



Swift Networks Pty Ltd

ABN 96 125 828 453

CUSTOMER AGREEMENT

(Standard Form of Agreement as prescribed under section 479 of the Telecommunications Act)

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Your Contract

1 Your Customer Agreement

1.1 About this document

- a) This is Swift Networks' Standard Form of Agreement as prescribed under section 479 of the Telecommunications Act, called our 'Customer Agreement' or 'Customer Terms'.
- b) Copies of this agreement may be obtained by calling us or by visiting our website.
- c) If you have a disability that impedes your ability to read these documents or have difficulty reading or understanding English, we have options to assist and ask that you call our Help Desk for assistance.

1.2 About us

- a) Swift Networks or 'we' or 'us' means Swift Networks Pty Ltd ABN 96 125 828 453
- b) We supply telecommunications Services to individual customers as end users. In these circumstances we enter into a Customer Agreement with them directly.
- c) In some circumstances we supply telecommunications Services under a license agreement to Village Operators whom on-pass these services to their Residents. If this applies to you, then you are a user of Services under an agreement with the Operator and we do not have a specific contractual relationship with you. Notwithstanding, we endeavour to supply all Services on the basis of this Customer Agreement.

1.3 Your Customer Agreement

- a) Your Services are supplied by us under a Contract that includes:
 - i the selections you make in an Application;
 - ii any applicable Pricing Schedules;
 - iii this Customer Agreement (Standard Form of Agreement); and
 - iv any applicable Service Descriptions or Product Warranties.
- b) If there are any inconsistencies between terms contained within any of the documents mentioned above they are to be read in order of priority in the order in which they are presented above.

2 Applications and Relevant Dates

2.1 Application for Service

- a) To acquire a Service from us you must complete an Application either on paper, online or over the phone in accordance with processes we specify from time to time.
- b) All information you provide in connection with an Application must be true, correct, complete and not misleading.
- c) If you request us to transfer a Service to us then you warrant to us that you are the same End User to whom your current Provider supplies the relevant Service.

2.2 Processing an Application

- a) We do not have to accept an Application.
- b) Before we confirm that we can and will provide Service, if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.
- c) In processing your Application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 6 (Credit reports).

2.3 Relevant dates

- a) The date when you make an Application is the Application Date.
- b) The date when we confirm that we can and will provide Service is the Contract Date.
- c) Unless otherwise provided within a Service Description the date when we notify you that Service is available for use (or the date you first use the Service, if that is earlier) is the Service Start Date.

2.4 Providing Service

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

Charges

3 Plans

3.1 Plans & Plan Extras

- a) Our Services are provided under different Plans, each with its own features, entitlements, contract period, Charges and special conditions.
- b) You may be entitled to add Plan Extras to your Plan.
- c) You may be entitled to Promotions which may be applicable to your Plan.
- d) Depending on the rules described in the Pricing Schedule, Plan, Plan Extra or Promotion you may be able to change or cancel your Plan, Plan Extra or Promotion. Charges may apply in these circumstances (see more information below in Section 4 (Charges)).
- e) You acknowledge that before entering into a Contract with us that you have received and understood the Pricing Schedule associated with your Service.
- f) Your Plan may be varied, or its term extended or renewed as agreed between you and us from time to time.

3.2 Plan changes requested by you

- a) If you request a variation to your Plan and we, in our discretion, make that variation, then revised Charges may apply and the Service may be correspondingly varied in accordance with that new Plan (or Plan Extra or Promotion or offer as the case may be).
- b) If you request a Plan Downgrade within a minimum Contract term then you acknowledge that in completing your request we will suffer loss, you authorise us to charge you a Plan Downgrade fee and you acknowledge that this represents a genuine pre-estimate of our costs and is not a penalty.

3.3 Peak & Off-peak

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

3.4 Included Value

- a) A Plan may include the right to a certain amount of a service usage within a period.
e.g. An Internet Plan might let you download 100 gigabytes of data each month at no extra cost.
e.g. A local call Plan might let you make 50 local calls each month at no extra cost.
- b) We call this Included Value.

- c) Unused Included Value does not carry forward and is not redeemable for cash or other credit.
- d) If you exceed your Included Value, extra Charges may apply or a Service may be limited in some way. Your Plan's Pricing Schedule will give details.

