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## STANDARD FORM OF AGREEMENT

### GENERAL TERMS

#### 1. Introduction

##### **Our Terms**

- 1.1 'Our Terms' are the terms and conditions (including pricing) applicable to the supply by us to you of the Services and Equipment and consist of these General Terms, the Service Terms and the other documents referred to in the General Terms and the Service Terms. Our Terms are our standard form of agreement formulated in accordance with section 479 of the Telecommunications Act. Our Terms contain all of the terms and conditions applicable to the supply of the Services and the Equipment, and no other document or representation forms part of Our Terms.
- 1.2 Our Terms apply to the supply of the Services and Equipment from the date that we first accept your Application. We will continue to supply the Services until the Services are terminated in accordance with clause 13 or otherwise under Our Terms.

##### **Cooling-off period**

- 1.3 We will allow you a cooling-off period of 10 business days from the date we first accept your Application via our Website. If you have ordered Equipment from us, the cooling-off period will only apply so long as you have not opened the Equipment packaging. During the cooling-off period you may (i) cancel the Service and must return the associated Equipment (if any), or (ii) return the Equipment while retaining the associated Service. You may not cancel the Service and retain the associated Equipment.
- 1.4 You must communicate to us your intention to use the cooling-off period by calling our Customer Service Centre and return the Equipment (if any) during the cooling-off period. If you do this within the cooling-off period you will not be charged any Service charges or fees (including applicable early termination fees). You will be liable for your actual usage of the Service (for example, call and event Charges, and installation Charges), any delivery charges incurred in the delivery and return of the Equipment, and any infrastructure and installation costs incurred by us in connection with our preparation for supplying the Service to you.

##### **Variations to our Terms**

- 1.5 We may make a change to Our Terms, if the change will not adversely affect you, without giving you prior notice, but by updating Our Terms on our Website.
- 1.6 We may make a change to Our Terms, if the change will adversely affect you, by giving you prior notice in accordance with Our Terms and by updating Our Terms on our Website, but only if:
- (a) the change is required by law or to account for a tax imposed by law; or
  - (b) the change is in relation to the cost of international services or international roaming; or
  - (c) the change is in relation to a fee or charge for a service ancillary to the supply of a Service provided that, if your Service is subject to a minimum service term, we offer
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you the right (exercisable within 42 days of the date of the notice) to terminate the Service without paying any early termination fee; or

- (d) the change increases the price of a content or premium service (where the supplier who supplies the content service or premium service to us to allow supply of your Service increases the price they charge us for the content service or premium service) provided that we allow you to elect to not use (nor incur further charges for) the content or premium service from the date of such election; or
- (e) the change is as a result of a Network Provider varying the agreement we have with it or ceasing to provide or changing a service or network and as a consequence we need to make a change to Our Terms, provided that, if your Service is subject to a minimum service term, we offer you the right (exercisable within 42 days of the date of the notice) to terminate the Service without paying any early termination fee; or
- (f) the change is, in our opinion, reasonably necessary or desirable to take account of any changed circumstances provided that, if your Service is subject to a minimum service term, the change will not apply to you until the minimum service term has expired.

## **2. Supply of the Services and Equipment**

### **Supply and use**

- 2.1 We will only supply the Services and/or Equipment to you if it is technically possible, you are either a residential (non-commercial) customer or a small business customer, and you meet our credit policy requirements. We may pay a commission to any person, including an ACN Independent Business Owner, who introduces you to us.
- 2.2 You may only use the Services and/or Equipment as stated in Our Terms and for your own personal use. You must not resell or resupply any of the Services.
- 2.3 You agree that we may configure your Services so as to be Preselected as your service provider for local, national and international long distance calls and calls to mobile services for so long as we supply the Services.
- 2.4 We will supply the Services using our facilities and services and those of other carriers, carriage service providers and equipment suppliers ('**Network Providers**') and by reselling the services of Network Providers.

