

connection with the Service, you must comply with any applicable acceptable use terms or other rules of those third parties.

- (g) You must provide us all information and assistance reasonably required to enable supply of the Service and compliance with any request or direction of a government agency, emergency services organisation or other authority and to investigate if we reasonably suspect unauthorised use of the Service or you have misused the Service or breached the Agreement.
- (h) You must use the Service only for lawful purposes and activities and must comply with all laws, regulations and industry codes of practice which apply to your use.
- (i) You must not use the Service in any manner which could cause you or us to violate a law, regulation or industry code, commit an offence, endanger any person, damage any property, infringe a person's rights (including Intellectual Property Rights), or which could give rise to us incurring a liability. You must not use the Service to transmit, communicate, access or publish any material which is unlawful, offensive, indecent, defamatory, abusive, menacing or harassing, material which is unsolicited and material known to contain a virus or similar.
- (j) You must not knowingly do anything or use the Service in any manner which may compromise the security or safety of, or which might damage, interrupt or interfere with the operation of the Service, the infrastructure used to supply the Service, Our Equipment, or any other computer, system, network or services, including hack or otherwise obtain unauthorised access to any of them.
- (k) You are responsible for billing your own customers including Users for services provided by you using the Service (except if we agree in writing to supply billing services to you), for collecting payments from them, for defending all claims from them and for providing support services to them in respect of the Service including receiving, handling and resolving all of their inquiries, fault reports and complaints.

Our Rights to intercept, monitor and take other action

- (l) You acknowledge and agree that, without incurring liability to you or any User, we may:
 - (i) intercept communications and provide call related information to government authorities (including law enforcement agencies), to the extent required by law to do so;
 - (ii) (but are not obliged to) monitor the usage of the Service and communications sent over it for compliance with the Agreement and to protect the networks and infrastructure used to supply the Service and its other users;
 - (iii) implement traffic management measures as set out in our acceptable use policy;
 - (iv) if, in our reasonable opinion, you or any User are not complying with clause 7, take such action as we deem necessary; and
 - (v) take any steps necessary to monitor and ensure our compliance with the law, relevant industry code of practice, court order, or notification or direction from a regulatory body.
- (m) We may, but are not obliged to, scan Customer Equipment or otherwise test the security of your Service, in order to assist you to keep your Service secure from unauthorised access.

8 CHARGES, INVOICING AND PAYMENT

8.1 Charges

- (a) You must pay all Charges in connection with the equipment, the Service and the Agreement set out in the Order, the Service Schedule, the Special Offer (if any), these Enterprise Terms and the Standard Fee Table and any other charges we invoice in accordance with the Agreement.

- (b) Charges for the Service accrue from the Start Date and may include set up Charges (which may be payable before we commence provisioning), usage based Charges and recurring Charges and any other charges set out in the Agreement.
- (c) You are responsible for all Charges in connection with the Service whether or not you authorised the use, including those incurred by any User or other person, those arising from toll fraud or other unauthorised or fraudulent usage, from your failure to access or disconnect a call properly, from your failure to disconnect a Service when vacating premises or from your failure to keep your Service secure.
- (d) Recurring Charges are payable from the Start Date until cancellation of the Service. The recurring Charges continue to be incurred during any period of interruption to the Service including if caused directly or indirectly by your failure to connect equipment to the Service, failure of Customer Equipment or other fault of you or any User, relocation of the Service, failure of services provided to you by anyone else (including broadband internet service where this is not provided by us), interruption for an insignificant period, or suspension of the Service for any reason.
- (e) If you ask us to provide services onsite, or outside the support hours specified in clause 6(b), or in connection with Customer Equipment, you must pay our charges for those services. Those services may include repair, replacement, upgrade, provisioning, reconfiguring or support and any other kind of services.
- (f) You must pay our charges to repair, replace, modify or service the Service or Our Equipment if required in connection with:
 - (i) Customer Equipment;
 - (ii) your failure to return Our Equipment in good condition (excepting fair wear and tear) when required under the Agreement or loss, theft or damage of Our Equipment except to the extent caused or contributed to by us; and
 - (iii) any negligence, fraud or breach of the Agreement by you or any User or any of your or their officers, employees, agents or contractors.
- (g) You must pay our charges incurred in connection with any failure by you to comply with your obligations set out in clauses 4(g), 6(f), 6(g) and 6(h).
- (h) We may from time to time make a Special Offer subject to Charges, terms and conditions that differ from those in the Service Schedule. If you accept a Special Offer from us, the Charges and terms and conditions of the Special Offer take priority over the Service Schedule, to the extent they differ, only for the limited period specified in the Special Offer.
- (i) All Charges are in Australian dollars. If a Charge excludes GST, and we are liable to pay GST or other tax on supply of the Service to you, we may increase the Charge by the amount of GST or other tax and you must pay us the whole of that amount when we ask. If the charge is stated to be inclusive of GST, but the GST rate used is incorrect or changes, the amount of the charge will be adjusted to reflect the actual GST rate.