3.5 Prepaid Plans

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

3.6 Fixed terms

- a) A Plan may specify a particular, fixed or minimum term. If it does:
 - i Your Contract term is that specified term.
 - ii Either you or we can terminate the Contract as at the end of that specified term, by notice.
 - iii If neither of us gives a termination notice, it becomes month-to-month after that specified term.

3.7 Month-to-month, casual or 'no contract' terms

- a) If a Plan does not have a minimum term then it is described as a month-to-month, casual or no contract Plan. In such circumstances you or we may terminate it at any time by providing notice.
- b) The termination described in the preceding clause will, unless your Contract permits immediate termination, ordinarily be made effective on the conclusion of your current Billing Period.

3.8 Bundled Equipment

- a) Under some of our Plans, you will be supplied with Equipment (eg a mobile handset or modem) without paying its full purchase price on delivery (Bundled Equipment).
- b) Bundled Equipment may be:
 - i free – in which case we absorb its full cost;
 - ii amortised – in which case you pay \$0 up-front and we recoup the cost from you as part of Charges over a minimum term; or
 - iii subsidised – in which case we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.
- c) Clause 19 (Equipment) explains when ownership of Bundled Equipment passes to you.

4 Charges

4.1 You must pay our Charges

- a) You must pay us all fees and charges that are incurred in using your Service ("Charges") (except for unauthorised use that results from our negligence or breach of Consumer Guarantees, or any fees or charges that we are not permitted by the TCP Code or any other law to recover from you).

4.2 Types of Charges we may levy on you

- a) installation charges (e.g. for installing Equipment);
- b) set up charges (e.g. a one-off Charge when you start on an Internet Service);
- c) periodic charges (e.g. a fixed monthly Plan Fee for an ADSL Service or a Manual Payment Plan for the purchase of Equipment);
- d) usage charges (e.g. a Charge per call made on a local call Service);
- e) prepaid charges (e.g. a Charge for call credit on a mobile telephone service);
- f) call connection charges (e.g. a Charge incurred when a telephone call connects);
- g) miscellaneous charges (e.g. a Charge for providing a second copy of a bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make or where we incur costs in processing or investigating certain such as usage, failures, changes and transfers); third party charges (e.g. an amount we must pay to a Provider to install a second telephone line in your premises or for Premium Services or relating to Recovery Action);
- h) plan or service variation charges (e.g. a fee to change your plan and includes a Plan Downgrade Fee in the event you choose to reduce your period plan fee whilst within a fixed contract period);
- i) Equipment charges (e.g. the price of a modem we sell to you);
- j) other charges that we state as part of a Plan; and
- k) out-of-pocket expenses (eg where we notify you that, in order to supply a Service, we need to incur costs).

4.3 Our Prices

- a) Subject to clause 4.7 (Varying Charges), our prices are as stated in your Pricing Schedule.
- b) Our current prices at any time are referred to as our Current Pricing.
- c) As you may purchase third party services through our Services, we do not promise to maintain a schedule of third party Charges and we will not be able to ensure you are aware of these prior to purchase.
- d) Unless otherwise expressly stated, our prices for usage of home and mobile phone services (e.g. calls, messaging, data transfers) are always quoted on the basis that:
 - i you are using the phone in Australia, and
 - ii any phone you are calling or messaging is in Australia.
- e) We cannot necessarily know when a mobile telephone is located outside Australia and if it is, extra Charges may apply.

4.4 Errors in our documents

- a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Contract, including any Plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- b) You are not entitled to a reduction or variation in the price of a Service by reason of any such error or misprint.

4.5 Spot priced Services

- a) We may designate a Service as a spot priced Service.
- b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.
- c) Unless specified otherwise in your Plan's Pricing Schedule, international telephone calls and international roaming are spot priced Services.

4.6 Out-of-pocket expenses

- a) We may notify you that, in order to supply a Service, we need to incur some out-of-pocket expense. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.

4.7 Varying Charges

- a) We may vary the Charges or add new Charges from time to time in accordance with clause 29 (Variations).

4.8 Promotions

- a) We may offer Promotions to you, on particular terms.
- b) The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Contract.

