amounts.

133. Mobile Equipment and Mobile Plans

- (a) For the avoidance of doubt, this clause only applies to Mobile Equipment. To be eligible to receive Mobile Equipment you must:

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- (i) apply for Mobile Services in your Application;
 - (ii) apply for Mobile Equipment in your Application;
 - (iii) agree to our Minimum Term and Minimum Monthly Spend requirements;
 - (iv) use the Mobile Services and Mobile Equipment for business or personal use only; and
 - (v) meet our minimum credit requirements.
- (b) If you purchase outright any Mobile Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery. We will retain ownership in all Mobile Equipment purchased from us until you have paid for them in full. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Mobile Equipment will not pass to you until this residual amount is paid in accordance with your Application.
- (c) You must not do anything to give rise to an adverse claim to our rights in or ownership of the Mobile Equipment. You cannot sell or use the Mobile Equipment for a loan or deal with it in any way until you own the Mobile Equipment. If you damage or lose any Mobile Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Mobile Equipment.
- (d) You are responsible for arranging your own insurance for any Mobile Equipment. 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. 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.
- (e) Lost or stolen Mobile Equipment: If:
- (i) your Mobile Equipment is lost or stolen you must contact Customer Service to request that your SIM card and/or Mobile Equipment be blocked. This will prevent the Mobile Equipment being used on the GSM Network or 3G Network;
 - (ii) you obtain a handset that is lost or stolen, we or our Supplier may block your handset without your consent even if you are not aware it is stolen; and
 - (iii) you obtain the Mobile Equipment and Mobile Service under false pretences, we or our Supplier may block the handset without your consent.

134. Changing Plans

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

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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.

135. Acceptable Use

- (a) You warrant that while using the Mobile Services, Value Added Features or the Mobile Equipment you or anyone else will not engage in conduct which affects the GSM Network or 3G Network or another person's network including the sending of commercial electronic messages as defined under the SPAM Act 2003 (Cth). You warrant that you will at all times comply with the SMS Code of Conduct irrespective of whether the SMS Code of Conduct has been registered by the ACMA under Part 6 of the Act.
- (b) While we will exercise due care and skill in providing the Mobile Service, you agree that your ability to use the Mobile Service to access, use, download and upload Content; or send data in any form including voice, SMS and Content will depend upon the features and functionality of your handset and the nature and quality of the Content being accessed or sent. While receiving Mobile Services, you agree to comply with our Fair Use Policy set out on our website or available from us on request. You acknowledge that the ability to access, view or otherwise receive Wireless Packet Data is dependent upon external factors outside our control and the control of our Suppliers, including:
 - (i) the media contained in MMS Messages;
 - (ii) WAP Data and Packet Data media limitations; and
 - (iii) Wireless Device type, software version and capabilities.

136. Lost and Stolen And Fault Reporting

- (a) We will provide a seven days a week lost and stolen reporting service. You should notify our customer service team for this.
- (b) We will provide a fault reporting service via our help desk during Business Hours.
- (c) Actions:
 - (i) 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.
 - (ii) We are not responsible for any fault which is within the network of a Supplier.
 - (iii) We will notify that Supplier of the fault and request that the fault be corrected promptly.

137. Termination

The services described in this Part may be terminated in accordance with your Contract.

138. Definitions

In this Part, unless the context requires otherwise:

- (a) **3G** means 3rd generation mobile network

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- (b) **Content** means any data, information, image or downloadable file provided by us or a content provider and that can be accessed using the Mobile Services.
- (c) **Eligible Calls for Mobile Services** are any call type specifically identified as being an Eligible Call under a Rate Sheet and may include SMS; MMS; voicemail (while in Australia); circuit fax and circuit data (while in Australia); mobile calls while in Australia to Local Calls, National Calls, International (IDD) Calls and Australian mobile network numbers, 13, 1300 and 1800 numbers. For clarity, they do not include mobile calls to 12 prefixes, 19 prefixes, satellite services, global services, international roaming (including but not limited to access and use of your Mobile Service for SMS, MMS, internet, WAP, circuit fax, data calls, voicemail and any calls while outside of Australia) or any other call type not specifically identified as being an Eligible Call (including where so identified under a Rate Sheet).
- (d) **GSM** means Global System for Mobiles as defined by ETSI and the GSM Memorandum of Understanding and as applied in Australia.
- (e) **GSM Network** means the Optus GSM mobile telephone network.
- (f) **GPRS** means general packet radio service and as specified in your Application.
- (g) **GPRS Network** means the Optus general packet radio service.
- (h) **Internet** means the International network of data networks utilising the TCP/IP protocol suite of which the SMS Network forms part.
- (i) **International Call** means a call from a cellular public mobile telecommunications service from Australia to another country.
- (j) **Mobile to Local Calls** means calls made from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN number which if made from a PSTN or ISDN number would be a Local Call.
- (k) **MNP Code** means the code entitled ACIF C570:2005 Mobile Number Portability or as otherwise agreed in writing between the parties.
- (l) **Mobile Equipment** means any equipment purchased from us as specified in your Application that is not Data & Internet Equipment, or Data & Internet Services Related Equipment, and may include handsets, accessories, and equipment supplied by us but does not include the SIM.
- (m) **Mobile Number Portability** or **MNP** has the meaning given to it by the MNP Code.
- (n) **Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service or any other public mobile network and the Value Added Features which we provide you on the terms and conditions of your Contract and as specified in your Application.
- (o) **National Calls** means a call made within Australia from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN telephone service that is not a Mobile to Local Call.
- (p) **SMS Code of Conduct** means the SMS Code of Conduct developed by the Australian Communications Industry Forum and registered or published by the ACMA under Part 6 of the Telco Act.

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- (q) **SIM** means the subscriber identity module owned by us and we issue to you which enables you to access the Mobile Service.
- (r) **WAP** means Wireless Application Protocol which is a protocol that enables internet services to be delivered to small-screen mobile devices.
- (s) **Wireless Packet Data** means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded using the Mobile Service.

Part I – Purchase Equipment

139. Application of this Part

This Part applies if you have requested in your Application that we supply you with Purchase Equipment and sets out the terms and conditions on which we will supply you with the Purchase Equipment. You are only eligible to purchase Equipment if you also purchase Voice Services, Data & Internet Services, Mobile Services, or any other Services specified in your Application that are required to be purchased with that Equipment. In addition, as stated in your Application we may offer you a credit towards the purchase price of equipment (including Mobile Equipment), on the terms specified in your Application.

140. Installation

- (a) We will provide the Purchase Equipment nominated by you in your Application. You acknowledge that the Purchase Equipment may be either new or refurbished.
- (b) You are responsible for all costs of delivery and installation and for preparing the Site for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.
- (c) If requested by us, you will execute an acknowledgment of delivery in an acceptable form.

141. Period of Agreement

You agree to the Minimum Term described in your Application, commencing on the date we deliver the relevant Purchase Equipment, or otherwise in accordance with these terms and conditions.

142. Payment

- (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 your Contract.
- (b) You agree that we may (subject to your rights under this Part) sell, transfer or assign our rights under this Part and/or to the Purchase Equipment and that your consent to such dealing is not required.
- (c) Termination of any other part of your Contract does not constitute or effect a termination of this Purchase Equipment Agreement.

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- (d) 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, in accordance with the terms of this Part, for the remainder of the Minimum Term.
- (e) 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.

143. Ownership

- (a) 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. If stated in your Application, 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. 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.
- (b) The Purchase Equipment is at your risk from the time of delivery to the address you nominate in your Application for the purposes of delivery.
- (c) The warranty period (if any) for each item of the Purchase Equipment and installation workmanship (if installed by us) is detailed in your Application. Any warranty we provide you only covers the Purchase Equipment and not anything else, including but not limited to, things attached to the Purchase Equipment or the wiring already at the Site.
- (d) We will use reasonable efforts to transfer to you any manufacturer's warranty in the Purchase Equipment, from the time title passes to you.
- (e) You must not do anything to give rise to an adverse claim to our rights in or ownership of the Purchase Equipment. You cannot sell or use the Purchase Equipment for a loan or deal with it in any way until you own the Purchase Equipment.
- (f) Manuals provided to you are subject to copyright. The Purchase Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Purchase Equipment without our written permission.
- (g) Unless nominated in your Application, we will not provide you with any maintenance or software as part of the Purchase Equipment.