### **Service activation and transfers**

- 2.5 We will provide you with each Service from the day on which our Network Providers have performed all steps necessary to enable you to acquire the Service, including the installation, connection, transfer, testing and activation of the Access Line (if any), the provision, testing and activation of the SIM card (if any), and the transfer, porting or connection of your telephone number. You acknowledge that there may be a delay between your request to transfer the Service (or a telephone number) to us and the day when our Network Providers complete all steps necessary to enable us to provide you with the Service. You acknowledge that when you request us to transfer the Service (or a telephone number) to another supplier, there may be a delay between the day of your request and the day when that transfer is implemented by that supplier.
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- 2.6 We are not liable for any delay by, or any act or omission of, any Network Provider in respect of the completion of the transfer or porting process.
- 2.7 You are responsible to your previous Supplier for all charges billed by your previous Supplier prior to and including the date of transfer of the Services to us.

**Minimum service terms**

- 2.8 A Service may be supplied to you under a minimum service term applicable to that Service or to a Plan which you take up.
- 2.9 If your Service is cancelled or terminated (by us for your breach of Our Terms or by you) or you request a change to your Plan within the minimum service term then you must pay to us the early termination fee as specified by us. This fee will be a genuine pre-estimate of the loss suffered by us for your early termination of the Service.

**Varying Services and Plans**

- 2.10 We may vary a Service or Plan in any of the following ways:
- (a) We may vary each Service (including its technical specifications) if reasonably required for technical, network planning, operational or commercial reasons or if any of our Network Providers varies the terms and conditions or technical specifications of a particular service provided to us. We will give you reasonable prior notice of changes which will adversely impact on your use of the Service.
- (b) We may change the access method for your Service for the remainder of your minimum service term and move you to:
- a new Plan that is reasonably comparable with your current Plan; or
  - an alternative Plan, but only if we take reasonable steps to address any detrimental impact that the change may have on you that is not minor.

If we change your access method, you must provide all reasonable assistance to enable the change to be implemented, including access to your premises and equipment. Unless otherwise agreed with you, we will not charge you for installation or for equipment we supply to you to use with the changed access method.

Alternatively, we may ask you to change your access method during your minimum service term even if the change may have a detrimental impact on you that is more than minor. If you refuse our request, we may cancel the Service by giving you at least 90 days' notice. If the Service is cancelled, you will be liable for charges incurred up to cancellation, but you will not be liable for any cancellation fee or outstanding equipment charges. We will contact you to discuss the details of any changes we plan to make to your access method prior to making the change.

**Availability and restrictions**

- 2.11 We aim to provide but cannot guarantee that the Services will be available continuously and in all areas, that you can make and receive calls at all times, or that the Services are free of faults, interruptions or errors. The quality and availability of the Services always depend on

the performance of our Network Providers and other network providers, as well as climatic, geographic and usage issues, none of which we control. There may be Telstra exchanges that do not support Preselection to us.

- 2.12 We or our Network Providers may restrict access to any public number (other than an emergency services number) if reasonably required for technical, operational or commercial reasons.
- 2.13 We do not offer priority assistance services (as defined in industry code C609:2007) in relation to any ACN Service.

#### **Account name and information**

- 2.14 Your account may only be in one name. If you have the account in more than one name we may, at our discretion, transfer the account to one only of those names.
- 2.15 You must provide your correct name, address, telephone number(s) and other information when applying for the Services, and be authorised to request the transfer or porting of your services and numbers to us. Also, you agree that:
- (a) if the account is in your name as an individual, even where you have also nominated a business name, you have full capacity to request the Services and are able to pay the Charges; or
  - (b) if an account is established in the name of a company or partnership, the person that has opened the account on behalf of the company or partnership is duly authorized to request the Services on behalf of the company or partnership.
- 2.16 You may nominate an authorised representative to act on your behalf in relation to Service enquiries, payments and updating contact details, and you agree that any instructions or directions from any such representative will be binding on you.
- 2.17 If you are or become a Carrier or Carriage Service Provider, then we may immediately terminate the Services by notice to you. If we do so, we will negotiate in good faith with you to enter an agreement governing supply of the Services, on terms to be agreed.

