

# General Terms

This is a legal document that forms part of the Pennytel Customer Terms that apply to your service. You must read and understand all documents that form part of the Customer Terms (including this document, the applicable Service Terms and the offer you choose) before you commence using the service.

## Table of Contents

<u>Definitions</u> .....	4
<u>1. General Terms</u> .....	8
<u>2. Pennytel Terms</u> .....	8
<u>2.2 When do the Customer Terms commence?</u> .....	8
<u>2.3 When do the Customer Terms end?</u> .....	8
<u>3. Changing the Customer Terms and the Service</u> .....	8
<u>3.1 Changes Pennytel can make</u> .....	8
<u>3.2 Changes that benefit or have no impact on you</u> .....	9
<u>3.3 Changes that adversely affect you</u> .....	9
<u>3.4 Mobile Network changes</u> .....	9
<u>3.5 Urgent changes</u> .....	9
<u>4. Getting started</u> .....	9
<u>4.1 Applying to become a Customer</u> .....	9
<u>4.2 Connecting to the Service</u> .....	10
<u>4.3 Your Account</u> .....	10
<u>5. The Service</u> .....	11
<u>5.1 What does the Service give you?</u> .....	11
<u>5.2 Provision and standard of the Service</u> .....	11
<u>5.3 Accessing the Service</u> .....	11
<u>5.4 Maintenance and faults of the Service</u> .....	11
<u>5.5 Optional third-party services</u> .....	12
<u>6. Your use of the Service</u> .....	12
<u>6.1 Your obligations</u> .....	12
<u>6.2 Intercept</u> .....	13
<u>6.3 Barring of calls and services</u> .....	13
<u>7. Charges</u> .....	13
<u>7.1 What are the Charges?</u> .....	13
<u>7.2 Promotions</u> .....	14

7.3	<u>Monitoring Charges You incur</u>	14
8.	<u>Bills and Payment</u>	14
8.1	<u>Post-paid Services</u>	14
9.	<u>Your other obligations</u>	15
10.	<u>Suspension of Your access to the Service</u>	16
11.	<u>Termination by You</u>	17
12.	<u>Termination by Pennytel</u>	17
12.1	<u>Fixed Term Service</u>	17
12.2	<u>Casual Service</u>	18
12.3	<u>All Services</u>	18
13.	<u>Consequences of termination</u>	19
14.	<u>Pennytel Liability to You</u>	20
14.1	<u>Terms, conditions or warranties implied by law</u>	20
14.2	<u>Other matters for which Pennytel is liable to You</u>	20
14.3	<u>When Pennytel is not liable</u>	20
15.	<u>Your liability to Pennytel</u>	21
15.1	<u>When You are liable to Pennytel</u>	21
15.2	<u>When You are not liable</u>	21
15.3	<u>Your Indemnity</u>	22
16.	<u>Personal Information</u>	22
17.	<u>Confidentiality</u>	24
18.	<u>Force Majeure</u>	25
19.	<u>Miscellaneous</u>	25
19.1	<u>Complaints</u>	25
19.2	<u>Special Assistance</u>	25
19.3	<u>Assignment</u>	26
19.4	<u>Notices</u>	26
19.5	<u>Severance</u>	27
19.6	<u>Entire Agreement</u>	27
19.7	<u>Waiver</u>	27
19.8	<u>Governing Law</u>	27
19.9	<u>Information about Your rights</u>	27
	<u>PART A - VOICE SERVICES</u>	27
	<u>Definitions</u>	27
20.	<u>Application of this Part</u>	28
21.	<u>Service Number Portability</u>	28

22. Provision of Voice Services..... 29

23. Voice Services Charges..... 31

24. Provision of Voice Services Related Equipment..... 31

25. Fault Reporting..... 32

26. Application of this Part..... 32

27. Provision of Data and Internet Services..... 32

28. Period of Agreement..... 33

29. Data and Internet Service Charges..... 34

30. Moves and Upgrades..... 34

31. Acceptable Use Policy..... 34

32. Software..... 34

33. Provision of Data and Internet Services Related Equipment..... 35

34. Installation of Data and Internet Services Related Equipment..... 35

35. Your Obligations in Relation to Data and Internet Services Related Equipment..... 36

36. Fault Reporting and Maintenance..... 36

## Definitions

The meaning of certain words and abbreviations used in the Customer Terms are set out below.

- Singular words include the plural equivalent and vice versa.
- Grammatical variations of a word defined in the Customer Terms have a corresponding meaning.
- Where the word “including” is used in the Customer Terms, it should be read as “including but not limited to”.
- **Acceptable Use Policy** means the document which sets out Pennytel’s policies in relation to the acceptable and unacceptable uses of the Service.
- **Account** means an account set up in your name which is linked to your Service and which contains all records about you, including your usage records, charges you incur, Payment Method you use and any personal information that you have provided to Pennytel.
- **Account Password** means the unique password which you establish to be used by Pennytel to identify you when you are seeking to access or change details in your account.
- **Activate** means the process which you must undertake in order for Pennytel to start providing you with services.
- **Application** means an application for a service whereby you either:
  - give a verbal voice recording;
  - register online; or
  - subscribe to the service by any other means that Pennytel may provide to you for that purpose from time to time.
- **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Commonwealth).
- **Carrier** means a telecommunications or other service provider that is a carrier as defined in the Telecommunications Act (Cth) 1997.
- **Carriage Service Provider** means a telecommunications or other service provider that is a carriage service provider as defined in the Telecommunications Act (Cth) 1997.
- **Casual Service** means a Service provided on a month-to-month basis and without a minimum term.
- **Charge** means any charge related to the service, a feature of the service, your selected recharge and any other amounts payable by you under the Customer Terms.
- **Complaints Handling Policy** means the document which sets out Pennytel’s internal complaints handling procedure, and which outlines the steps involved in responding to a complaint, including information about timeframes for response, what steps Pennytel will take to investigate the complaint, the escalation process if the complaint is not resolved adequately at the first instance and information about other avenues available to you to resolve the complaint. You can access the Complaints Handling Policy through the Pennytel Website.
- **Connected** means connected to the service and the Network.
- **Consequential Loss** means any loss which is indirect, consequential, incidental or special, a loss of revenue, a loss of profits, a loss of anticipated savings, a loss of goodwill, and/or reputation, lost opportunities, loss of business, a loss of data, and/or any loss in connection with a claim of a third party.
- **Content** means any music, video, SMS, data, software, information, service or other content which you may access, use, receive, download, upload or transmit when using the service.
- **Credit** means the dollar value in your account from which you will pay for the services you

use.