144. Things You Must Do

- (a) You must:
 - (i) arrange for the Purchase Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty;
 - (ii) comply with the manufacturer's instructions relating to the Purchase Equipment and its use;

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- (iii) comply with all laws and regulations relating to the Purchase Equipment, the use or possession of it, or any premises on which it is situated;
- (iv) keep the Purchase Equipment at the Site address indicated in your Application, or at such other place as we approve in writing;
- (v) produce the Purchase Equipment for inspection or testing by us, or a person approved by us, at our request, and for this purpose allow us access to any place where the Purchase Equipment is kept;
- (vi) keep the Purchase Equipment under your control or the control of your employees; and
- (vii) notify us immediately in writing if the Purchase Equipment is lost, stolen or damaged or any person asserts any rights to the Purchase Equipment.

145. Things You Must Not Do

- (a) You must not.
 - (i) change the Purchase Equipment, make any addition to it or install anything with it without our written consent. You agree that the changed Purchase Equipment, including any other goods supplied with or attached to it, becomes our property and will comprise the Purchase Equipment for the purposes of your Contract;
 - (ii) use the Purchase Equipment for any purpose which is unlawful or might endanger the safety or condition of the Purchase Equipment or prejudice our interest in it;
 - (iii) alter or cover up any insignia, number or mark in or on the Purchase Equipment; or
 - (iv) alter the installation of the Purchase Equipment in a way that makes it a fixture.

146. Insurance

- (a) Unless agreed otherwise in writing, you must:
 - (i) insure the Purchase Equipment and keep it insured for its full insurable value under an all risks insurance policy;
 - (ii) take out and maintain an adequate level of public risk liability insurance in relation to the Purchase Equipment and its use;
 - (iii) take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
 - (iv) punctually pay all premiums on each insurance policy and not prejudice any policy;
 - (v) if we request, provide us with adequate evidence of the insurance policies;
 - (vi) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Purchase Equipment or any injury, death, damage or loss caused by the Purchase Equipment or its use; and

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(vii) appoint us your attorney:

- (A) to make, recover and/or compromise in your name any claim under such insurance or against any person; and
- (B) to appropriate any insurance money or other amount received at our option towards repair or replacement of the Purchase Equipment or towards any money payable by you to us or to any third party.

147. Destruction

- (a) If the Purchase Equipment is lost, stolen or substantially destroyed we may terminate your Contract by notice to you.
- (b) We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you.
- (c) Your obligations under your Contract continue even if the Purchase Equipment breaks down, is defective or damaged.
- (d) If the Purchase Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold the Purchase Equipment Charges or other money.

148. Our Action

- (a) If you fail to comply with any obligations under your Contract, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).
- (b) We may do anything which we consider desirable to protect or enforce our rights in the Purchase Equipment.
- (c) You irrevocably authorise us to act on your behalf in protecting or enforcing our rights in the Purchase Equipment, as we may reasonably require.

149. Software

- (a) We will only provide you with Software which you have selected on your Application Form. We will not provide you with any Other Software in order to access and use the Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Purchase Equipment, but you must first get our written permission.
- (b) We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

150. Definitions

In this Part, unless the context requires otherwise, **Proposed Installation Date** means the nominal date stated in your Application for the installation of Purchase Equipment.