8.2 Invoicing and Payment

- (a) We may invoice and require payment of certain Charges, including those for equipment, installation, set up and provisioning of the Service, before commencing to deliver equipment or provision the Service. We may invoice and require payment of Charges for any additional services before provision of those services. Unless otherwise stated in the Service Schedule, recurring Charges are billed in advance and usage based Charges are billed in arrears. We may invoice and you must pay any minimum monthly Charge stated in the Service Schedule even if you have not incurred the services related to those Charges.
- (b) We will send a monthly itemised invoice for the Charges to your address (by email, facsimile or post and in HTML, pdf or other format at our option) and may issue interim invoices and require interim payments to maintain your account within any credit limit approved by us or to maintain any minimum account balance stated in the Critical Information Summary. We aim to include all charges relating to the current billing period on the invoice but some

of the charges may appear on later invoices. If we send or offer to send your invoice by email, and you ask us to provide a paper copy, we may charge you a paper invoice fee.

- (c) If we have taken reasonable steps to ensure you receive it, an invoice remains payable even if you do not receive it because you have changed address and not notified us or because your email mailbox is full or for other reason attributable to you.
- (d) If you ask us to re-send you an invoice more than 3 months after the issue date, we may charge you an invoice copy fee for each invoice you request.
- (e) You must pay the Charges by the due date specified on the invoice and must make any interim payment described in clause 8.2(b) by the due date notified by us.
- (f) You must pay the Charges using the payment method specified on the invoice, or on our website, except that if a specific payment method is required in the Service Schedule, or otherwise agreed with you, you must use that payment method.
- (g) If you have agreed to pay by automatic payment or direct debit from your credit card, charge card or bank account, you:
 - (i) authorise us to:
 - (A) (in the case of payments by card) disclose your card details to and obtain information from the card issuer to verify those details and your ability to pay the Charges using the card; and
 - (B) debit your credit card, charge card or bank account all Charges you owe us from time to time in accordance with the Agreement, including any Charges which may become owing as a result of cancellation of the Service;
 - (ii) must ensure that your account has sufficient funds to allow payment when required; and
 - (iii) must notify us promptly if there is a change to your card or bank details.
- (h) If you pay by credit card, you must pay a credit card fee if applicable as specified on the invoice. We may choose to stop accepting credit or charge cards from one or more providers, by giving you reasonable notice.
- (i) If we identify an error in an invoice, we will apply an adjustment to your account which will appear on your next invoice. Any overpayment will be credited to your account and you must pay us for any underpayment.
- (j) If you fail to pay the Charges in accordance with clause 8.2(e), we may:
 - (i) withdraw any discounts in connection with the Service and/or suspend or cancel the Service in accordance with the Agreement;
 - (ii) charge you a late payment fee;
 - (iii) exercise a general lien over any Customer Equipment in our possession until any outstanding charges have been paid in full; and
 - (iv) charge you our costs of recovering payment for outstanding charges, including reasonable debt recovery agent costs and legal costs.
- (k) If your payment is dishonoured by the bank or credit or charge card issuer, we may charge you a dishonour fee.
- (l) If at any time we have reason to become concerned about your ability to pay the Charges, we may, in respect of your credit account (if any), decline to extend further credit or vary your credit limit and any related conditions.
- (m) If you fail to pay any amount when due or otherwise breach the Agreement, become bankrupt, insolvent, enter into an arrangement with your creditors, receivership, liquidation or similar, or if we become concerned about your

ability to pay the charges for any other reason, we may cancel your credit account without prior notice and all balances owing will become immediately due and payable.

- (n) You must not set off or deduct any amount from payments you owe us. We may set off or deduct any amount we owe you.