- **Credit Card** means any credit card accepted by Pennytel as a form of payment for any charges you incur for the service, from time to time.
- **Credit Expiry Period** means the number of days, months or years, as applicable, from the date of connection or the date of recharge, that you have to use or add to the credit in your account.
- **Customer** means a person who enters into the Customer Terms for the purposes of being supplied a service or who otherwise acquires a service from Pennytel as detailed in the Application form.
- **Customer Terms** is defined in Clause 2.A.
- **Data Add-on** means a recharge that is specified as being a 'Data Add-on' that may attach to certain base recharges. A Data Add-on may be a recurring or once off, as specified.
- **Debit Card** means any debit card accepted by Pennytel as a form of payment for any charges you incur for the service, from time to time.
- **Disconnect** means the process by which Pennytel stops your access to the service and the Network.
- **Events beyond Pennytel's control** means an event or circumstance beyond the reasonable control of Pennytel, including any force majeure, civil disorder, war, terrorism, riots, rebellions, revolution or any other unlawful act against public order or authority, national or local emergency, elements of nature, fire, flood, earthquake, cyclone, explosion, loss of power, strike, lockout, industrial action, or the act or omission of any Government Agency, or failure in another telecommunications service provider's network.
- **Fixed Term Service** means a service that is acquired on a minimum term basis as set out in the applicable Service Terms. At the end of the minimum term and unless specified otherwise in the Service Terms or agreed with you, a Fixed Term Service will become a Casual Service for the purposes of these General Terms.
- **General Terms** means this document.
- **Government Agency** means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- **GST** means the tax introduced by the A New Tax System (Goods and Services Tax) Act 1999 and the related imposition Acts of the Commonwealth.
- **International Calls** means calls to and from your service to a mobile or landline handset connected to a public telecommunication network overseas or to any landline connected to a public fixed line telecommunications network overseas.
- **Intellectual Property Rights** means all rights conferred under statute, common law and equity in Mobile and in relation to trademarks, trade names, logos, inventions, patents, designs, copyright, circuit layouts, confidential information, know-how and trade secrets and all rights and interests in them or licences to use any of them.
- **International Roaming** means using your service on networks operated by other suppliers in countries outside Australia.
- **Loss** means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kinds.
- **Pennytel** means Pennytel Australia Pty Ltd ABN: 12 166 566 632.
- **Pennytel Equipment** means any equipment supplied by Pennytel or a Pennytel Supplier to you to enable you to access and use the service and the Networks, other than any equipment that you purchase.

- **Pennytel Supplier** means any supplier of goods or services which is used directly or indirectly by Pennytel in the supply of the Service and any features of the Service, including other Carriers, Carriage Service Providers, telecommunications service providers or mobile handset manufacturers.
- **Pennytel Website** means the website at [www.pennytel.com.au](http://www.pennytel.com.au) as updated from time to time.
- **MMS** means Multimedia Messaging Service that includes multimedia objects such as images, audio, video and content rich SMS.
- **Mobile Network** means the mobile telecommunications network that Pennytel uses to provide the Mobile Service from time to time. Pennytel uses part of Telstra's 4G and 3G mobile network.
- **Mobile Network Coverage Area** means the coverage area in which you can access the Mobile Service. For the latest information on the coverage area, visit the Pennytel Website.
- **Mobile Number** means your mobile service number allocated pursuant to the Telecommunications Numbering Plan.
- **Mobile Service** means the mobile telecommunications services that Pennytel supplies under the Customer Terms.
- **MPS Code** means the Mobile Premium Services (MPS) Code C637:2011 (Variation No. 1-2014) registered by the Australian Communications and Media Authority.
- **Offer** means an offer available from Pennytel to enable customers to acquire and use the service.
- **Payment Method** means the method you choose to pay for the service.
- **Personal Information** means information about you including your name, address and other details and from which your identity is apparent or can be ascertained and is further defined in the Privacy Act 1998 (Cth).
- **Post-paid Mobile Service** means the mobile telecommunications service that Pennytel supplies under these Customer Terms, where you post-pay monthly in arrears for your use of the service.
- **Premises** means premises owned or occupied by you or at which you receive the service.
- **Premium Services** means information and entertainment which can be downloaded to a mobile handset and includes, without limitation: ringtones, wallpapers, games, music tracks and videos, news, weather, sports results, entering quizzes, voting in TV competitions, chat groups, dating services and horoscopes as regulated under the MPS Code.
- **Premium SMS** means an SMS which is charged at a higher rate than Standard SMS.
- **Privacy Policy** means the privacy policy, which sets out how Pennytel collects and uses your Mobile personal information. You can access the Privacy Policy by visiting the Pennytel website or you may request a hard copy by contacting Pennytel.
- **Service** means the service you have chosen to acquire from Pennytel, unless the context requires otherwise.
- **Service Terms** means the document entitled "Service Terms" which relates to a particular Service and sets out the terms and conditions that are specific to that service.
- **Site** means the site described in your Application.
- **SMS** means short message service and is a communications service allowing the interchange of short text messages of up to 160 characters each from a mobile telephone, phone or computer service to another such service.
- **Software** means the software we provide as specified in your Application but does not include Other Software.

- **Standard MMS** means MMS excluding video MMS. Standard SMS means sending from within Australia an SMS from your service, to another Australian mobile service also connected to a public mobile telecommunications network in Australia, fixed line phone (excluding 13, 1300, 18 and 1800 numbers) service within Australia or computer service within Australia.
- **Standard SMS** excludes, without limitation, Premium SMS, MMS, WAP services and Content.
- **Supplier** means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.
- **Tax Invoice** means the definition given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- **Telecommunications Numbering Plan** means the Telecommunications Numbering Plan 1997, which establishes a framework for the numbering of carriage services in Australia.
- **Value Added Features** means any of the Mobile Services value-added features as specified in your Application.
- **Voice Services** means the telecommunications services to be provide to you under Part A and as specified in your Application.
- **Voice Services Related Equipment** means equipment that is not Equipment, other equipment or data and internet services related equipment, which is provide to you by us or our Supplier for use in connection with the provision of Voice Services as specified in Part A
- **WAP** means Wireless Application Protocol which is an open international standard for application layer network communications in a wireless communications environment. Its main use is to enable access to the Internet from a mobile handset. A WAP browser provides all of the basic services of a computer based web browser but simplified to operate within the restrictions of a mobile handset.
- **We, us** means the entity defined as 'The Company' / Pennytel in the policies section of our webpage and on our Service Application Form.
- **You (Your)** means you, a Customer or prospective Customer

## 1. General Terms

The General Terms set out the Pennytel standard terms and conditions that apply to all Services provided by Pennytel and acquired by you. The meaning of terms used in this General Terms document are listed in clause 18.

## 2. Pennytel Terms

- A) The Customer Terms are made up of:
  - i. the terms of the offer you choose
  - ii. the Service Terms that apply to the Service You choose.
  - iii. these General Terms.
  - iv. the terms of the Application You complete for the Service You choose.
  - v. any other documents referred to in the Customer Terms, including the Refund Policy, Privacy Policy, Acceptable Use Policy, Complaints Handling Policy.
  
- B) If any of the documents that make up the Customer Terms conflict or are inconsistent with each other, the document listed first in Clause 2.A takes precedence to the extent of the conflict or inconsistency.
  
- C) You should read all the Customer Terms carefully so that you understand all of your rights and obligations before you use the Service. You must comply with all the Customer Terms and so must Pennytel.
  
- D) You may obtain a copy of any of the documents forming part of the Customer Terms from the Pennytel Website.

### 2.2 When do the Customer Terms commence?

The Customer Terms commence once you apply to become a Customer, whether Pennytel connects you to the Service and opens an Account for you.

### 2.3 When do the Customer Terms end?

The Customer Terms will continue until you or Pennytel terminate them in accordance with Clauses 11 or 12 of these General Terms or another clause of the Customer Terms.

## 3. Changing the Customer Terms and the Service

### 3.1 Changes Pennytel can make

- A) Pennytel may make changes to the Customer Terms and/or Service at any time.
  