4.9 Bundled Plans

- a) We may offer a group of Services as a package (bundle) for discounted total Charges (compared to the total Charges that would apply if you acquired the same Services not as a bundle). e.g. We might offer bundled 'Home phone + Internet Access for \$89.95 a month' where our Charges for the individual Services would be \$99.95 a month.
- b) Each Service in a bundle is subject to a separate but dependant Contract.
- c) If you stop acquiring any Service in a bundle:
 - i You have 'broken' the bundle, and
 - ii We may bill you non-discounted Charges for the remaining Service/s.

4.10 Plan Extras

- a) You may choose to add a Plan Extra during the term of your Contract and not on connection. If so then we will typically add this to your Plan effective on the beginning of your Billing Period.
- b) We typically cancel Plan Extras at the end of the current Billing Period.
- c) If we add or cancel a Plan Extra immediately then pro-rata'd calculations will be made for charging for the Plan Extra and for using its benefits.

4.11 Services you acquire for others

- a) You may enter into a Contract where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your children).
- b) If the previous clause applies then you are responsible for all use of the Service and all Charges incurred under the Contract.

4.12 Premium Services

- a) Your Service may permit you to purchase Premium Services such as through a phone call, an SMS, or a request on the Internet to the provider.
- b) Premium Services are charged at premium rates and we encourage you to consider such purchases carefully.
- c) Mobile premium services are often subscription services. This means you will receive the service, and be charged for receiving the service regularly – usually monthly.
- d) You should carefully read the terms and conditions of any premium service before you purchase the service to understand whether the service is a once off or subscription service.
- e) The providers of Premium Services charge us and we in turn will pass the Charge onto you.
- f) We may mark-up the charges for Premium Services and if so we will advise you of this in the relevant Pricing Schedule(s).

- g) By default, access to mobile premium services from the Mobile Voice Service is enabled. To bar your access to mobile premium services you can do so via our website or contacting our Help Desk.
- h) The communications alliance produce an industry code for mobile premium services which can be found at: <http://www.commsalliance.com.au/Documents/all/codes/c637>
- i) The communications alliance also provide more information about mobile premium services at: www.19sms.com.au

4.13 Charges relating to suspension and early termination by you

- a) Our Plans are priced on the basis that you will complete the minimum term of your Contract. When a minimum term applies to your Contract, it will be identified on your Pricing Schedule. You are not entitled to simply choose to suspend your Service or terminate its Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.
- b) Where you are entitled to terminate your Contract early (e.g. because we have offered you that option following a variation to your Contract), we may bill you for:
 - i any outstanding amounts for installation costs or Equipment that can be used in connection with services provided by other suppliers; and
 - ii usage or network access charges incurred up to the date on which the Contract ends.
- c) If we agree that you may terminate your Contract early in any other circumstances, we may bill you:
 - i an Early Termination Fee;
 - ii any applicable amounts for installation costs or Equipment;
 - iii a reasonable administration Charge;
 - iv usage or network access charges incurred up to the date on which the Contract ends; and
 - v any other Charge that is specified in the applicable Plan or the Current Pricing.
- d) Some of our Plans discount, defer or waive normal Equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and if we agree that you may do so), we may also bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated. We will not do this and also charge you an Early Termination Fee.
- e) We may charge a reconnection Charge following reasonable action taken by us to suspend or terminate your Service or where we have done so on your request.

4.14 Commissions

- a) We may pay a commission to any agent, employee, contractor or dealer in connection with the acquisition of Services and your Customer Agreement.

5 Guarantees and security

- 5.1 We can make supply of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction. If we require a third party guarantee, you agree that we may disclose information about you (including credit information) to any person you nominate to be your guarantor.
- 5.2 TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.
- 5.3 If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction.