8.3 Billing Disputes

- (a) If, in your reasonable opinion, there is an omission or error in relation to a charge on an invoice, you may, before the due date for payment of the invoice, dispute the invoice by giving written notice ('Billing Dispute Notice') of a billing dispute to our customer service team. The Billing Dispute Notice must, as a minimum, include the date and number of the disputed invoice, itemised details of the charges in dispute, detailed reasons for dispute and any documentation sufficient to support your claim and to enable us to investigate it.
- (b) You must pay any undisputed amount by the invoice due date.
- (c) We may, at any time, reject a billing dispute if:
 - (i) we receive the Billing Dispute Notice after the due date for payment of the invoice;
 - (ii) the Billing Dispute Notice does not contain the minimum information required by clause 8.3(a);
 - (iii) you do not, within 5 business days of our request, provide such additional information and documentation as we may reasonably request to enable us to investigate the billing dispute; or
 - (iv) in our reasonable opinion, the billing dispute is not genuine.
- (d) If we reject a billing dispute for any reason under clause 8.3(c), you must pay the whole of the invoice (disputed and undisputed amounts) by the due date, or if the due date has passed, immediately, together with interest, if charged, from the due date of the disputed invoice until the date of payment calculated in accordance with clause 8.2(e).
- (e) Where you give us a Billing Dispute Notice in accordance with clause 8.3(a) and promptly provide such other information and documentation as we may reasonably request, we will investigate the dispute within a reasonable period and notify you of our determination and reasons.
- (f) Within 7 days after receiving notice of our determination, you must pay any outstanding amount which we have determined is payable, together with interest, if charged, from the due date of the disputed invoice until the date of payment calculated in accordance with clause 8.2(e).
- (g) We are committed to ensuring that our bills are accurate and unless you provide reasonable substantiation of your claim, we are entitled to rely on our records as proof of usage and charges incurred. If you ask us to investigate a dispute using material provided by you, you must pay our reasonable charges to evaluate the material provided.

8.4 Financial Security

- (a) As a condition of our acceptance of an Order, or if we have reason to be concerned about your ability to pay at any time, we may require you to provide a security (if not already provided) in the form of a cash deposit to be held by us, or a bank guarantee in a form acceptable to us, or to increase any security previously provided.
- (b) If you fail to provide adequate security within 7 days of our request, we may, without liability, suspend the Service to you in accordance with the Agreement until we receive adequate financial security.
- (c) We may access the security at any time to pay outstanding Charges you owe us.
- (d) We will refund you the security deposit less any amounts owing, without interest, within a reasonable period of the sooner of you satisfactorily completing the terms of the security arrangements, or cancellation of the Service.

9 SUSPENSION AND CANCELLATION

9.1 Your Rights to Cancel the Service

- (a) To cancel the Service you must give us written notice as set out in clause 17(a) (unless the law specifies otherwise) with the notice periods set out in this clause 9.1. Failure to pay Charges does not automatically cancel the Service and Charges will continue to be incurred until the Service is cancelled by you or us.
- (b) You may cancel a Service with no Fixed Contract Period at any time by giving us 30 days' notice before the end of a billing period. You acknowledge and agree that you may incur the Charges set out in clause 9.3 as a result.
- (c) You may cancel a Service with a Fixed Contract Period:
 - (i) on expiry of the Fixed Contract Period by giving us notice 30 days before expiry of the Fixed Contract Period; or
 - (ii) at any time after expiry of the Fixed Contract Period by giving us 30 days' notice before the end of a billing period.
- (d) You may cancel the Service by giving us notice if we commit a material breach of the Agreement and fail to correct the breach within 30 days of receiving notice from you to do so.
- (e) You may cancel the Service if permitted under the law or under any other clause of the Agreement.

9.2 Our Rights to Cancel or Suspend the Service

- (a) To cancel the Service we must give you notice as set out in clause 17(a) if required but there are also circumstances where we can cancel immediately without giving you notice beforehand, as set out in this clause 9.2.
- (b) We may cancel the Service:
 - (i) if we determine that for technical or other reasons we will be unable to provision or connect the Service to you within a reasonable time after accepting the Order, immediately by giving you notice;
 - (ii) where the Service has no Fixed Contract Period, or the Fixed Contract Period has expired, at any time by giving you 30 days' notice;
 - (iii) where the Service has a Fixed Contract Period, by giving you notice 30 days before expiry of the Fixed Contract Period;
 - (iv) if we are entitled to cancel any other Service we supply to you, by giving you notice; or
 - (v) if you consent to cancellation of the Service.
- (c) We may cancel or suspend a Service immediately by notice to you, if you:
 - (i) commit a material breach of the Agreement which is capable of being corrected and fail to correct the breach within 30 days of receiving notice from us to do so;
 - (ii) commit a material breach of the Agreement which is not capable of being corrected;
 - (iii) withdraw your consent (if any) to waive your rights and protections under the Customer Service Guarantee Standard;
 - (iv) fail to provide us with access, authority or information reasonably notified as required by us to enable us to provide the Service or as set out in clause 11;
 - (v) or any User, in our reasonable opinion, have been, or are, involved in fraud or other illegal conduct in connection with the Service;