- B) The types of changes that Pennytel may make include:
  - i. change to the Customer Terms.
  - ii. change to the features of its Offers.
  - iii. change to the Charges.
  - iv. change to the Services including Mobile Network Coverage Area, device specifications, functions and capabilities; and/or



- v. removal of a Service or Offer from its product range.
- C) Pennytel provides the Services using the Mobile Networks and other services and Mobile facilities that Pennytel does not own or control. Accordingly, Pennytel may be required to make changes to the Customer Terms or a Service if a Pennytel Supplier changes its agreement with Pennytel or the services it provides to Pennytel.

### 3.2 Changes that benefit or have no impact on you

If Pennytel reasonably considers that a change will benefit you or have no impact on you, then Pennytel will not notify you individually of the change.

### 3.3 Changes that adversely affect you

- A) Subject to Clauses 3.4 and 3.5, if Pennytel reasonably considers a change is likely to adversely affect you, Pennytel will provide you with at least 40 days' notice in writing of the adverse change before it is due to happen.
- B) If Pennytel notifies you of an adverse change under Clause 3.3.A, then:
- i. if you are a Fixed Term Service customer, you have the right to cancel the contract for your Service within 60 days from the date of the notice described in Clause 3.3.A without incurring any early termination charges other than any charges incurred up to the date of termination; or
  - ii. if you are a casual service customer, you may cancel the contract for your service at any time without incurring any early termination charges other than any charges incurred up to the date of termination.
- C) If you decide to terminate the Customer Terms for the service in accordance with Clause 11, Pennytel will not charge you any fees or charges

### 3.4 Mobile Network changes

Pennytel or a Pennytel Supplier may change, suspend or terminate a service to maintain, operate or upgrade any part of the Network. If Pennytel cannot give you 30 days' notice, Pennytel will try to give you as much notice as reasonably possible.

### 3.5 Urgent changes

Pennytel may make a change to the Customer Terms or a service (including a change that adversely affects you) urgently if required in an emergency, to comply with law, to protect security, or to prevent fraud. If this happens, Pennytel may not be able to give you 40 days' notice, Pennytel will try to give you as much notice as reasonably possible.

## 4. Getting started

### 4.1 Applying to become a Customer

- A) You must complete an application to become a Pennytel customer for each service you select.
- B) You can make an application to become a customer through the Pennytel website or by

direct engagement with our Sales Team.

- C) In order to successfully complete an application for a service, you must:
- i. provide acceptable proof of identification, as required by law.
  - ii. meet any eligibility requirements for the service, which may include being over a certain age, having an acceptable credit rating, providing valid proof of Business Registration and being located within the coverage area of the Service.
  - iii. in the case of Mobile Service be 18 years of age or older and provide one or more of the following forms of identification (as requested by Pennytel in order to meet its legal obligations):
    - a. Australian driver's licence.
    - b. Medicare card
    - c. Australian Passport
    - d. International Passport with Visa (permission to travel to, enter and remain in Australia)
  - iv. provide any other information that is reasonably required by Pennytel in order to complete the Application.
- D) Pennytel may collect this information from you at the time of you making your application for the service or prior to connection of the service.

#### 4.2 Connecting to the Service

Pennytel will connect you to the service within a reasonable time after:

- A) You have completed an application
- B) Pennytel has accepted your application; and
- C) You have taken any steps necessary to activate your service, including meeting the eligibility requirements and activation of your service.

#### 4.3 Your Account

- A) Once Pennytel has accepted your application to become a customer, Pennytel will open an account for you within a reasonable time after Pennytel has connected you.
- B) Your account is for exclusive use of the registered business assigned and may not be transferred or assigned to any other person or business.
- C) You must not disclose your account details including access information or pricing to a third party, and you should immediately change your account password if another person gains unauthorised access to it.
- D) Your account may track your usage of the service, including the amount of any charges, mobile credits and bills in accordance with your offer. If you access this information via the Pennytel Website, it may be up to a few hours old.

## 5. The Service

### 5.1 What does the Service give you?

The specific features of the service you choose are set out in the service terms and or in Critical Information Summary which apply to that service and your offer.

### 5.2 Provision and standard of the Service

- A) Pennytel will provide the service to the standards required by law, including those required under the consumer guarantees in the Australian Consumer Law and customer service guarantees under ACMA's Telecommunications (Customer Service Guarantee) Standard 2011.
- B) Given the nature of the Service (including Pennytel's reliance on facilities that Pennytel does not own or control), Pennytel cannot promise that the Service or the network that supplies the service are free from faults, interruptions and congestion.
- C) Neither Pennytel nor Pennytel's Suppliers can guarantee the secure transmission of communications and data across the Mobile or other Networks.

### 5.3 Accessing the Service

- A) Your devices and hardware must be compatible with the Networks used by Pennytel. Unless Pennytel supplies you with a device, you must ensure that the device you use to access the service complies with any specifications published on the Pennytel Website.
- B) Your ability to use certain features of the service will depend on the functionality of device and not all features of the service will be available for use with all devices, even if they comply with the specifications published on the Pennytel Website.
- C) Even if your device has the functionality to enable use of all features of the service, there may be other factors which may interfere with your ability to use all features of the service.

### 5.4 Maintenance and faults of the Service

- A) Pennytel or a Pennytel Supplier may conduct maintenance activities in relation to the Networks used by Pennytel or other equipment used by Pennytel or the Pennytel Supplier to provide the service from time to time.
- B) Pennytel's Support Services are available during the opening hours published on Pennytel's Corporate Website. Pennytel's Support Services are available for you to report faults relating to the service. You must report any faults with the service to Support Services after you have taken reasonable steps to ensure that the fault is not caused by equipment owned by you or incorrect use of the service.
- C) Pennytel and Pennytel's Suppliers will use reasonable endeavours to investigate a fault and restore the service as soon as is reasonably practicable following your report of a fault to Support Services.

- D) You must provide any assistance that Pennytel or a Pennytel Supplier reasonably requires to enable Pennytel or a Pennytel Supplier to investigate a fault and restore the service.

### 5.5 Optional third-party services

Pennytel may, from time to time, provide you with the ability to obtain an optional third-party service with the services. You acknowledge and agree that any such optional third-party services may require you to enter into an agreement with the relevant third-party service provider before you can receive those third-party services.

## 6. Your use of the Service

### 6.1 Your obligations

- A) You are liable for any use of the service, whether or not you have authorised it, including use of the service made by someone else without your knowledge.
- B) In using the service, You must:
- i. comply with all laws, regulations and guidelines.
  - ii. comply with any terms, rules or regulations imposed by a third party whose content, networks or services you may access or use.
  - iii. comply with all provisions in the Customer Terms.
  - iv. only use the service for your own personal or business use.
  - v. comply with all reasonable directions of Pennytel, cooperate with Pennytel and provide any information and reasonable assistance which Pennytel may require from time to time, including in investigating any fraudulent use or other misuse of the Service.
  - vi. not use or allow another person to use the service for improper or illegal activities.
  - vii. not connect anything to the Networks that Pennytel uses or use any service in a way that:
    - a. endangers the health or safety of any person or negatively impacts on the normal operation of the Network or systems over which the service is supplied; or
    - b. damages or interferes with any telecommunications equipment, site, or facility of Pennytel or a Pennytel Supplier.
  - viii. not send excessive unsolicited data to third parties using the service.
  - ix. not menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person.
  - x. not expose Pennytel or a Pennytel Supplier to any liability or risk of any legal or administrative action including prosecution under any law or damage the reputation of Pennytel or a Pennytel Supplier; and
  - xi. not use, transmit, publish or communicate material which is defamatory, false, offensive, immoral, indecent, pornographic, racist, menacing, threatening, abusive, in breach of a person's rights (including Intellectual Property Rights) or confidentiality obligations or which may promote others to engage in such acts.