### **3. Prohibited and permitted uses**

- 3.1 You must not use, or permit any use of, the Services in any manner which is in contravention of the Acceptable Use Policy.
- 3.2 You must not, and must use reasonable endeavours to ensure that other persons do not interfere with, or attempt to interfere with, the operation of:
- (a) the Services; or
  - (b) the Network; or
  - (c) our equipment or facilities, or the equipment or facilities of Network Providers, associated with the Services.
- 3.3 As we use the services of other Network Providers in providing the Services, you agree to comply with any reasonable instructions given by us from time to time which are necessary to
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avoid causing any breach by us of the relevant Network Provider's terms and conditions of supply applicable to that Service.

- 3.4 You must comply with any reasonable instructions given by us, and provide all information and assistance reasonably required by us, in order to enable us to comply with any request or direction of a government agency, emergency services organization or other competent authority for reasons of health, safety or the quality of the Services or the general maintenance and operations of the network(s) and facilities used to provide the Services.

#### **4. Reporting faults**

- 4.1 You must report faults in the Services as soon as you become aware of them by contacting the Customer Service Centre. Where you report a fault after 5:00 pm or on a non-business day, it will be deemed reported on the following business day.
- 4.2 Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by the equipment you use to access and use the Services. As we resell the services of other Network Providers, we will need to inform them of the fault and request an investigation and correction. You may be contacted by our Network Provider about the fault and you must provide reasonable assistance.
- 4.3 If it is determined that the fault was caused by the equipment you use to access and use the Services, we will use reasonable endeavours to inform you of the fault and its probable cause and location and we may charge you for any costs we incur in investigating and rectifying the fault.
- 4.4 You must assist us and our Network Supplier in the localisation, investigation and rectification of any fault whatever its cause, including by allowing us and our Network Providers to access your premises.
- 4.5 If you have any complaints about the Services, you should contact our Customer Service Centre. We will attempt to resolve any problem or complaint you have as quickly and effectively as possible. If you are not satisfied with the initial outcome of your complaint, the matter will be handled in accordance with our complaints procedure. Disputes between telecommunications service providers and their customers may be resolved by the Telecommunications Industry Ombudsman (TIO). The TIO is an independent body and provides its services for free. The TIO is an office of last resort. It only takes up a complaint if the customer has first tried to resolve it with the relevant service provider. The Office of Fair Trading (or similar) in your State or Territory may also investigate consumer complaints.

#### **5. Security for payment**

- 5.1 We may require you to provide a form of security (for example, a cash deposit) or pay some or all of the Charges in advance. If you do not, we can suspend, restrict or cancel, or refuse to provide, the Services. We will give you reasonable notice before such requirement takes effect. We may from time to time vary the requirement for and the amount of this security.
- 5.2 We may apply the whole or any part of any financial security to satisfy any amount you are required to pay to us from time to time and that is overdue. This does not limit our other rights under Our Terms.

- 5.3 We will return any remaining security to you after you have stopped using the Services, you have paid us all outstanding Charges and discharged all your other obligations under Our Terms and we are satisfied that we will not be obliged to repay any amount received by us for any reason.
- 5.4 We may from time to time set a credit limit for the provision of the Services to you. You will be notified of this credit limit and any variation to it. If you exceed this credit limit, we may suspend or restrict the Services available to you without notice.

## **6. Charges, Billing and Payment**

### **Charges**

- 6.1 We may charge you the Charges in accordance with Our Terms and the pricing published on our Website.
- 6.2 We may pass on to you any charges our Network Providers charge us for provision and usage of your Services.
- 6.3 You are liable for all Charges for the use of your Services whether or not you authorised the particular use of the Services by other persons including family members and persons who access your Services including via wireless networks.
- 6.4 Unless expressly stated otherwise, the charges payable for the Services are inclusive of GST. Where the Charges are expressed to be exclusive of GST, you must pay us in addition to the Charges an amount equal to any GST payable on the supply of the Services. That additional amount is payable at the same time as the Charges are payable. We will issue a tax invoice to you for the supply of those Services at or before that time.