- (vi) or any User fail to use the Service as permitted under the Agreement;
 - (vii) in our reasonable opinion, are, or are operating as, or using the Service as, a Carrier or Carriage Service Provider;
 - (viii) in our reasonable opinion, are using the Service for a purpose other than for which it is intended as specified in the Service Schedule, and you fail to change to a more suitable Service within 30 days of receiving our notice requesting you to do so;
 - (ix) fail to pay any amount owing to us within 7 days of us giving notice to you that the amount is overdue;
 - (x) in our reasonable opinion, present an unacceptably high credit risk to us;
 - (xi) fail to provide or increase financial security as required under the Agreement;
 - (xii) become bankrupt, insolvent, or have a receiver, manager, administrator, provisional liquidator or liquidator appointed, enter into an arrangement with your creditors, or if a partnership the partnership is dissolved or application made to dissolve the partnership;
 - (xiii) vacate your premises; or
 - (xiv) (in the case of a Service with no Fixed Contract Period) do not use the Service for a period of at least 6 months, have a zero or negative account balance, and do not notify us that you wish to retain the Service, within 30 days of receiving notice from us of our intention to cancel.
- (d) We may cancel or suspend a Service immediately and we will try, but are not obliged, to give notice to you, if:
- (i) we are required to do so by law, or to comply with a direction or order of a government authority;
 - (ii) a competition notice is or is likely to be issued by a government authority in connection with the Service;
 - (iii) there is an emergency;
 - (iv) we have reasonable grounds to believe there is a threat or risk to the security of the Service or integrity of the network or the Service may cause death, personal injury or damage to property;
 - (v) we are unable to supply the Service because of an Event;
 - (vi) prudent or necessary to allow maintenance, upgrade or repair of, or to avoid or minimise a risk to the networks and infrastructure used to supply the Service, or for other operational reasons; or
 - (vii) where we supply the Service using another supplier's network or services, our supplier ceases to supply its services to us.
- (e) We may cancel the Service if permitted under any other clause of the Agreement.
- (f) If we suspend the Service under the Agreement, we may later cancel the Service for the same reason.

9.3 Effect of Suspension or Cancellation

- (a) During any period of suspension, you remain responsible for all recurring Charges which will continue to be incurred for the Service and any usage based Charges incurred.
- (b) If the Service is cancelled before we give you notice of Service connection, you must pay:
 - (i) (except if the Service is cancelled under clause 9.1(d) or 9.2(b)(i)), our charges and all third party costs we have incurred in connection with preparing to supply the Service; and
 - (ii) equipment charges in accordance with clause 9.3(d).

- (c) If the Service is cancelled for any reason after we give you notice of Service connection, you must pay:
- (i) all Charges incurred for the Service, including any usage based Charges whether incurred before or after the date of cancellation;
 - (ii) if the Service is cancelled within a Fixed Contract Period (except under clause 9.1(d) or 9.2(d)), the applicable Break Fee; and
 - (iii) equipment charges in accordance with clause 9.3(d).
- (d) If any equipment you purchased from us has not been paid in full (including because it was purchased by instalment payments), or was supplied free or at a discount to our standard retail price as part of a Service with a Fixed Contract Period or otherwise, on cancellation of the Service for any reason, you must pay us the unpaid balance of our standard retail price for the equipment (including the amount of any discount given).
- (e) If any other service was supplied free or at a discount to our standard retail price because it was supplied with the cancelled Service, we may vary the Charges for the other service and you must pay those varied Charges for that other service.
- (f) Cancellation of the Service takes effect on expiry of any notice period required by the Agreement, unless we agree otherwise. On cancellation of the Service for any reason, we may disconnect the Service and you must:
- (i) immediately cease to use the Service;
 - (ii) immediately cease to use, and comply with your obligations in respect of Our Equipment as set out in clause 5.3(h), and in respect of any software licensed by us as set out in clause 12(e)(vi); and
 - (iii) pay all invoices for the Charges by the due dates.
- (g) Except if the Service is cancelled under clause 9.1(d) or 9.2(b)(i),(ii) or (iii), we are not liable to refund any monies which you have paid in advance. If the Service is cancelled under clause 9.1(d) or 9.2(b)(i),(ii) or (iii), we will refund you the balance of any monies which you have paid in advance, after you have met your obligations under clauses 9.3(b), 9.3(c), 9.3(d) and 9.3(f).
- (h) Except if required otherwise by law or as otherwise stated in this clause 9, we are not liable to you for any loss, cost, damage or liability in connection with suspension or cancellation of the Service by us in accordance with the Agreement.
- (i) Subject to clause 9.3(e), cancellation of one Service does not affect your contract obligations in connection with any other services we supply to you.
- (j) If we agree to reconnect a Service after suspension or cancellation, you may incur a reconnection fee.
- (k) You acknowledge and agree that the Break Fee (if any) is a genuine pre-estimate of the damage we will suffer as a result of cancellation or change of the Service.
- (l) Cancellation of the Service or termination of the Agreement does not extinguish a party's debt, obligation or liability which has accrued under it.
- (m) On cancellation of the Service or termination of the Agreement for any reason, the parties are released from the obligation to continue to perform the Agreement except those obligations in clauses 8 (Charges, Invoicing and Payment), 9.3 (Effect of Suspension or Cancellation), 10 (Liability and Indemnity), 11 (Privacy), 12 (Software Licence) and 16 (Intellectual Property Rights and Documents) and any other obligations that, by their nature, survive termination.