Part J – Early Termination Fees

Product	Early Termination Calculation Method /Charge
Mobile Services	Minimum monthly commitment per service x months remaining in contract
Business Phone Services (excluding Telstra ISDN)	Minimum monthly commitment per line or channel x months remaining in contract
Business Phone Service (Telstra ISDN)	Minimum monthly commitment per line or channel x months remaining in contract plus the relevant installation fee for the service where such installation fee was waived or credited as part of the fixed term agreement
Home Phone Services	Minimum monthly commitment per line x months remaining in contract
Inbound Services	Minimum monthly commitment per service x months remaining in contract
Mobile Broadband Services	Minimum monthly commitment per service x months remaining in contract
ADSL Services	\$121 flat fee (inc GST) charged only if service is cancelled within first 12 months from signed start date of service
VoIP Services	Minimum monthly commitment per service x months remaining in contract
Web & Mail Hosting Services	Minimum monthly commitment per service x months remaining in contract

Part K– Partner Requirements: Optus NBN

1. Application of this Part

- (a) If we supply you with an NBN Service, our wholesaler Optus has the Partner Requirements in this Part.
- (b) You acknowledge and are bound by Acceptable Use Policy 1, as amended by Optus from time to time.
- (c) You acknowledge and are bound by Acceptable Use Policy 2, as amended by Optus from time to time.
- (d) You are responsible for checking Optus' web site regularly to ensure you are aware of any amendments to its Acceptable Use Policies.

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2. Acceptable Use Policy 1

- (a) You must not use the Service in a manner which may interfere with the technical operation of the Service or any other computer, system or network
- (b) You are responsible for the security of your own systems and data. For example, you should not share the private key of digital certificates.
- (c) The Service is a residential grade service and not to provide data links that result in excessive data usage. This includes any exchange based equipment.
- (d) In using the Service, you must not break any law or infringe the rights of other persons, and:
 - (i) You must not break any laws or infringe the rights of other persons, including by copying any material if you do not have the owner's permission to do so.
 - (ii) You must comply with any relevant legislation.
- (e) Detection and Dealing with breaches of the Acceptable Use Policy
 - (i) You will co-operate with Optus to control unacceptable behaviour by any person who uses your Service.
- (f) You must give details of parties who are suspected of breaking any laws in connection with the Service to the police and to other law enforcement agencies.
- (g) Optus may implement mechanisms to prevent behaviour which breaches this Acceptable Use Policy.
- (h) Optus may exercise any rights it has under its contract with us any person who is identified in breach of this Acceptable Use Policy.
- (i) Optus may take any other action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.

3. Acceptable Use Policy 2

- (a) About this policy
 - (i) *Your* use of the *service* is subject to the following rules and guidelines contained in this policy.
 - (ii) The meaning of the words printed *like this* is set out at the end of this policy, the *service description* for the relevant *service* or in the *consumer terms* or *SMB terms* (as applicable to you). If a definition in this policy is inconsistent with a definition in the *service description* for the relevant service or in the *consumer terms* or *SMB terms* (as applicable to you), the definition in this policy applies.
- (b) General
 - (i) This policy is designed to ensure that *your* use of the *service* does not break any laws, hinder the efficient operation of *our network*, interfere with the rights of *OptusNet customers*, or interfere more generally with the rights of Internet users.
 - (ii) *You* are responsible for ensuring that use of the *service* and *your OptusNet account* (if any) complies with this policy. *You* are also

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responsible for any use of the *service* even if, for example, it was used, with or without *your* consent, by a friend, family member, guest or employee who gains access to the service or your *OptusNet account* (if any).

- (iii) If Optus amends this policy, Optus may notify *you*, and *you* hereby consent to Optus sending *you* notices in such a way, by using one or more of the following methods:
 - (A) mail (to the last address *you* have given us),
 - (B) email (to *your primary email address*), or
 - (C) notice on the OptusNet web site at optus.com.au/optusnet (if the *service* is a pre-paid service).
- (iv) *You* should consult this policy regularly to ensure that *your* activities conform to the most recent version.
- (v) If there is an inconsistency between any other part of your Customer Contract and this policy, this policy will apply.
- (vi) If *you* become aware of any violations of this policy by other *OptusNet users* *you* should contact Optus.

4. Illegal activity

You must not use the *service* for any activity that breaches any law or violates any local, state, federal or international law, order or regulation.