### **Invoicing**

- 6.5 We will invoice you monthly for the Charges for post-paid Services but reserve the right to invoice at different intervals (for example, we may defer issuing an invoice if your Charges are small) and issue interim invoices. We will provide you with a breakdown of the Charges payable in each invoice. Your invoicing date each month is dependent on the invoicing cycle day assigned when you became a customer.
- 6.6 Unless otherwise expressly stated in the relevant Service Terms, we will invoice you:
- (a) for any Equipment, on or after delivery (which may be by instalments over a minimum service term);
  - (b) for any installation, activation or connection Charges, after installation, activation or connection;
  - (c) for variable or usage Charges, in arrears;
  - (d) for recurring or fixed Charges, in advance; and
  - (e) otherwise, as notified by us from time to time.
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- 6.7 Where we install, activate or connect a Service or feature that incurs a recurring Charge, the recurring Charge for the initial period will be pro-rated (unless specified otherwise) and invoiced on the next invoice immediately following the connection, activation or installation.
- 6.8 Our standard method of issuing our invoice to you is via electronic media. We will charge you an additional Charge if you request to receive paper invoices or request billing information which does not form part of our standard invoice.
- 6.9 Delays in the processing and receipt of billing information may mean that not all Charges during the invoicing period covered by an invoice can be included in that invoice. Those Charges may be included in any subsequent invoices. If any error is subsequently discovered, we may re-issue any invoice or issue an additional invoice.
- 6.10 Although we do not have the obligation to monitor your usage, we may temporarily suspend or restrict the Services and issue an interim invoice where we reasonably believe that your usage has been excessive or unreasonably high or when you have exceeded your credit limit. Re-activation of your Services may depend on your payment of the interim invoice. We are not required to keep you informed of your usage prior to issuing an interim invoice.
- 6.11 Our records and/or the records of any relevant Suppliers or Network Providers will be conclusive evidence of your usage of the Services and the Charges payable by you.

#### **Payment**

- 6.12 You must pay all Charges within 14 days of the date of invoice, unless otherwise stated on the invoice. Your invoice will state the available methods of payment and any additional fees for particular payment methods. We will always offer a fee-free payment method.
- 6.13 We may set off in whole or in part any amounts due and payable by us to you, against any amount due and payable by you to us under Our Terms. You may not withhold, deduct or set-off any amount from or against any payment due by you to us in any circumstances.
- 6.14 You may elect to pay automatically, in which case you must complete a direct debit authority. If your financial institution fails to honour a direct debit payment or rejects or returns our payment request for any reason, we may ask you to pay directly to us the amount owing. We may charge you a dishonour fee or a decline fee, as applicable.
- 6.15 If you fail to pay your invoice, including any interim invoice, on time, you will be in breach of Our Terms and we may:
- (a) charge interest on any Charges remaining unpaid by the due date, charged from the due date until payment at a rate equal to 3% above the Commonwealth Bank Corporate Overdraft Reference Rate; and
  - (b) charge you all the costs and expenses (including our administrative costs, reasonable legal costs and expenses, and the fees of our debt recovery agents) we incur in relation to recovering unpaid Charges; and
  - (c) suspend, restrict or terminate the Services, and if we suspend or terminate the Services and we agree to re-connect you, you will be required to pay a service restoration fee, which will be added to your Charges.
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- 6.16 After the Services are terminated or cancelled, it is your responsibility to cancel any direct debits and other authorisations you may have given in relation to your Services.

#### **Pre-paid charging**

- 6.17 We may offer to supply some Services on a pre-paid charging basis. This section of Our Terms applies only in respect of those Services.
- 6.18 You must nominate a valid credit card (MasterCard or Visa) at the time we create your pre-paid account for you. Only one Service may be associated with each pre-paid account.
- 6.19 We may require you to agree to credit monthly service fees to your pre-paid account via automatic recharge and you must complete a direct debit authority for this purpose. We will then automatically deduct these amounts from your nominated credit card in accordance with the authority.
- 6.20 Charges for the Service, including non-recurring Charges and usage Charges but excluding monthly service fees, are deducted from your pre-paid account following performance of the work or service or as the usage occurs. Monthly service fees are deducted from your account in advance on a periodic basis (usually monthly and immediately upon being credited to your account from your nominated credit card).
- 6.21 We will not send you electronic or paper invoices or statements in respect of service and usage Charges for your pre-paid account. You can however obtain your usage records and the respective Charges for a preceding period online via MyAccount. Where you request that we supply paper records, or electronic records beyond the period normally available in MyAccount, we may charge you our reasonable costs in providing such records.