10 LIABILITY AND INDEMNITY

10.1 Our Liability

Service Interruption and Delay

- (a) Subject to clause 10.1(b), we accept liability for any interruption or delay to supply of the Service to you to the extent caused by our negligence, and to the full extent the law permits, we limit our liability for the interruption or delay and all related claims to crediting to you, if claimed within a reasonable period by you:
- (i) the amount of the applicable service credit we are obliged to give, if any, under any agreed service level for the Service; or
 - (ii) if no service credit or rebate applies to the interruption or delay, the amount of any recurring Charges billed to you for the affected Service for the period of the interruption or delay.
- (b) To the full extent the law permits, an interruption or delay to the Service is considered not to be caused by our negligence, and we are not liable, if it is caused or contributed to by an Excluded Incident.

Implied terms

- (c) If we are not permitted to exclude liability to you under any law, we accept that liability, and to the full extent the law permits, limit our liability to replacing or repairing goods or resupplying services or paying the cost of replacement, repair or resupply. If the law requires us to pay you compensation for reasonably foreseeable loss, to the full extent the law permits, we do not accept liability for any loss in connection with the use of a Residential Service for business purposes because it is not reasonably foreseeable loss as a Residential Service is intended to be used for personal, domestic or household purposes.
- (d) Subject to clause 10.1(c), to the full extent the law permits, we exclude all terms, conditions, warranties and guarantees implied or imposed by law.

Personal injury or death

- (e) The limitations set out in this clause 10.1 do not apply to any legal liability we may have for personal injury or death.

Events

- (f) To the full extent the law permits, we are not liable for any delay or failure to perform an obligation to the extent that the delay or failure is caused by an Event.

Consequential Loss

- (g) To the full extent the law permits, we exclude all liability to you for loss of profits, loss of revenue, loss of opportunity or goodwill, loss of actual or anticipated savings, loss or corruption of data, loss of any equipment value, any exemplary, punitive or special damage and any kind of indirect or consequential loss.

Contributory negligence

- (h) We reduce any liability we may have to you to the extent any loss, cost, damage or expense is caused or contributed to by you, a User or any of your or their officers, employees, agents or contractors, or by anyone else, or by Customer Equipment, or by your failure to take reasonable steps to mitigate your loss, cost, damage or expense.

User Claims

- (i) To the full extent the law permits, we exclude all liability to all Users and all liability to you to the extent caused or contributed to by any Claim by a User, whether arising under contract, negligence or other tort, statute or otherwise.

General exclusion and limitation of liability

- (j) To the full extent the law permits, if we do not expressly accept liability to you in connection with the Agreement or the Service under this clause 10.1, then we exclude that liability, whether arising under contract, negligence or other tort, statute or otherwise.
- (k) To the full extent the law permits, and subject to clause 10.1(c), we limit our total cumulative liability to you, for all loss, cost (including legal costs), damage or expense suffered or incurred by you for all Claims, in aggregate total, to the lesser of the amount you paid us for the Service in the 6 months preceding the most recent claim and \$100,000.
- (l) The limitations and exclusions of our liability set out in this clause 10.1 are to be construed for our benefit and that of each of our Related Bodies Corporate.