## 6.2 Intercept

Pennytel or a Pennytel Supplier may, at any time, monitor and intercept your use of the service if required by law.

## 6.3 Barring of calls and services

At your request, Pennytel will bar certain call types, except for emergency calls to 000, 106 or 112.

# 7. Charges

## 7.1 What are the Charges?

- A) Pennytel will charge you for access to and use of the service including any feature of the service in accordance with the applicable service terms and your offer.
- B) All Charges are exclusive of GST unless otherwise specified.
- C) You must pay the charges for the provision of the Services or the package at the relevant rates as notified to you, as well as any charges incurred by you in accordance with these General Terms.
- D) We will generally bill you in advance for periodic charges, connection and service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases. We will endeavour to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per ACIF CS42 Industry Code billing, we will not bill charges older than 190 days from the date the charge was incurred by the customer.
- E) All charges are due and payable by the due date shown on the invoice (New Charges Due). Payment must be made in full by cheque, credit card, direct debit or any other method permitted by us.
- F) If an invoice is paid by cheque, direct debit or credit card from your bank account and that payment is dishonoured, cancelled or otherwise fails, you may be liable for a charge which will be added to your next invoice.
- G) If you do not pay to us any part of the charges by the due date on any invoice, we may impose a late payment charge.
- H) If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we may recover these amounts from you in addition to the overdue amounts.
- I) You must pay all charges without any set off, counter claim or deduction. We may set

off any amount payable to you against any amount payable by you to us.

- J) Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.
- K) Supplier charges:
  - i. our charges to you may include charges passed on from another Supplier's charges to us (including increases and special or one-off charges).
  - ii. you will pay us any charge which any other Supplier or other person renders to us:
    - a. If you approach that other Supplier or person directly, or otherwise than through us; or
    - b. For connection or initiation of any service or for cancellation of any service.
  - iii. If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with clause 7.1.K

## 7.2 Promotions

- A) Pennytel may offer free or discounted components of the services as part of promotions from time to time.
- B) You must comply with the terms and conditions associated with those promotions if you participate in the promotion.
- C) Pennytel may withdraw promotions without notice at any time.

## 7.3 Monitoring Charges You incur

- A) The service includes several tools to assist you to monitor and manage the charges you incur in relation to the service.
- B) These may include from time to time service notifications and Pennytel will endeavour to ensure that you receive this information promptly but cannot guarantee that you will receive it in real time.
- C) Depending on the service, you can also monitor your usage via the "Manage My Account" page on the Pennytel website.
- D) You may also contact Customer Care.

# 8. Bills and Payment

## 8.1 Post-paid Services

- A) You will receive a regular bill for charges for your Post-paid Services.
- B) Pennytel may also issue you with an interim bill at any time. The charges set out on your bill may not always correspond to the exact period of usage of the Post-paid

Service. Your bill will specify the relevant period to which the charges relate.

- C) Your bill will be provided to you via an email address depending upon the option you have selected on your application for your service. You acknowledge and agree that it is your responsibility to:
  - i. ensure that you provide Pennytel with a valid email address
  - ii. monitor your email mailbox to ensure that it has adequate settings (for example, Mobile 'Promotional' and 'Junk Email' folders) and space to enable receipt of bills from (ii) monitor Your email mailbox to ensure that it has adequate settings (for example, Mobile 'Promotional' and 'Junk Email' folders) and space to enable receipt of bills from Pennytel.
  - iii. notify Pennytel of any changes to your email address that you wish to use to receive bills for your service.
- D) Pennytel will use its reasonable efforts to deliver your bill to your email address specified in your application (or the email address that you subsequently provide to Pennytel). All Charges set out in that bill will be payable by you on the date specified in that bill even if you were unable to receive, access or read your bill.
- E) Your bill may not include itemisation of all charges that you have incurred during the period for which the bill relates. You may access itemised charges for your bill via the Pennytel My Account Login or by calling the Support Services number.
- F) You may request a copy of a specific bill to be provided to you by calling the Support Services number and can also access this directly via "Manage My Account" page on the Pennytel website.
- G) If you fail to pay your bill by its due date, you will be charged a late payment fee of \$15. Pennytel may also restrict, suspend or cancel your service in accordance with Clause 12.

## 9. Your other obligations

- A) The information contained in Your Application for a Service must be true and correct to the best of your knowledge, information and belief.
- B) You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services or the package and their use.
- C) You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited or does not meet the requirements of any technical or interconnection standards made by the ACMA under the ACT unless such connection is made in accordance with a connection permit issued under the ACT or connection rules made under the Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- D) You must not resupply the Service, Equipment, Software and / or Maintenance to

anyone else without our prior written consent, which we may withhold in our absolute discretion.

- E) You are liable to us for all charges in relation to the Services or the Package whether you authorised the use of that Service or any and all components of the Package by another person.
- F) If you change your address, phone number or other billing contact details you must notify us before the end of your billing period. Please contact our customer service team if you do not know when the end of your billing period is.
- G) You must not use the Services, Value Added Features, Software, any Services Related Equipment or any and all components of the package in such a manner that may:
  - i. Menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person.
  - ii. Expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute.
  - iii. Involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts.
  - iv. Damage our, or our Suppliers, network or systems or cause the quality of the Services to be impaired.
  - v. Infringe any persons intellectual property, personal (as set out in the Privacy Act), or other rights.
  - vi. Send unsolicited information to third parties; or
  - vii. Be unlawful
- H) You agree to comply with the Acceptable Use Policy set out on our website.

## 10. Suspension of Your access to the Service

- A) Pennytel may, without liability, limit, restrict or temporarily suspend, Your access to the service or any part of the service, if:
  - i. Pennytel or a Pennytel Supplier needs to conduct maintenance on or repair a Network or the service or for other similar operational reasons.
  - ii. Pennytel or a Pennytel Supplier is required to do so for emergency reasons or events beyond Pennytel s' control, including in response to a threat to public health or safety or the health and safety of an individual, coverage, technical or capacity reasons or due to the actions of a Pennytel Supplier.
  - iii. Pennytel or a Pennytel Supplier is required to do so by the relevant government authorities or by law.
  - iv. You have notified Pennytel that the Pennytel Equipment or Account Password that you received from Pennytel for use with the service has been lost or stolen.
  - v. You materially breach any of the Customer Terms, including the Acceptable Use Policy.
  - vi. Pennytel has reasonable grounds to believe that you have provided false or misleading information.
  - vii. Pennytel has reasonable grounds to believe that your use of the service will give rise to a threat or risk to the security and/or integrity of the Network and the



- Service or is causing a fault; or
- viii. Pennytel has a right to do so in the Service Terms for the service.
- B) If Pennytel suspends your access to the service for any of the above reasons, other than for reasons set out in Clause 10.A.7, Pennytel will endeavour to give you as much notice as reasonably possible before suspending the Service.
- C) If Pennytel suspends your access to the service for the reasons set out in Clause 10.A.1 to 10.A.3, Pennytel will only continue the suspension for so long as is reasonably necessary to address the event giving rise to the suspension.
- D) If Pennytel suspends your access to the service for any of the reasons set out in Clauses 10.A.5 to 10.A.8, Pennytel may charge you the reconnection fee specified in the Customer Terms or on the Pennytel Website when Pennytel lifts the suspension.