#### **Recharging your pre-paid account**

- 6.22 We may make available various means by which you may recharge your pre-paid account, including by Auto Top-Up or Manual Top-Up. This does not apply to recharges of your monthly service fees, which are recharged as described above.
- 6.23 Auto Top-Up will recharge your account automatically, so when your account balance drops below a preset amount (\$5.00), your nominated credit card will be automatically debited with your selected recharge amount. You can set up Automatic Top-Up by registering at the time you connect the Service, online via MyAccount or alternatively by calling our Customer Service Centre.
- 6.24 If your Auto Top-Up recharge fails we will send you an email advising of the failure so as to allow you to contact us to rectify the problem. We will automatically attempt to debit the preset amount from your credit card again. Auto Top-Up will be cancelled following this attempt if your recharge fails following a third attempt.
- 6.25 You can manually top-up your account from time-to-time using your nominated credit card, either online via MyAccount or by calling our Customer Service Centre.

#### **Pre-paid account conditions and limitations**

- 6.26 If your pre-paid account balance is or becomes insufficient to cover a call or use of a particular feature or service, or falls below 10c, we will not provide the Service to you and will terminate

any outbound call, feature or service in progress, except for calls to the emergency services number 000. We may make available limited inbound services at our discretion.

- 6.27 If a recharge of your monthly service fee fails (the date on which such failure occurs being the 'Failure Date'), your pre-paid account is cancelled 60 days after the last successful recharge of your monthly service fee (unless you successfully recharge your monthly service fee within that period). Subsequent to the Failure Date and prior to any cancellation, we will charge you for all usage by deducting from your pre-paid account the relevant Charges determined by us, whether or not such usage is included in your monthly service fee.
- 6.28 The maximum amount of credit that can be applied to your pre-paid account is \$300.
- 6.29 Upon cancellation, expiry or termination of your pre-paid Service, account credits will be forfeited and cannot be converted into or redeemed as cash and cannot be applied or credited against other Services.

## **7. Disputing the Charges**

- 7.1 You may dispute an invoice or a Charge applied to your account if you:
- (a) reasonably and in good faith believe that you are not liable to pay the Charges because of an inaccuracy, omission or error in the invoice; and
  - (b) provide us with specific evidence, which demonstrates that a particular Charge or invoice is incorrect; and
  - (c) do the above within 12 months of the date of invoice or, if there was no invoice, the date the relevant Charge was applied to your account.
- 7.2 If you raise a dispute in accordance with clause 7.1, we will conduct an investigation reasonably appropriate in the circumstances. At the end of this investigation, if we find that the dispute is valid we will credit your account with the relevant amount (together with interest on that amount calculated in accordance with clause 6.15 from your original payment date) within seven business days.

## **8. Plan pricing**

- 8.1 Plans are special offers or pricing options which we may make available to you from time to time.
- 8.2 In order to obtain the benefit of a Plan, you may be asked to agree to additional terms and conditions, such as adopting a minimum service term. Such terms and conditions will prevail over any inconsistent terms and conditions of Our Terms, for the duration of the Plan. A fee may payable if you breach any of these terms or conditions. Your use of a Plan is always subject to the Acceptable Use Policy.
- 8.3 Subject to clauses 1.5 and 1.6, we may withdraw or amend a Plan at any time. If the withdrawal of or amendment to a Plan will adversely affect you, we will treat the withdrawal or amendment as a change to Our Terms and comply with clause 1.6.

## 9. Equipment

### Operation of equipment

- 9.1 You must ensure that all equipment which you use to access and use the Services is ACMA-approved. You are responsible for the security and proper functioning of such equipment, and to ensure that such equipment does not interfere with the normal operation of the Services and our networks and the networks of the Network Providers.