10.2 Customer Indemnity

- (a) You must pay us on demand the amount of any loss, cost (including legal costs), damage, expense, Claim (including third party claims) and any other liability, whether arising under contract, negligence or other tort, statute or otherwise, suffered or incurred by us, any of our Related Bodies Corporate and contractors in connection with:
 - (i) use of the Service by you, a User or any of your or their officers, employees, agents or contractors;
 - (ii) Customer Equipment; and
 - (iii) any inaccurate or incomplete information or improper authorisation provided to us or our contractors by you, your employees, agents or contractors in connection with the Service.
- (b) You must pay us on demand the amount of any loss, cost (including legal costs), damage, expense, Claim (including third party claims) and any other liability suffered or incurred by us, any of our Related Bodies Corporate and contractors arising from a Claim by a User in connection with:
 - (i) use of any goods and services including the Service; and
 - (ii) supply, or interruption, delay or defect in supply, of any goods and services including the Service.
- (c) If the customer for a Service is more than one person then each of you is jointly and severally liable in all respects under the Agreement.

11 PRIVACY

- (a) We collect, use and disclose your personal information as set out in our privacy policy published on our website, and as disclosed to you when we collect information from you.
- (b) If you do not provide personal information which we reasonably require, we may choose not to supply, or to cancel or suspend supply of the Service to you, or to limit or not to provide credit terms to you.
- (c) You may request us only to send you communications about your account, the Agreement or as required by law, and not to send communications which market our services or Special Offers. You can access and update the personal information we hold about you. Please see our privacy policy on our website for information about this.

12 SOFTWARE LICENCE

- (a) This clause 12 applies if we supply any software to you in connection with the Service, except to the extent stated otherwise in the Service Schedule or agreed in writing by us.
- (b) We grant you a revocable, non-exclusive, non-transferable licence to use the software:
 - (i) if third party software, subject to the terms and conditions of the applicable third party software licence;
 - and

- (ii) otherwise, subject to the terms and conditions of any licence agreement packaged with the software; and
 - to the extent there is no conflict, the terms and conditions of this clause 12.
- (c) You acknowledge and agree that we do not warrant the performance or features of the software and are not responsible for providing any upgrades or updates for the software.
- (d) You may only use the software until cancellation of the software licence or the Service in connection with which the software is licensed.
- (e) You must:
- (i) only use the software with the Service and in accordance with our directions;
 - (ii) comply with any restriction on the number of end users or other capacity restriction applicable to the software;
 - (iii) not copy, modify, decompile or reverse engineer the software or derive or develop other software based on the software we supply;
 - (iv) not remove or modify any copyright notice on the software;
 - (v) not sub-license, assign or otherwise transfer the right to use the software to any other person; and
 - (vi) cease to use the software on the sooner of our request or cancellation of the Service, and if we request, promptly return to us or delete or destroy all copies of the software in your possession or control.

13 TELEPHONE NUMBERS AND IP ADDRESSES

- (a) You acknowledge and agree that any telephone number used in connection with the Service is allocated and regulated by law and your right to use it may cease on cancellation of the Service (unless you transfer it away to another service provider) or if the number is required by the numbering regulations to be changed. If on cancellation of the Service, you do not transfer the telephone number to another service provider, it may be issued to another customer as set out in the numbering regulations. We will not be liable for any loss, cost, expense, damage or liability suffered or incurred by you or User arising from or in connection with loss of the right to use a telephone number or change of a telephone number, in accordance with the numbering regulations.
- (b) If we allocate an IP address to you for the Service, you must use it only connection with the Service. You do not own the IP address and your right to use it ceases on cancellation or suspension of the Service for any reason.

14 CHANGES TO THE AGREEMENT

- (a) We may make a change to the Agreement which impacts you, at any time, and without giving you prior notice, if you agree to the change or if the change is necessary for security or technical reasons or required by law.
- (b) We may vary any Charge and introduce any new Charge (at any time and without prior notice unless stated otherwise):
- (i) for international rates or any other Charge described as variable or subject to change or similar and for incidental charges such as credit card fees;
 - (ii) to reflect an increase in our costs of supplying the Service resulting from a regulatory decision;
 - (iii) to reflect an increase in price from a supplier to us (where we use the services of that other supplier to provide the Service);
 - (iv) to reflect a change in tax laws; and

(v) as permitted under any other clause of the Agreement.

- (c) Apart from the kinds of changes set out in clauses 14(a) and 14(b), we may only vary the Agreement in a manner which could be reasonably expected to adversely affect you, by giving you reasonable notice in accordance with the telecommunications legislation relating to standard forms of agreement. We may make any other variation to the Agreement at any time and without prior notice to you.
- (d) You can only change the Agreement with our written agreement. An upgrade, downgrade, relocation or other change to the Service (if we agree) may result in revised Charges, incur additional Charges (including Break Fee), impact provisioning times and quality of service and cause interruption to the Service.