- 5.4 TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you are to acquire.
 - 5.5 We may use a security payment to pay any billed Charge that is overdue, where you have not disputed the Charge.
 - 5.6 TCP Customers: Before we access a security payment, we will advise you that it will be accessed within 5 working days and provide you an opportunity to pay within that period.
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6 Credit reports

- 6.1 You acknowledge Applications for all of our Plans other than Prepaid Plans constitute an application for credit.
- 6.2 You authorise us to provide personal information to credit reporting agencies
 - a) You acknowledge that the Privacy Act allows us to give a credit reporting agency certain personal information about you, and you authorise us to do so. The information which may be given to a credit reporting agency includes:
 - i the fact that you have applied for credit, and the amount;
 - ii the fact that we are a credit provider to you;
 - iii (in some cases) payments which become overdue more than 60 days;
 - iv advice that payments are no longer overdue;
 - v in specified circumstances, that in our opinion, you have committed a serious credit infringement, that the credit provided to you by us has been discharged; and
 - vi other information permitted to be shared per any future applicable amendments to the Privacy Act.
- 6.3 **Authority for us to obtain certain credit information**
 - a) If you apply to us for personal or commercial credit, you authorise us:
 - i to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us;
 - ii to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us;
 - iii to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by us; and
 - iv to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.
- 6.4 **Authority to exchange information with other credit providers**
 - a) In accordance with the Privacy Act, you authorise us to give to and obtain from credit providers information about your credit arrangements and any other information permitted to be shared per any future applicable amendments to the Privacy Act. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.
 - b) You acknowledge that the information may be used for the following purposes:
 - i to assess your Application;
 - ii to assist you to avoid defaulting on your credit obligations;
 - iii to notify other credit providers of a default by you; and
 - iv to assess your creditworthiness.

6.5 Credit reporting policy

We have a credit reporting policy that contains more information about:

- a) how we deal with credit information that we hold about you here and overseas;
- b) the credit reporting bodies to whom we may disclose your credit information;
- c) how you may access and correct credit information that we hold about you;
- d) how you may complain about any failure by us to comply with that policy; and
- e) how we will deal with any such complaint.

You can get a copy of this policy from our website or by contacting us.

7 Monitoring Use, Minimising debt & financial hardship

Monitoring Use

- 7.1 We aim to monitor the use of your Service, however we do not promise to do so. If we identify excessive use or unusual activity we may temporarily restrict or suspend your Service. If we do so we will endeavour to contact you via your nominated primary contact details. We may require an advance payment in accordance with clause 5.2 before your Service is restored.
- 7.2 Use of your Service is your responsibility. You should not rely on us to contact you or to suspend your Service in the event of excessive or unusual activity.

Controlling costs & minimising your debt

- 7.3 In accordance with the TCP Code we will provide you with access to your usage and billing information and in certain circumstances and subject to limitations endeavour to provide you with usage alerts. Notwithstanding, your charges and minimising debt is your responsibility.
- 7.4 There are many options available to you to minimizing your costs and debts and we are happy to discuss these with you. Examples include:
 - a) Call Barring and Restrictions (because these can reduce your exposure to expensive services such as Premium Services);
 - b) Plan Changes;
 - c) Avoiding International Roaming;
 - d) Physically protecting and securing your Equipment;
 - e) Applying strong passwords and PIN codes as applicable for your Equipment; and
 - f) Immediately notifying us if Equipment is lost or stolen.

Financial Hardship

- 7.5 Financial Hardship describes a situation where a person is unable to meet their financial commitments.
- 7.6 If you are in Financial Hardship or you wish to discuss options to minimise your bill, please contact us early so we can assist.
- 7.7 Please view our Financial Hardship policy which is available on our website for information on how we can assist.

8 Billing

8.1 When we can bill

- a) Your Billing Period is the period between bills. Our standard Billing Period is monthly; however we reserve the right to vary it.
- b) We can bill a part-period e.g. to align your Billing Period with the first day of each month.
- c) We may bill for Charges as follows:

Type of Charge	Payable
Set up Charge	Immediately
Installation Charge	Immediately
Plan or service variation Charge	At the end of each Billing Period
Periodic Charge	Before the start of the period it relates to
Usage Charge	At the end of each Billing Period
Prepaid Charge	When you buy a prepaid Service
Call connection	At the end of each Billing Period
Charge miscellaneous	At the end of each Billing Period
Charge extra Charge	At the end of each Billing Period
Third party Charge	At the end of each Billing Period
Equipment Charge	When or before we dispatch the equipment

In any case, we may bill you for any Service we have already provided.