### Equipment you purchase from us

- 9.2 These terms apply to the purchase by you from us of the Equipment.
- 9.3 Upon the Equipment being delivered to the address you specified for delivery:
- (a) the risk of loss of, or damage to, the Equipment passes to you; and
  - (b) you become liable to pay us the purchase price for the Equipment.
- 9.4 Title in, and ownership of, the Equipment passes to you when you open the packaging enclosing the Equipment.
- 9.5 We retain a lien over the Equipment for the amount of the purchase price not paid to us from time to time. If you fail to pay any amount of the purchase price for the Equipment when due, we may exercise our lien over the Equipment by entering your premises to repossess the Equipment.
- 9.6 The Equipment will be subject to the manufacturer's applicable warranty conditions in addition to any applicable statutory guarantees. Warranty information will be included with the Equipment, and must be followed if you wish to make a warranty claim.
- 9.7 From time to time we may supply accessories with some of the Equipment. The accessory item is a gift, has no cash value and is not part of the Equipment. If the gift is defective and you notify us within 30 days of delivery of the gift, we may at our discretion repair or replace the gift. This will be your sole remedy in relation to the gift.

## 10. Telephone numbers, IP addresses and service transfers

### Use of numbers and IP addresses

- 10.1 You do not own the telephone numbers or IP addresses (in this clause, each a 'number') we allocate to you, and you have no right to retain or transfer a particular number when the Services end. We may change, withdraw or reset a number in accordance with the Numbering Plan or our standard operating procedures. You acknowledge that you have no claims in relation to, and do not acquire title or goodwill as a result of using, a number. You acknowledge that we are not liable to you for any expense or loss incurred by you or your business due to any change in or withdrawal or resetting of a number. You may not transfer, assign or relocate a number except with our consent.
- 10.2 As required by law, we will supply your name, address, telephone service number and other public number customer details to the operator of the Integrated Public Number Database (IPND).

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- 10.3 When you acquire a Service, you may be able to retain (port) your existing telephone number, subject to availability and technical and commercial considerations.
- 10.4 We have the right to classify certain telephone numbers as premium numbers and charge you additional once-off and recurring Charges to cover the additional costs incurred by us. We may amend our Charges for premium numbers, including for premium numbers already issued, at any time.

#### **Dealing with Network Providers**

- 10.5 You appoint us as your agent to deal with your current Supplier(s) and our Network Providers. You grant us the authority to act on your behalf in relation to any services provided by your other Suppliers, including to transfer your existing services and numbers to us, and in relation to the Services, including to manage faults and changes.
- 10.6 Despite your services being transferred to us, you remain responsible for all amounts owing to your other Suppliers for any services they supply or supplied to you.

### **11. Liability**

- 11.1 You may have certain remedies under the *Competition and Consumer Act 2010 (Cth)* and other laws, which imply certain guarantees in relation to the supply under Our Terms. We do not exclude or restrict or modify those implied guarantees if to do so would contravene that law or make any part of this clause 11 void.
- 11.2 Nothing in Our Terms excludes or limits our liability for death, personal injury caused by our negligence, our fraud or anything limited or excluded by law.
- 11.3 We are not liable for: (a) any delay in installing or transferring any Services, (b) any delay in correcting any fault in the Services, (c) failure or incorrect operation of any Services, or (d) any other delay or default in performance under this where the failure, default or delay is the result of or is related to: strike or other industrial action; any act or omission by you or any third party; failures or delays by our Network Providers; legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licences or authorities; fire, flood, war, network damage or cable cut; or any other event beyond our reasonable control.
- 11.4 To the extent permitted by law, we exclude all liability to you in connection with the Services and Equipment for consequential loss, indirect loss, loss of profit, loss of anticipated savings, loss or corruption of data, interruption to business, loss of revenue and economic loss of any kind, whether in contract, tort (including negligence), for repudiation, under any statute or otherwise.
- 11.5 To the extent permitted by law, our aggregate liability to you in connection with the Services and Equipment in respect of all claims, whether in contract, tort (including negligence), for repudiation, under any statute or otherwise, will not exceed the total amount of charges paid by you to us within the last three months before the event which gave rise to your claim.
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**12. Assignment**

- 12.1 You may not assign or transfer your rights under Our Terms, except in accordance with clause 12.3.
- 12.2 We may assign or transfer our rights and obligations under Our Terms to any person without your consent.
- 12.3 You agree to novate your rights and obligations in relation to the supply of the Mobile Service to our Network Provider on receipt of a notice from either us or our Network Provider (where our Network Provider is authorised by us to issue such a notice), such novation to be on terms no less favourable than Our Terms in existence immediately prior to the novation.
- 12.4 If the arrangements between us and our Network Provider for the Services are terminated, the Network Provider may arrange to supply the Services directly to you. You acknowledge that the Plan applicable to the provision of the Services to you may be altered to the nearest applicable Network Provider service plan in the event that our rights and obligations are assigned or novated to the Network Provider so that the Network Provider provides the Services directly to you.