15 RELATIONSHIP OF THE PARTIES

- (a) The relationship between you and us is that of independent contractors and nothing in the Agreement creates a relationship of partnership or agency between you and us.
- (b) You are not authorised to act on our behalf, to bind us to any obligation or to make any representation to a User or any other person on our behalf. You must not represent to a User or any other person that you are approved by us, or that you are our dealer, agent or representative.

16 INTELLECTUAL PROPERTY RIGHTS AND DOCUMENTS

- (a) All Intellectual Property Rights remain the property of the party which owns or creates them.
- (b) If we develop any Intellectual Property Rights in the course of performing the Agreement, in the course of preparing any proposal or quotation or other material for submission to you, or otherwise in connection with the Agreement, those Intellectual Property Rights remain our property and all information relating to those Intellectual Property Rights is our confidential information.
- (c) Nothing in the Agreement is to be construed as, and the supply of the Service by us is not to be construed as, an assignment of any Intellectual Property Rights, or grant of licence of any Intellectual Property Rights, by us to you.
- (d) You must not use any of our trade names, trademarks, service marks, domain names or logos or those of any of our Related Bodies Corporate without our prior written consent.

17 GENERAL

- (a) A notice required to be given by one party to the other must be given in writing unless otherwise specified in the Agreement. We may give notice to you by mail, facsimile, by message on or sent with the invoice, or by email to your last known address. You may give notice to us by mail, facsimile or email to our customer service team. A notice will be deemed to be received as follows: if given by normal mail on the 3rd day after posting, if given by express post on the next day after posting, if given by facsimile or email immediately when sent if during normal working hours, or if outside those hours, at 9am on the next working day.
- (b) You are responsible for complying with all laws, regulations, determinations, standards and industry codes applicable to your business, use of the Service by you and any User, and any resupply of the Service by you, including those applicable to supply of telecommunications services.
- (c) We do not provide a priority assistance service for life threatening medical conditions.
- (d) We may at our absolute discretion pay commission to any person in connection with the Agreement.
- (e) We may subcontract any work to be performed under the Agreement but will retain responsibility for the work. We may arrange for any of our obligations under the Agreement to be performed by any of our Related Bodies Corporate.

- (f) Each party must bear its own costs in respect of the Agreement and any document contemplated by it.
- (g) If a provision of the Agreement is invalid or unenforceable in a jurisdiction, it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- (h) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (i) The Agreement is the entire agreement of the parties about the subject matter of the Agreement and supersedes all prior oral or written representations, understandings or agreements about that subject matter.
- (j) Except as otherwise stated, all rights and remedies granted to a party under this Agreement are cumulative and in addition to and not in place of any other rights or remedies available at law or equity.
- (k) You acknowledge and agree that in entering into the Agreement you have not relied on any representations made by or on behalf of us, other than those expressly made in the Agreement.
- (l) You may only assign your rights under the Agreement with our prior written consent. We may assign our rights under the Agreement to any person.
- (m) The Agreement is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

18 DICTIONARY AND INTERPRETATION

- (a) Terms used in these Enterprise Terms have the meanings given them below unless the context requires otherwise.

ACL means the Australian Consumer Law, which is set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

ACL Customer means a person who enters into a consumer contract or small business contract (as those terms are defined in the ACL) for goods and/or services.

Agreement means the terms and conditions on which we supply the Service to you and is made up of these Enterprise Terms, the Service Schedule and the Order.

Break Fee means the fee payable by you in respect of a Service with a Fixed Contract Period if you change a plan or if the Service is cancelled and unless stated otherwise in the Service Schedule, is calculated by multiplying the minimum monthly charge by the number of months remaining in the Fixed Contract Period as at the date of Service cancellation (months remaining x minimum monthly charge).

Carrier and **Carriage Service Provider** have the meanings given them in the Telecommunications Act 1997 (Cth).

Charges means those monies payable by you to us under the Agreement as varied in accordance with the Agreement. Charges include those set out in the Order, the Service Schedule, the Standard Fee Table, the Special Offer (if any) and any amounts payable for rental of Our Equipment and for provision of any services by us and any incidental charges.

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind), whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory including repudiation), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all.

Customer Equipment means equipment, used in connection with the Service and necessary for us to supply the Service to you, other than Our Equipment and the networks and infrastructure we and our suppliers use to

supply the Service to you. Customer Equipment includes cabling, telephone access lines, modems, telephone and computer equipment, software, infrastructure and services of your own or a User, or provided to you or a User by a third party, including all equipment you purchase from us but excluding Our Equipment.

Customer Service Guarantee Standard or CSG means the Telecommunications (Customer Service Guarantee) Standard 2011.

Enterprise Terms means the terms and conditions set out in this document.