## 11. Termination by You

- A) You may terminate the Customer Terms and close your account at any time without cause. You will not be entitled to any refund or credit in relation to unused value or credit for services which are terminated. You may also be required to pay Pennytel any applicable early termination charges if you are a Fixed Term Service customer, and you terminate the Customer Terms before the expiry of your contract term.
- B) You may terminate the Customer Terms and close your account immediately by giving notice to Customer Care if:
- i. Pennytel materially breaches the Customer Terms and:
    - a. Pennytel is not able to remedy the material breach within 30 days after you provide notice in writing that you require Pennytel to do so: or
    - b. the material breach is not capable of being remedied.
  - ii. Events beyond Pennytel's control prevents Pennytel from supplying the service for more than 30 days: or
  - iii. You are entitled to do so under the Australian Consumer Law.
- C) If You terminate the Customer Terms under Clause 11.B, then:
- i. in respect of your Post-paid Mobile Service (if applicable), you will not be required to pay the applicable early termination charges. However, you will still be responsible for any charges incurred by you prior to the events under Clause 11(b).

## 12. Termination by Pennytel

### 12.1 Fixed Term Service

- A) In relation to any Fixed-Term Service, Pennytel may, without liability, terminate the Customer Terms prior to expiry of your contract term at any time by giving reasonable notice to You and by either:
- i. obtaining your consent to do so.
  - ii. providing you with appropriate compensation for such termination; or

- iii. offering an alternative service to you.
- B) Pennytel will not charge you any early termination charges in the event of a termination described in Clause 12.

### 12.2 Casual Service

We may without liability suspend limit or terminate the provision of any Service or Package if there is no minimum term in place by giving 30 days' notice in writing to you and you will not be liable to pay any early termination charges.

### 12.3 All Services

- A) Pennytel may, without liability, terminate the Customer Terms immediately by notice to you if:
- i. you materially breach the Customer Terms and:
    - a. you are not able to remedy the material breach within 30 days after Pennytel provides notice in writing that Pennytel requires you to do so (including your failure to pay any charges on time); or
    - b. the material breach is not capable of being remedied.
  - ii. Pennytel has reasonable grounds to believe that you or any other person in connection with the service provided to you have provided false or misleading information.
  - iii. Pennytel has reasonable grounds to believe that you or any other person in connection with the service provided to you have or are engaging in fraudulent, illegal or unacceptable conduct (including infringement of another person's rights) with, using or in relation to the service or any part of the service.
  - iv. Pennytel has reasonable grounds to believe that your use of the service will give rise to a threat or risk to the security and/or integrity of the Networks and the service.
  - v. you are declared bankrupt, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you.
  - vi. a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you.
  - vii. any Services Related Equipment connected with a Service or Package provided to you do not function because we are unable to enter your premises in order to update or rectify such equipment.
  - viii. you vacate the premises to which we had been supplying Services or a Package to you.
  - ix. you change your address or phone number and you do not notify us, or the Service may not be provided at your new address or phone number through no fault of ours or our Supplier.
  - x. we reasonably believe that your usage of the Services is unusually high.
  - xi. we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy.
  - xii. we are permitted or required to do so by law.
  - xiii. any of our or our Supplier's Services Related Equipment is lost, stolen or substantially destroyed.

- xiv. the physical infrastructure and site conditions for your service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.
  - xv. Pennytel is unable to supply the service for more than 30 days due to Events Beyond Pennytel s' control, or due to coverage, technical or capacity reasons, or due to the actions of a Pennytel Supplier.
  - xvi. Pennytel decides that it will no longer offer the service. However, Pennytel will endeavour to give you as much notice as possible if it decides that it will no longer offer the service.
  - xvii. you ask Pennytel to close your account.
  - xviii. you die; or
  - xix. Pennytel has a right to do so in the Service Terms for the service.
- B) If Pennytel terminates Your Service under Clauses 12.3.A.15, 12.3.A.16 or 12.3.A.18, You are entitled to:
- i. a refund of any charges you have paid in advance for the service. You will not be required to pay any applicable early termination charges for your service. However, Pennytel may deduct amounts that You owe Pennytel from any refund.
- C) If termination is not under Clauses 12.3.A.15, 12.3.A.16 or 12.3.A.18, any charges you have paid in advance for the service, including any remaining credit in your account will be forfeited and in the case of a Fixed Term Service, you may be required to pay Pennytel any applicable early termination charges.
- D) On termination You must:
- i. pay all charges incurred by you up to the time of termination which will become immediately due and owing upon termination.
  - ii. pay all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination.
  - iii. if we request and at our option, either immediately return all of our or our Supplier's Services related equipment (at your cost) or make such equipment available for our, or our Suppliers collection.
  - iv. either pay any costs incurred by us in repossessing our or our Supplier's Services Related Equipment and any costs of making repairs that we think necessary or if we are unable to repossess such Services Related Equipment, pay an amount equivalent to our then current installation fees for that equipment as specified in the rate sheets and any costs incurred by us in attempting to repossess such Services Related Equipment.
  - v. pay the applicable Early Termination Fee (if any) to us.

### 13. Consequences of termination

On termination of the Customer Terms:

- A) Pennytel will stop providing the service to you, will disconnect you from the Service and the Networks and will close your account.
- B) You will no longer be able to use the service; and

- C) You will not be able to use any number associated with your service unless you have successfully ported the number to another telecommunications service provider.

## 14. Pennytel Liability to You

### 14.1 Terms, conditions or warranties implied by law

- A) Nothing in the Customer Terms excludes, restricts or modifies rights you may have under the Australian Consumer Law or any other law in relation to the goods or services provided under the Customer Terms.
- B) Under the Australian Consumer Law a number of consumer guarantees apply to the supply of goods or services which cost less than \$40,000 or are normally acquired for personal, domestic or household use (and, in the case of goods, are not re-supplied by you), including that:
  - i. goods are of acceptable quality (unless Pennytel specifically made known to you the reasons why the goods may not be of acceptable quality before purchase).
  - ii. goods are fit for any purpose Pennytel has disclosed them to be reasonably fit for.
  - iii. goods match the description, sample or demonstration model provided to You;
  - iv. goods and services comply with any express warranty given in relation to them; and
  - v. services are provided with due care and skill, the services and any product resulting from the services are fit for any disclosed purpose and the services are provided within a reasonable time, if no time is fixed for supply of the services.
- C) Pennytel is liable to you under the Australian Consumer Law if it breaches any of the consumer guarantees.

### 14.2 Other matters for which Pennytel is liable to You

In addition, but subject to Clause 14.3, Pennytel is liable to You for:

- A) Pennytel's breach of the Customer Terms.
- B) Any other matter for which the liability of Pennytel may not be excluded at law.

### 14.3 When Pennytel is not liable

All limitations of Pennytel's liability in this Clause 14.3 are subject to Clause 14.1 and do not apply to the extent that they are contrary to law.