Prohibited activities include (but are not limited to):

- (a) posting, disseminating, or in some cases accessing, *content* which is unlawful, including:
 - (i) *content* that is or would be classified by the *Classification Board* as *RC rated* or *X rated* and that is or would be classified by the *Classification Board* as *R rated* where a restricted access system is not in place,
 - (ii) *content* which violates the copyright or other *intellectual property rights* of others. *You* assume all risks regarding the determination of whether material is in the public domain, or
 - (iii) *content* that defames, harasses or abuses anyone or violates their privacy,
 - (iv) pyramid or other illegal soliciting schemes, or
 - (v) any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

5. Security

- (a) *You* are responsible for any misuse of the *service*, as set out above. *You* must take reasonable steps to ensure that others do not gain unauthorised access to the *service* and your *OptusNet account* (if any).
- (b) The *service* must not be used to obtain or attempt to obtain unauthorised access to any computer, system or *network*. If *you* do not have authorisation, prohibited activities include (but are not limited to):
 - (i) accessing, monitoring or using any data, systems or *networks*,

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- (ii) probing, scanning or testing the vulnerability of a system or *network*,
 - (iii) breaching any security or authentication measures for a system or *network*,
 - (iv) accessing the account or private information of any other person or entity,
 - (v) accessing any server in violation of any acceptable use policy of that server, including any attempt to do any of the things mentioned in paragraphs (i) to (iv) above.
- (c) *You* must not:
- (i) use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or *network* probing tools,
 - (ii) knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature,
 - (iii) use (or attempt to use) the *service* in a manner that may interfere with the technical operation of the service or any other computer, system, *network* or telecommunications services, including (but not limited to) denial of service attacks, flooding of a network, overloading a *service*, improper seizing and abuse of operator privileges and attempts to 'crash' a host, or
 - (iv) interfere (or attempt to interfere) with the regular workings of Optus' systems or *network* connections.
- (d) *You* are solely responsible for the security of any device *you* choose to connect to the *service*, including any data stored on that device.
- (e) Optus recommends against enabling file or printer sharing of any sort. Optus recommends that any files or services *you* do choose to make available for remote access be protected with a password or other appropriate measures to prevent unauthorised access.
- (f) *You* must notify Optus immediately of any unauthorised or attempted unauthorised use of *your service* and any other breach or attempted breach of security.

6. Risks of the Internet

- (a) Some activities that *you* can perform when accessing the Internet may be harmful or cause loss to *you*, other people that may access *your service*, or *your* equipment. Typical activities include (but are not limited to):
- (i) downloading *content* (including receiving emails) from the Internet which may introduce viruses or other harmful features to *your* computer,
 - (ii) purchasing goods or services using the Internet,
 - (iii) transmitting confidential information over the Internet (such as *your* credit card number or other personal information), or
 - (iv) accessing and viewing content on the Internet or otherwise available through the *service* that may be offensive to some individuals, or

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inappropriate for children (for example, it is possible to obtain access to content that is pornographic, offensive and/or unsuitable for children).

- (b) *You* bear all risk associated with the activities referred to in paragraph (a) above, and Optus does not have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.
- (c) *You* may minimise the risk of accessing illegal or offensive *content* as well as managing use of the Internet by using a *filtering solution*. Optus will provide access to one or more of these filtering solutions at a reasonable cost to *you* as part of the service.
- (d) *You* have the right to make complaints to the Australian Communications and Media Authority about Internet *content* which is or would be classified by the *Classification Board* as *X rated*, *RC rated*, or *R rated* and does not have a *restricted access system* in place.