8.2 Credit Limits

- a) We may set Credit Limits for you. If we do we will advise you whether the Credit Limit is a guideline or an absolute limit. Your Credit Limits may be changed from time to time with reasonable notice provided to you. If you exceed this Credit Limit, we may restrict or suspend your Service:

TCP Customers: We will do so in accordance with Section 18.3 (TCP Customers – Disconnection, Suspension and Restriction)

- b) Where we consider your use of the Service to be unusual we can issue you with an interim bill at any time and request an advance payment in accordance with clause 5.2. If so this will be credited towards your next full bill.

8.3 We rely on the records of Carriage Service Providers

- a) You acknowledge that usage records and download times are controlled by the relevant Carriage Service Provider and can vary from time to time. Accordingly, whilst we aim to, we are unable to guarantee that all usage records during a Billing Period will appear on the corresponding Bill.
- b) You acknowledge that we will apply the Carriage Service Provider's rules for whether usage or usage attempts are chargeable to you or not.
- c) You acknowledge that we will apply the Carriage Service Provider's rules for determining the time of a particular usage.

8.4 Supplying a bill

- a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.
- b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- c) If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.
- d) **TCP Customers:** If you are a TCP Customer, we will supply a Bill to you for each current Billing Period, except where:
- i you pay by Automatic Direct Debit and the Charges for that Billing Period are for the same fixed amount in each Billing Period and in that case you and we agree that, although a Charge for that fixed amount will be payable by you, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount; or

- ii your Service is Prepaid.
- e) We may not supply a statement or Bill if no credits or Charges have been incurred in a Billing Period. This does not affect any late payment penalties or other Charges that may apply to you.

8.5 Requesting access to non-standard bill formats and information

- a) We may charge you an extra Charge if:
 - i you request non-standard information about your bill or Charges, or
 - ii you ask us to deliver a bill by a method that is not the standard method for your Plan such as a paper bill.
- b) **TCP Customers:** We will provide all Billing information related to your Service (including, if you request it, itemised details of Charges associated with the Service) relating to up to 72 months prior to your request, provided that:
 - i for information relating to the 24 months prior to your request:
 - a we shall provide it through at least one medium (of our choice) free of charge; and
 - b otherwise we may impose a Charge for providing the information, limited to the cost of providing it;
 - ii for information relating to a period between 24 and 72 months prior to your request, we may impose a Charge for providing the information, limited to the cost of providing it;
 - iii you may request provision of Billing information via other mediums and formats normally available from us and we may impose an extra Charge for providing the information in that way, limited to the cost of providing it.
- c) **TCP Customers:** If we make information from, or about, a Bill, available in an electronic form, we will offer at least one method of accessing that information that does not involve paying access Charges to us (but to avoid any doubt, this does not prevent us from making any Charge that is authorised by the previous clause).
- d) Our Extra Charges are described in our Admin Charges Schedule.

8.6 Itemised Billing

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

8.7 Costs of telephone Billing Enquiries

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

8.8 Late Billing

- a) We may Late Bill.
- b) **TCP Customers:** We shall only do so up to 160 days in arrears.
- c) Some Charges in a Bill may relate to a previous Billing Period.

8.9 When you must pay

- a) Where a Direct Debit arrangement applies, we may Extract payment for Charges:
 - i after it is billed (if we issue a Bill for the Service); or

- ii after the end of the current Billing Period (if we do not issue a Bill for the Service);
or
- iii if an amount is overdue at anytime.

TCP Customers: All Billing information will be accessible before we do so, but you agree that we need only allow 10 working days before Extraction.

- b) If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.
- c) In any other case, you must pay a Bill within 14 days after its Bill Date.

8.10 How you can Pay

- a) If your Plan specifies 'Direct Debit only' (or similar) then:
 - i Direct Debit payment is a precondition to supply of Service to you;
 - ii We may suspend Service if Direct Debit arrangements are not maintained; and
 - iii You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

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

- b) In any other case:
 - i Direct Debit is our preferred payment method and incurs no surcharges.
 - ii You may pay by MasterCard or Visa or any other card we notify you that we accept.
 - iii Payments made using credit cards, cheques and telephone banking may be subject to an Admin Charge (a surcharge) as detailed in our Admin Charges Schedule.
- c) If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment. Our related fees are detailed in our Admin Charges Schedule.