- A) Pennytel is not liable to you in contract, tort (including negligence), statute, equity or otherwise, for any Consequential Loss.
- B) Pennytel is not liable to you for failing to comply with the Customer Terms if that failure results from:
  - i. events beyond Pennytel's Control.
  - ii. a suspension of the service or operation of the Network by Pennytel in accordance with Clause 10.
  - iii. maintenance or outages.

- iv. faults or defects in the services to the extent that they are caused by your own conduct or misuse of the service, including any feature, aspect or component of the service; and/or
  - v. any faults, interruptions, congestion and compromised security to the Network beyond the reasonable control of Pennytel, including where caused by a Pennytel Supplier.
- C) Pennytel is not liable to you under or in connection with the Customer Terms, whether in contract, tort (including negligence), statute, equity or otherwise, if Pennytel's aggregate liability to you under or in connection with the Customer Terms exceeds an amount equal to the total charges paid by you in the period of 6 months prior to your claim.
- D) We may without liability suspend the provision of any Service or Package for a reasonable period for operational reasons.
- E) To the maximum extent permitted by law, we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, any and all components of the Package, or any other equipment under this SFOA or otherwise in connection with the relationship established by this General Terms including any loss or damage caused by our negligence or any fundamental breach of this General Term.
- F) If the supply relates to goods, the repair or replacement of the goods or the payment of the cost of having the goods repaired or replaced; and if the supply relates to services, the resupply of those or equivalent services or the payment of the cost of having those services resupplied.

## 15. Your liability to Pennytel

### 15.1 When You are liable to Pennytel

Subject to Clause 15.2, You are liable to Pennytel for:

- A) Your breach of the Customer Terms and or General Terms.
- B) Any other matter for which liability may not be excluded at law.

### 15.2 When You are not liable

- A) You are not liable to Pennytel in contract, tort (including negligence), statute, equity or otherwise, for any Consequential Loss.
- B) You are not liable to Pennytel under or in connection with the Customer Terms, whether in contract, tort (including negligence), statute, equity or otherwise, if your aggregate liability to Pennytel under or in connection with the Customer Terms exceeds an amount equal to the total charges paid by you in the period of 6 months

prior to Pennytel's claim.

### 15.3 Your Indemnity

You indemnify us and will keep us, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:

- A) Your breach of General Terms and Customer Terms.
- B) Any claim or demand against us (including negligence) by any person other than you, which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment.
- C) Any claim or demand (including for negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services, any and all components of the package, or any other equipment.
- D) Any damage which you or your employees, agents or contractors cause to our, or our Supplier's network, equipment or other property.
- E) The reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you.
- F) Any breach of a person's rights or defamation of a person (or allegation of such break or defamation) involving the use of the Services, or any and all components of the Package, or any other equipment by you.

### 16. Personal Information

- A) If you do not provide Pennytel with your personal or business information as required by law, Pennytel is entitled to refuse to provide you with the service.
- B) Pennytel will use your personal or business information to provide the service to you, create and maintain your account, enable you to communicate using the service, allocate charges, provide you with updates and changes to the service and generally keep you informed about the service.
- C) Additionally, Pennytel may collect information about the way you use the service, your preferences and your location when using the service.
- D) Your calls to Customer Care may be monitored for training and quality purposes.
- E) Pennytel may collect your personal or business information from third parties if it is unreasonable or impracticable for Pennytel to obtain that personal information from you directly, including where Pennytel obtains your personal or business information from:
  - i. a credit reporting agency or credit provider; or
  - ii. a Pennytel Supplier.
- F) Pennytel may contact you with information about new developments, products,

services and special offers by post, telephone, email or SMS.

- G) Notwithstanding section 18(1) of the Spam Act 2003:
- i. if Pennytel sends you a message, it will not contain an unsubscribe facility; and
  - ii. you may, at any time, opt-out of receiving marketing material by contacting [info@pennytel.com.au](mailto:info@pennytel.com.au)
- H) You consent to Pennytel:
- i. sharing your personal or business information with other members of the Pennytel group of companies.
  - ii. sharing your personal or business information with Pennytel's Suppliers in connection with Pennytel's provision of services to you, or Pennytel's agents, contractors or other service providers and sharing your personal or business information with organisations and contractors that assist Pennytel with billing and debt-recovery function (including assignment of Pennytel's debts to third parties);
  - iii. sharing your personal or business information with other providers of telecommunications services in connection with Pennytel's provision of services to you, including in respect of any porting request or if we are investigating a possible fraud.
  - iv. sharing or authorising a Pennytel Supplier to share your personal or business information with other Carriers or Carriage Service Providers where you acquire telecommunication services from those Carriers or Carriage Service Providers (e.g. by dialling an override code or Carriage Service Provider specific access code):
  - v. for the purposes of billing and marketing to you; and
  - vi. as required or authorised under law, regulation or industry codes (including the ACIF C515:2005 Pre-selection Code); and/or
  - vii. in order to identify and address problems with the systems used to provide information about your service Pennytel may use Pennytel's Suppliers located overseas. These Suppliers may need to access your personal or business information in order to perform this work.
  - viii. disclosing your personal or business information as authorised by law, including providing your details for inclusion in the Integrated Public Number Database as required for emergency services.
- I) You consent to Pennytel Suppliers collecting, storing, using and disclosing your personal or business information, including by using such personal information to contact you directly, for purposes in connection with the provision of the services to you.
- J) Pennytel may, from time to time, provide you with the ability to obtain an optional third-party service with the services. If so, then you acknowledge that you may have to provide your personal or business information to that third-party service provider to receive the service. If you do not do so, then Pennytel and/or the relevant third-party service provider may not be able to provide you with that service.
- K) By providing Pennytel with your personal or business information, you agree to the collection, recording, use and disclosure of your personal or business information in

accordance with this Clause 16 and the Privacy Policy.

- L) if you are a business customer then you agree that if we need your consent to undertake certain actions, then provided we act in good faith, we may rely upon the authority of any of your employees, who warrants to be authorised to provide consent on your behalf.
- M) You warrant that you have provided full and accurate personal information and business information to us in connection with this General Terms and your Application and you have full power and authority to enter this General Terms and Application.
- N) You authorise us to complete any blank spaces or incomplete information in your Application and including but not limited to the serial numbers and other identification details of the Equipment, any and all components of the Package and any other equipment being provided by you.
- O) You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement.
- P) You accordingly release us and each of our offices, agents, and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it.

## 17. Confidentiality

- A) We retain all intellectual property rights in any information relating to the Services, any and all components of the Package, the design or operation of the Services and any and all components of the Package and other technical information relating to the provision of the Services and any and all components of the Package (Confidential Information).
- B) You will keep the Confidential Information confidential and will not allow any written or electronically recorded material to be copied.
- C) On the termination of the General Terms for any reason, you will return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.
- D) You will keep confidential the manner in which we arrange Services, any and all components of the Package, including our charges, savings, and other financial information.
- E) You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.



## 18. Force Majeure

We are not liable for:

- A) Any delay in installing any Service, any and all components of the Package, or any other equipment.
- B) Any delay in correcting any fault in any Service, any and all components of the Package, or any other equipment.
- C) Failure or incorrect operation of any Service, any and all components of the Package, or any other equipment
- D) Service outages.
- E) Any other delay or default in complying with the General Terms if it is caused directly or indirectly by any event beyond our reasonable and foreseeable control. We are not liable for failure to perform its obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disasters), war, invasion, act of foreign enemies, hostilities (regardless of whether was declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of telephone service. No party is entitled to terminate this Agreement in such circumstances.