7. Content publishing

- (a) *You* are solely responsible for any *content* that you publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the *service*.
- (b) *You* must not publish material that is or would be classified by the *Classification Board* as *RC rated* or *X rated* via websites, email, newsgroups or other publishing mediums accessible via the *service*.
- (c) *You* must take appropriate precautions to prevent minors from accessing or receiving any *content* *you* have published that may be inappropriate for them. This includes implementing a *restricted access system* on *content* that is or would be classified by the *Classification Board* as *R rated*. Optus also encourages *you* to use appropriate warnings and / or labelling systems in respect of *content* which is likely to be considered unsuitable for children.
- (d) Optus reserves the right to block access to, to remove, or to refuse to post any *content*, in whole or in part, that Optus, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate regardless of whether such *content* or its dissemination is unlawful. This includes (but is not limited to) obscene material, fraudulent or deceptive statements, threatening, intimidating or harassing statements, or material which violates the privacy rights or intellectual property rights of others, or is likely to be defamatory of another person.
- (e) Commonwealth legislation allows the Australian Communications and Media Authority to direct Optus to remove certain prohibited or potentially prohibited *content* from its servers or to prevent users from accessing certain Internet *content*. Optus may take any steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from the Australian Communications and Media Authority, including removing any *content* (including part or all of a website) from its servers, blocking access to newsgroups, closing or suspending *your* OptusNet account, filtering the Internet *content* made available to *you* or restricting access to a particular website. Optus may take these steps at any time and without notice to *you*.

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- (f) Commonwealth legislation allows copyright owners or their agents to direct Optus to remove copyright materials from Optus' servers or to prevent users from accessing copyright materials. Optus may take any steps necessary in order to ensure compliance with a notification from a copyright owner or their agent, including removing any *content* (including part or all of a website) from its servers, closing or suspending *your* OptusNet account, filtering the Internet *content* made available to *you* or restricting access to a particular website. Optus may take these steps at any time and without notice to *you*.
- (g) Optus is under no obligation to monitor transmissions or published *content* on the service. However, Optus (or its agents) have the right to monitor such transmissions or published *content* from time to time and to disclose that *content*.
- (h) By using the *service* to reproduce, publish, display, transmit or distribute *content*, *you* warrant that the *content* complies with this policy and authorise Optus (or its agents) to reproduce, publish, display, transmit and distribute such *content* as necessary for it to deliver the *content* in a timely manner.

8. Electronic messaging

- (a) *You* must not use the *service* to send bulk and/or unsolicited messages. This includes, but is not limited to commercial advertising, informational announcements, charity requests, petitions for signatures, chain letters and political or religious messages. *You* must only send such a message to those individuals who have explicitly requested it.
- (b) The *service* must not be used to:
 - (i) send messages to any individual or entity who has indicated that he/she/it does not wish to receive messages from *you*,
 - (ii) collect or redirect responses from unsolicited messages sent from accounts on other Internet hosts or messaging services which violates this policy, or the equivalent policy or any other policy of any other Internet service provider or web site. Moreover, unsolicited messages sent from accounts on other Internet hosts or messaging services may not direct the recipient to any web site or other resource that uses Optus' network.
- (c) *You* must not:
 - (i) obscure, alter or delete the source of messages that you *send* or forge message headers,
 - (ii) send numerous copies of the same or substantially similar messages, or send very large messages or files, to a recipient with the intent to disrupt a server or account (for example, 'mail bombing'),
 - (iii) send chain letters, whether or not the recipient wishes to receive such mailings.
- (d) Optus is not responsible for forwarding or storing messages sent to any *OptusNet account* that has been suspended or cancelled. Such messages

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may be returned to sender, ignored, deleted, or stored temporarily at Optus' sole discretion.

9. Online forums

- (a) This clause applies to *online forums*, in addition to clause 7.
- (b) Messages posted to an *online forum* must comply with the written charters for that forum. *You* are responsible for determining the policies of a given forum before posting a message to it. Data files may only be posted to *online forums* that specifically permit this.
- (c) Posting or cross-posting the same or substantially similar messages to more than eight *online forums* is prohibited.
- (d) *You* must not disrupt or attempt to disrupt online forums by posting a large number of messages that contain no substantive *content*. Disruption occurs when normal discussion in the group is significantly hindered.
- (e) *You* must not use the *service* to connect to an *online forum* from which you have been previously banned.

10. Automated applications

The *service* is provided for interactive use. However, if automated programs or programs that maintain a persistent connection to a remote service are used, they must only be used when *you* are physically present at the computer. These activities include (but are not limited to) automated file *downloading*, IRC 'bots', continuous streaming media and peer-to-peer file sharing applications.