Event means any circumstance outside the reasonable control of the affected party, including act of god, fire, flood, storm, earthquake, war, riot, strike or unforeseen labour dispute, shortage of labour, equipment or materials, change of law or regulation, act or omission of any government authority including failure or delay in granting any approval or licence, electromagnetic interference, failure or variations in power supply, air conditioning or humidity control, act or omission of any of our suppliers or other third party, cable cut, failure of network, equipment, software, facilities or infrastructure owned or operated by any of our suppliers or another third party.

Excluded Incident means an interruption or delay to the Service caused directly or indirectly by:

- (i) an Event;
- (ii) any fraud, negligence or breach of the Agreement by you, a User or any of your or their officers, employees, agents or contractors;
- (iii) Customer Equipment;
 - (i) Our Equipment loaned to you;
 - (iv) provisioning, upgrade or reconfiguring of systems or equipment requested by you;
 - (v) cancellation or suspension of the Service in accordance with the Agreement; or
 - (vi) scheduled maintenance, upgrade or repair of the networks and infrastructure we and our suppliers use to supply the Service to you or Our Equipment.

Fixed Contract Period in respect of a Service, means the minimum contract term (if any) specified in the Order for the Service, commencing on the Start Date, but does not mean a month to month term.

Intellectual Property Rights means all intellectual property rights throughout the world, including:

- (i) copyright, inventions, patents, trademarks, trade names, logos, service marks, designs, semi-conductor or circuit layout rights and other related rights, whether created before or after the date of the Agreement and whether or not registered or able to be registered; and
- (ii) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (i).

Network Boundary means the physical point where responsibility for the Service transfers from us to you as set out below unless stated otherwise in the Service Schedule:

- (i) for a fixed phone (not VOIP) or data service (including ADSL, NBN, ethernet, broadband, internet) where there is no main distribution frame (MDF) (typically a single dwelling residence), the first telephone socket we nominate inside the premises (typically the socket closest to the lead-in cable);
- (ii) for a fixed phone (not VOIP) or data service (including ADSL, NBN, Ethernet, broadband, internet) where there is a main distribution frame (MDF) (typically a business premises or a multi-storey building), the A side of the MDF where A side means the side facing externally towards the network;
- (iii) for a fixed data service where there is a Network Termination Unit (NTU), the port of the NTU which is used to supply the Service (NBN service); and

(iv) for a VOIP phone service (where internet protocol is used to carry voice calls over a data service), the external carrier interconnect port on our core router at the edge of the network we or our suppliers use to supply the Service to you.

Order means your written order for the Service or any change to the Service, submitted to us as described in clause 3.

Our Equipment means equipment loaned or rented to you by us together with any cabling or other ancillary items provided with it. For clarity, it does not include equipment you purchase from us by instalment payments or otherwise.

Related Body Corporate has the meaning given that term in the Corporations Act 2001 (Cth).

Residential Service means a service described as 'residential' or as intended for personal, domestic or household use or similar in a Service Schedule.

Service means the service requested in the Order as described in the relevant Service Schedule and any related equipment, software, firmware and other goods and services we supply to you in connection with the Service.

Service Schedule means our document headed 'Service Schedule' (or if there is no such document but we have document(s) headed 'Critical Information Summary' and/or 'Service Description', then those documents) which describes the Service, sets out charges and any additional terms and conditions or other matters related to the Service.

Special Offer means a special offer or promotion which we may make in relation to the Service from time to time.

Standard Fee Table means our standard fee table available on our website.

Start Date means the earlier of the date when you first use the Service and the date on which the Service is first available for use as notified by us unless stated otherwise in the Service Schedule.

User means a person:

- (i) who acquires under contract a product or service that relies on the Service as an input;
- (ii) who is the ultimate recipient or user of the Service or a product or service of the kind described in (i) (excepting you);
- (iii) to whom we supply the Service at your request;
- (iv) to whom the Service is resupplied by you; or
- (v) authorised by you to use or distribute the Service.

Walk Away Rights means the right to cancel the Service (even during a Fixed Contract Period) without incurring a Break Fee.

we, us, our means the company named on the front page of this document.

you, your means the customer whose name appears on the Order.

(b) In these Enterprise Terms, unless the context requires otherwise:

- (i) headings are used for convenience only and do not affect the interpretation of the terms;
- (ii) the singular includes the plural and vice versa;

(i) a reference to a person includes a reference to a person, corporation, firm or other legal entity;

(iii) “including” and similar expressions are not words of limitation;

- (iv) a reference to a clause is a reference to a clause in the Enterprise Terms; and
- (v) a reference to all or any part of a statute, regulation or code (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.