**13. Termination**

- 13.1 You may terminate the Services at any time, but if:
- (a) you have a Service subject to a minimum service term then you will have to pay any applicable early termination fee in accordance with clause 2.9; and
  - (b) you terminate a Service before we commence supplying the Service to you, you must also pay us any infrastructure and installation costs incurred by us in connection with our preparation for supplying the Service to you.
- 13.2 We may terminate the Services or the supply of a part of the Services with immediate effect upon notice to you (or with effect from such later date as we may specify in the notice) if:
- (a) you default in the payment of any Charges by the due date and fail to remedy such default within 14 days of notice from us;
  - (b) subject to paragraph (a), you breach any term of Our Terms (including the Acceptable Use Policy) and, in the case of a breach capable of remedy, you fail to correct that breach within 7 days of notice from us;
  - (c) we reasonably suspect fraud or misuse of the Service on your part;
  - (d) you enter into bankruptcy, liquidation, administration, receivership, or are deemed to be insolvent or we otherwise reasonably believe that you will be unable to pay the Charges as they fall due;
  - (e) if you are an individual and you die (in which case your estate must pay all Charges that are due);
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- (f) we reasonably believe that your dealings with our Customer Service Centre or any of our independent representatives, or your use of the Services, pose a threat to or disrupt our operations or are of an unacceptable nature.
  - (g) we reasonably believe you have provided us with false or misleading details about yourself; or
  - (h) we no longer have access to the relevant services or networks of our Network Providers or we are no longer able to provide the Services or we cease business.
- 13.3 We will terminate the supply of a Service to you if you chose to change your supplier in respect of that Service (including by porting your mobile number), such change being effective from the date the new supplier has completed the transfer
- 13.4 You remain liable for all Charges up to the date of termination and for any subsequent Charges which we may charge you in accordance with Our Terms (for example, under clause 6.15).
- 13.5 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision that is expressly or by implication intended to operate after termination.

#### **14. Suspension and Restriction**

- 14.1 We may suspend or restrict a Service immediately:
- (a) if we are required to comply with an order, instruction or request of a government agency, emergency services organisation or other competent authority;
  - (b) if a Network Provider is required to undertake emergency repair, maintenance or service to any part of its network;
  - (c) if it is reasonably required to reduce or prevent fraud or interference with our equipment or facilities or the equipment or facilities of a Network Provider or to restore the proper functioning of our Services or a network of a Network Provider;
  - (d) where Charges owing to us under clause 6 remain outstanding after the due date, unless we have received written notice from you of a dispute of those Charges in accordance with clause 7;
  - (e) where your credit limit has been exceeded;
  - (f) where we reasonable believe that your use of the Service has been in breach of the Acceptable Use Policy; or
  - (g) as an alternative to the exercise of our rights of termination under clause 13.
- 14.2 Because we continue to incur costs of supply associated with keeping a Service in a suspended state, if we suspend a Service pursuant to clause 14.1 (d), (e), (f) or (g):
- (a) we may charge you a re-connection fee; and
  - (b) except in the case of usage-based Charges, all other Charges in relation to the Service will continue to accrue while suspended and will be payable by you.
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**15. Privacy**

- 15.1 We agree to collect, use and disclose your personal information and credit related information only in accordance with our Privacy Policy and Credit Reporting Policy. The current versions of these policies are available on our Website.