## 19. Miscellaneous

### 19.1 Complaints

- A) If You are unhappy with any aspect of the service provided to you under these Customer Terms, you can speak with one of Pennytel's consultants by contacting Pennytel, by writing to Pennytel.
- B) Pennytel will investigate all complaints in accordance with the Complaints Handling Policy, a copy of which can be found on the Pennytel Website. If You require a hard copy of the Complaints Handling Policy, please contact Pennytel.
- C) If Pennytel cannot resolve a complaint to your satisfaction, you may contact the Telecommunications Industry Ombudsman, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or a State Office of Fair Trading. The Telecommunications Industry Ombudsman is a dispute resolution service for small business and residential customers who have a complaint about their telephone or internet service in Australia. The ACMA, the ACCC or a State Office of Fair Trading can inform you about your rights and responsibilities as a consumer and offer you advice about how to resolve problems or make a complaint.

### 19.2 Special Assistance

If you have a sight or hearing impairment or have language difficulties, you or a nominated

Person will need to inform a Pennytel consultant, by contacting Pennytel, of your needs and the Pennytel consultant can determine whether Pennytel can provide you with the required assistance.

### 19.3 Assignment

- A) Pennytel may transfer your account, personal information and your services to another telecommunications provider on the condition that the telecommunications provider continues to provide the services to you on substantially the same terms and conditions as Pennytel provides them to you.
- B) Pennytel will endeavour to give you as much notice as is reasonably practicable of any transfer under Clause 17.3.A.
- C) You may assign any of your rights and/or obligations under the Customer Terms to any third party provided that you have first obtained Pennytel's consent.

### 19.4 Notices

- A) A notice issued by you under the Customer Terms must be in writing.
- B) A notice issued by Pennytel under the Customer Terms may be provided by Pennytel:
  - i. by delivering the information to you in person.
  - ii. by sending the information by pre-paid post to the address listed in Pennytel's records for you.
  - iii. if the notice relates to a Mobile Service, by sending the information to your Mobile Number by SMS.
  - iv. by transmitting the information to your email address if you have an email address and have given us your consent to send information to that address.
  - v. by informing you by recorded message, SMS or in writing how to receive the information which is:
    - a. published on the Pennytel Website.
    - b. provided through a recorded voice message announcement on the Pennytel number; or
    - c. included in the information in your account for you to view online at the Pennytel Website.
- C) A notice issued by Pennytel to you under the Customer Terms will be taken to be received:
  - i. when it is left at the address supplied by you.
  - ii. on the fourth day after posting, when sent by ordinary post to the address supplied by you.
  - iii. at the time of successful transmission when sent by email or SMS; or
  - iv. the later of when you have been notified that it is available and:
    - a. when it is posted as a recorded voice announcement at the Pennytel number; or
    - b. when it is posted on the Pennytel Website.

### 19.5 Severance

- A) If any part of the Customer Terms is void or unenforceable, then that part will be taken to be removed and will no longer be a part of the Customer Terms.
- B) The remaining parts of the Customer Terms will continue to have full force and effect.

### 19.6 Entire Agreement

- A) The Customer Terms contain the complete understanding between You and Pennytel to the exclusion of any prior or collateral agreement or understanding of any kind relating to the Service.
- B) To the extent that there is an inconsistency between the Customer Terms and any brochures or other advertising material relating to the services, then the Customer Terms prevail.

### 19.7 Waiver

- A) Any waiver of any rights under the Customer Terms must be in writing.
- B) Giving up a right under the Customer Terms in a particular instance, does not mean that that right is given up generally.
- C) Failure to exercise a right in a timely manner will not constitute acceptance of the matter nor suggest a waiver of any right or remedy arising in relation to that matter.

### 19.8 Governing Law

The Customer Terms are governed by the laws of NSW.

### 19.9 Information about Your rights

Information 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 Office of Fair Trading or Department of Consumer Affairs in your State or Territory.

## PART A – VOICE SERVICES

### Definitions

In this Part A, unless the context requires otherwise:

- **13 Calls** means the relevant 13 inbound services provided to you by us.
- **1300 Calls** means the relevant 1300 inbound services provided to you by us.
- **1800 Calls** means the relevant 1800 inbound services provided to you by us.
- **Data Calls** means a call enabling carriage of voice, data, text or image by means of digital data.

- **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).
- **Fixed to Mobile Calls** means calls made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.
- **International Calls** 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.
- **Local Calls** 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.
- **Long Distance Preselection Option** means that we will be your default provider for your International Calls, National Calls and Fixed to Mobile Calls.
- **National Calls** 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.
- **VoIP** means Voice over internet protocol as specified in your Application.

## 20. Application of this Part

- A) This Part A applies if you have requested in your Application that we supply you with Voice Services and sets out the terms and conditions on which we will supply you with Voice Services.
- B) To the extent relevant, the General Terms apply to the Voice Services as though Specified in full in this Part A and such terms or part of such terms will be relevant except to the extent they relate to any services or product other than voice services.
- C) Voice Services consist of telecommunications services specified in your Application, including Local Calls, National Calls, International Calls, Fixed to Mobile Calls, Data Calls, 13 Calls, 1300 Calls and 1800 Calls, ToIP, VoIP, and other call types specified from time to time.

## 21. Service 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) By signing the Service Number Portability Customer 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 Voice Service. This means you may lose value added services and other features provided by your

- current Supplier. When you are connected to the Voice Services you will use the Voice Services specified in your Application, which may be different to the service and features that you had with your current Supplier.
- iii. that by transferring your Service Number, the service and/or any 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 to us.
  - v. that your current Supplier may or may not disconnect your existing service and/or value-added services.
  - vi. if you are transferring between different voice service platforms, you may need to purchase certain software, modems, new handset and/or Voice Equipment.
  - vii. that you may need to purchase approved Voice Equipment to access the Voice Service.
  - viii. that you can only withdraw your authority to transfer prior to the port cutover notification being received by us from your current Supplier. Withdrawing your LNP Authorisation does not change your contractual obligations to us under your Application and this General Terms.
  - ix. that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to transfer the Service Number, if the information you provide is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to transfer the Service Number or dispute the rejection with your current Supplier.
  - x. that if your Service Number cannot be transferred to us then you may accept a new Service Number from us.
  - xi. that your authorisation to transfer your Service Number to the Voice Services is valid for 90 days from the date of the LNP Authorisation.
  - xii. that in the event of a withdrawal or reversal to your current Supplier, we:
    - a. are not responsible for any period of outage of the service or 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
    - c. to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, 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 the Service Number(s), withdrawal or reversal, including a negligent act or omission by us;
  - xiii. 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
  - xiv. that we reserve the right to charge for transferring your Service Number to and from us.