11. Violation of Acceptable Use Policy

- (a) If *you*, or someone with access to the *service*, use the *service* in a way that Optus, in its sole discretion, believes violates this policy or *Acceptable Use Policy 1*, Optus may take any responsive action it deems appropriate.
- (b) Such actions may include (but are not limited to) temporary or permanent removal of *content* and *content* publishing capabilities, filtering of Internet transmissions and the immediate suspension or cancellation of all or any portion of the *service*.
- (c) Optus has no liability for any such responsive actions and may take any other legal or technical action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them. If *your* use of the *service* causes a loss to third parties and Optus is required to pay compensation, Optus may require *you* to reimburse it.
- (d) Optus is not obliged to regularly monitor *your* usage of the *service* (including any content posted, disseminated or accessed by *you*), however Optus reserves the right to monitor *your* use of the *service* to identify violations of this policy and *Acceptable Use Policy 1*, and to protect its *network*, the other users of this *service*, and other Internet users.
- (e) Optus reserves the right to investigate suspected violations of this policy, including the gathering of information from the user(s) involved and the complaining party, if any, and examination of transmissions and material on Optus' servers and *network*. During an investigation, Optus may suspend *the*

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OptusNet account(s) involved, interrupt transmissions and/or remove material that potentially violates this policy.

- (f) In order to enforce this policy, *you* authorise Optus (or its agents) to cooperate with:
 - (i) law enforcement authorities in the investigation of suspected criminal violations, and
 - (ii) system administrators at other Internet service providers or other *network* or computing facilities.

Such cooperation may include Optus providing, for example, the username, IP address or other identifying information about a user.

- (g) Upon cancellation of an OptusNet account, Optus is authorised to delete any files, programs, data and email messages associated with the *OptusNet account*.
- (h) Any failure by Optus to enforce this policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time.
- (i) *You* agree that, if any portion of this policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.
- (j) This policy is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which *you* normally reside. *You* and Optus submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

12. What do words in this policy mean?

- (a) *Acceptable User Policy 1* means the Acceptable Use Policy so titled in this Part K.
- (b) *Classification Board* is the Classification Board established under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).
- (c) *electronic messaging* includes all forms of electronic communications to other individuals including email, instant messaging, web to SMS, Internet chat and online forums.
- (d) *filtering solutions* means Internet filtering software or system approved for use under the Internet Industry Association *Content Codes of Practice* registered under the *Broadcasting Service Act 1992* (Cth). The Internet Industry Association provides a list of approved filtering solutions on its website – www.iiia.net.au.
- (e) *online forum* mean a forum accessible on the Internet that is generally devoted to the discussion of a specific topic area and includes (but is not limited to) newsgroups, message boards, chat rooms or mailing lists.
- (f) *OptusNet account* means the email account (if any) where *you* are billed (or you have prepaid) for one or more *services* and through which *you* can monitor and request changes to the *service*.
- (g) *OptusNet customers* means customers who are connected to one of the *services*.

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- (h) *Optus network* means the *network(s)* used to supply the *service* to *you* as set out in the relevant service description .
- (i) *R rated* includes (but is not limited to) material containing excessive and/ or sexual violence, implied or simulated sexual activity, or materials which deal with issues or contains depictions that requires an adult perspective.
- (j) *RC rated* includes (but is not limited to) material containing detailed instruction in crime, violence or drug use, child pornography, bestiality, excessive violence or sexual violence, real depictions of actual sexual activity or obscene material.
- (k) *restricted access system* means a 'restricted access system' as referred to on the Australian Communications and Media Authority website at www.acma.gov.au.
- (l) *service* means each of the Optus residential broadband over NBN Network, OptusNet Dial- Up Internet Service, OptusNet Cable Internet Service or OptusNet DSL Internet Service, as applicable to the individual user.
- (m) *services* means the Optus residential broadband over NBN Network, OptusNet Dial-Up Internet Service, OptusNet Cable Internet Service and OptusNet DSL Internet Service.
- (n) *X rated* includes (but is not limited to) material containing real depictions of actual sexual activity.

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