**16. Miscellaneous**

- 16.1 Our Terms and the supply of the Services and Equipment are governed by the law of the Australian state or territory that is specified as the service address. Each of us agrees to only bring legal actions about the Services and Equipment in the courts of that state.
- 16.2 Our Terms constitute the whole legal relationship of the parties to the exclusion of any prior agreement, representation or understanding relating to the Service and/or Equipment.
- 16.3 You acknowledge that you made application for the Services and/or Equipment 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 Our Terms.
- 16.4 You release us and each of our officers, agents, representative and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning the Services and/or Equipment before the supply commenced, and from the negotiations leading to the supply.
- 16.5 In Our Terms, unless the context otherwise requires:
- (a) headings are for convenience only and do not affect interpretation;
  - (b) all references to dollars, value and price are to the Australian currency;
  - (c) references to a party includes its successors and permitted assigns;
  - (d) references to payment to any party includes payments to another person on the direction of that party; and
  - (e) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.
- 16.6 A notice, approval or consent, to be issued under Our Terms must be in writing and in the absence of evidence to the contrary will be taken to be received:
- (a) if left at the address of the addressee, at the time it was left;
  - (b) if sent by ordinary post, on the third day after posting;
  - (c) if sent by express post, on the next day;
  - (d) if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent;
  - (e) if sent via email, on the passing of 6 hours from the time which the email was sent subject to no error message having being received by the sender in relation to the email sent;
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- (f) if sent by short message service (SMS), on the passing of six hours from the time the SMS was sent subject to no error notification having been received by the sender in relation to the SMS sent; and
- (g) (in the case of notices issued by us) if posted on our website at [www.acnpacific.com.au](http://www.acnpacific.com.au), on the passing of 12 hours of such posting or if included in our invoice issued to you, on the passing of 12 hours of such issuance of invoice.
- 16.7 Any waiver of a breach of any obligation by you relates only to the particular breach and not to any other or subsequent breach, and will not prejudice our rights to take subsequent action. A waiver under this clause will only be valid if it is in writing and signed by the party against whom such waiver is claimed.
- 16.8 If a provision of Our Terms is void or voidable or unenforceable or the invalid part severed, the remainder of Our Terms will not be affected.

## 17. Definitions

### 17.1 In Our Terms:

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

**'Acceptable Use Policy'** means the document titled 'Acceptable Use Policy' published on our Website.

**'Acceptance Notice'** means the notice attached to the packaging of the Equipment which is titled 'Acceptance Notice'.

**'Access Line'** means a line or link, and ancillary facilities, connecting your telephone or other equipment to your local exchange.

**'Application'** means your application for us to supply to you the Services and/or Equipment on Our Terms, whether by means of a written application form, an on-line process or a verbal process.

**'Charges'** means all charges set out or otherwise referred to in Our Terms.

**'Customer Service Centre'** means our customer service centre, which you may access by the means specified on our Website or in your welcome kit or starter kit.

**'Do Not Bill Order'** has the meaning given to that term in the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

**'Equipment'** means equipment sold by us to you.

**'Interim Do Not Bill Order'** has the meaning given to that term in the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)*.

**'Local Exchange Carrier'** means the Supplier that owns and operates the Access Line.

**'Mobile Service'** means the Service described in the Service Terms - Mobile.

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**'Network Provider'** has the meaning given in clause 2.4.

**'Numbering Plan'** means the Telecommunications Numbering Plan and instruments and regulations made under it.

**'Our Terms'** has the meaning given in clause 1.1.

**'Plan'** means a special offer or pricing option as described in clause 8.

**'Preselect'**, in relation to an Access Line, means to designate a particular Supplier as the default supplier of long distance services to that Access Line. **'Preselection'** and **'Preselected'** have corresponding meanings.

**'PSTN'** means Telstra's Public Switched Telephone Network or an equivalent network used by us and which provides basic telephony services which we resell to you.

**'Service Terms'** means the terms and conditions contained in the documents titled 'Service Terms' and listed in the Title Sheet.

**'Services'** means any one or more of the services referred to in the Service Terms.

**'Supplier'** means a carrier or carriage service provider that supplies services.

**'Telecommunications Act'** means the *Telecommunications Act 1997 (Cth)*, as amended from time to time.

**'Website'** means our website [www.acnpacific.com.au](http://www.acnpacific.com.au) as amended from time to time.

*End of document*

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