## 22. Provision of Voice Services

- A) We will provide the Voice 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 Voice Services have been completed or when your account with us has been established.
- B) If you fail to nominate the required Voice Services option in your Application, we will assume you wish to select us as your full-service telecommunications provider.
- C) We will provide you with the relevant Voice Services, unless you dial another override code or, if required for access, you dial our override code as notified to you from time to time.
- D) We will provide the Voice Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.
- E) We will provide the required Voice Services subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Voice Services where capacity, geography, or technical capability, affect the application or installation of the Service to your premises. We do not warrant that the Voice Services will be free of interruption, delays, or fault.
- F) To the extent we provide you with a standard telephone service (as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) ("CSG"). This code is available at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_1668](http://www.acma.gov.au/WEB/STANDARD/pc=PC_1668). Certain specified enhanced call handling features, we may be obliged to comply with the CSG, you acknowledge and agree:
- i. the CSG sets performance standards for service connection times, fault repair times and keeping appointments to provide you with these services. The CSG does not apply to customer equipment (including Equipment) or to customers who have more than five telephone lines;
  - ii. where you have nominated in your Application to waive (where applicable to the Voice Services nominated in your Application) in whole or part your CSG rights in relation to certain Voice Services that we are not obliged to provide you with the CSG.
  - iii. where applicable, if we fail to meet CSG performance standards you may be entitled to specified monetary compensation. Our CSG policy is available on our website.
- G) You acknowledge that we reserve the right to Bar access to 1900 numbers, data calls, internet service providers and any other calls as set out in clause 4.2 or in a fair use policy or as we deem necessary from time to time. If you wish to Bar access to premium rate services from your Voice Service, please contact us.
- H) If you are on a Minimum Term Contract:
- i. the fixed minimum term of your Minimum Term Contract specified in your

- Application commences on the date that you sign your Application.
- ii. for the fixed term of your Minimum Term Contract you agree: to maintain us as your carrier for, as a minimum, the voice services; and
  - iii. to maintain the same level of business (or more) with us than as at the date that you sign your Application.
  - iv. you agree to give us reasonable notice in advance of any significant changes in your telecommunications requirements so that we can plan for these changes; and
  - v. you acknowledge that the pricing available to you under the General Terms and our Application is subject to you maintaining us as your carrier for, as a minimum, the voice services.

### 23. Voice Services Charges

- A) The charges applicable to the Voice Services are specified in the Rate Sheets and your Application.
- B) We may vary any of the charges applicable to the Voice Services.

### 24. Provision of Voice Services Related Equipment

- A) For the avoidance of doubt, this clause applies to any equipment provided by us that is Purchase Equipment, Mobile Equipment, Mobile Services Related Equipment and is not Data & Internet Services Related Equipment and may include equipment supplied by a Supplier.
- B) If you purchase any Voice Services Related Equipment from us, risk in the equipment passes to you on delivery to the delivery address you nominate in your Application.
- C) You are responsible for maintaining any Voice Services Related Equipment supplied by us or a Supplier. You indemnify us or the Supplier against any loss or damage to the Voice Services Related Equipment unless it is due to fair wear and tear.
- D) You will ensure that any Voice Services Related Equipment supplied to you or facilities and connections used in providing the Voice Services, are not altered, maintained, repaired or connected to or disconnected from any power source or line except by a person approved by us.
- E) We, or a person approved by us, or our Supplier may require access to your premises from time to time in connection with the provision, inspection and maintenance of Voice Services Related Equipment or Voice Services, including the installation, replacement or modification of necessary telecommunications connection, facilities, wiring or cabling in order for you to receive the Voice Services. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or any contractor, agent or representative approved by us, and our Supplier against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, which must be during Business Hours, we may limit, suspend or cancel the

Voice Services. We reserve the right to charge you, at our standard rates, should we, or our Suppliers, not be able to access your premises at the agreed appointment time (regional services will attract an additional charge).

## 25. Fault Reporting

- A) We will provide a fault reporting service during the following hours:
  - i. Monday to Friday: 8am to 8pm
  - ii. Saturday and Sunday: 9am to 5pm
- B) 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.
- C) Actions:
  - i. We are responsible for correcting faults in supplying the Voice Services. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
  - ii. We are not responsible for any fault which is on your side of the network termination point, except in relation to Purchase Equipment, or Other Equipment that we are maintaining.
  - iii. We are not responsible for any fault which is within the network of a Supplier. However, we will notify that Supplier of the fault and request that the fault be corrected promptly.

## PART B - Data and Internet Services

### 26. Application of this Part

- A) This Part B applies if you have requested in your Application that we supply you with Data & Internet Services and sets out the terms and conditions on which we will supply you with Data & Internet Services.
- B) To the extent relevant, the General Terms apply to the Data & Internet Services as though specified in full in this Part B and such terms or part of such terms will be relevant except to the extent they relate to services other than data & Internet services.

### 27. Provision of Data and Internet Services

- A) 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.
- B) 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

- C) We do not warrant that the Data & Internet Services will be free of interruption, delays or faults. You acknowledge and agree:
  - i. that certain Data & Internet Services are 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 fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.
- D) 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
- E) You agree that we may not supply a 'standard telephone service' (for the purposes of the Act) under this Part B 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.

## 28. Period of Agreement

- A) You must take the Data & Internet Services for the Minimum Term if specified in your Application, subject to your rights
- B) The Minimum Term commences when:
  - i. if you are arranging for self-installation of the required equipment and:
  - ii. you supply the required equipment yourself, on the date we activate your Data & Internet Services; or
  - iii. if we supply you with the required equipment, on the date of delivery of the required equipment; or
  - iv. if we are installing equipment for you and:
    - v. the equipment is being installed at a single Site, the date that we install the equipment at the Site; or
    - vi. the equipment is being installed at multiple Sites, the date we install the equipment at the second Site

- C) 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 this General Terms 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.

## 29. Data and Internet Service Charges

- A) The charges applicable to the Data & Internet Services are specified in the Critical Information Summary.
- B) 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 Critical Information Summary. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.
- C) We may vary any charges for the Data & Internet Services.

## 30. Moves and Upgrades

- A) 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 this General Terms by notice to you.
- B) 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, for those services that are on a fixed-term plan and where a router has been provided for \$0 as part of the minimum term required.

## 31. Acceptable Use Policy

- A) If you are receiving Internet Services, you agree to comply with our Acceptable Use Policy.

## 32. Software

- A) 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.

- 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).

### **33. Provision of Data and Internet Services Related Equipment**

- A) 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.
- B) 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

### **34. Installation of Data and Internet Services Related Equipment**

- A) 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.
- B) 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.
- C) If requested by us, you will execute an acknowledgment of delivery in an acceptable form.
- D) 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.
- E) 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).
- F) You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- G) 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.

- H) 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.
- I) Telephone line configuration changes are only available for our supported modems and routers.
- J) Changes made by you to the supplied configuration are at your risk and will not be supported by us.

### **35. Your Obligations in Relation to Data and Internet Services Related Equipment**

- A) If you are supplied with Data & Internet Services Related Equipment by us or by our Suppliers on our behalf, other than where you purchase such equipment, then the whole of this clause 35 applies to you. If you purchase Data & Internet Related Equipment from us, then only clause 35.D applies to you.
- B) We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of this General Terms.
- C) 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 case may be). We may change the Data & Internet Services Related Equipment at any time by giving you three days' notice.
- D) 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.
- E) 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.
- F) 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.

### **36. Fault Reporting and Maintenance**

- A) 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.
- B) 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.

- C) 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.
- D) If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays).
- E) 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 A charge may be due where line fault requires an on-site visit to rectify.
- F) 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.