9 Late Payments & Debt Recovery Action

9.1 Late payment

- a) If a Bill is not paid on time:
 - i you are in breach of your Contract, and
 - ii we may charge you interest at 1.5% a month from the Bill Date until it is paid in full, or a reasonable late payment fee, plus any Recovery Costs that we incur.

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

- b) If your payment is 60 days or more overdue or we otherwise consider it is reasonable to do so:
 - i we may refer it to an external collections agency;
 - ii we may charge you interest at 1.5% a month from the Bill Date until it is paid in full, or a reasonable late payment fee, plus any Recovery Costs that we incur.

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

10 Billing disputes

- 10.1 Our records of what you owe us are deemed to be right unless you show them to be wrong. ACL Consumers: This does not apply to you.

- 10.2 If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.
- 10.3 You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.
- 10.4 If our investigation determines your billing dispute to be invalid, you must pay any outstanding amount within five Business Days.
- 10.5 **TCP Customers:** Clauses 10.1 to 10.4 do not apply to you. We will not take Credit Management action in relation to a disputed amount that is the subject of an unresolved complaint, if we are aware that the complaint has not been resolved to your satisfaction and is being investigated by us, the TIO or a relevant recognised third party but:
- a) you must still pay all undisputed portions, and
 - b) if it is determined that some or all of the disputed portion is payable, you must pay that amount within 5 days.

11 General

11.1 Billing agents

- a) We may bill you using a billing agent.
- b) Payment to our billing agent constitutes payment to us.
- c) Failure to pay our billing agent constitutes failure to pay us.

11.2 Unclaimed monies

If after conclusion of all of Services hold money on your behalf we will take reasonable steps to refund this to you. If we are unable to do so within 12 months of your disconnection we will retain the funds, which you agree to forfeit to us.

TCP Customers: This does not apply to you.

The Services

12 Service Descriptions

- a) We publish on our website descriptions of each of the Services we provide. These are called Service Descriptions.
- b) Where terms in our Service Descriptions are inconsistent with your Customer Agreement, the terms in the Service Description prevail.

13 Use of The Services

13.1 Use of Service by others – service provider arrangements

- a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.
- b) You promise that you are not a carrier or a Carriage Service Provider.
- c) If you do become a Carrier or a Carriage Service Provider, then we or our Providers may immediately cancel the Service and terminate your Contract by notice to you.

13.2 Use of Service by others - general

- a) A person who makes use of a Service with or without your consent or from your premises or using your Equipment or log-in credentials is your End User.
- b) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.

- c) You must take reasonable steps to ensure that your End Users do not do (or omit to do) anything that would breach your Customer Agreement if done (or not done) by you.

13.3 Acceptable Use Policies and Fair & Safe Policies

- a) We publish on our website an Acceptable Use Policy and a Fair & Safe Use Policy.
- b) An Acceptable Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service. This policy will include Legal Compliance Policies.
- c) A Fair & Safe Use Policy will be directed at ensuring a reasonable level of service is available for all customers and all customers use their Service safely.
- d) You must comply with an applicable Acceptable Use Policy and a Fair & Safe Use Policy.
- e) You may request details of our policies via our website, our Help Desk or by writing to our Customer Information and Compliance Officer at PO Box 318 Maylands WA 6931.

13.4 Operational Directions

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

13.5 Cooperation

- a) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fix any problems that arise, and resolve any disputes or complaints that you may have.
- b) You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or a Provider may be required:
 - i to intercept communications over the Service, and
 - ii monitor usage of the Service and communications over it.

13.6 Provider Requirements

- a) Telecommunications services, including many of our Services, are provided through or by means of third party Providers through their Facilities.
- b) These Providers often have their own Provider Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Provider Requirements.
- c) We detail Provider Requirements in our Service Descriptions and you must comply with these as amended from time to time.

ACL Consumers: If a new or amended Provider Requirement is materially detrimental to you, you may have Walk Away Rights under clause 29.2 (ACL Consumers and Contract variations).

13.7 Using a Service

- a) When using a Service, you must comply with:
 - i your Customer Agreement;
 - ii our Acceptable use Policy;
 - iii our Fair & Safe Use Policy;
 - iv the applicable Service Description;and v any applicable Laws.
- b) You must not use a Service:

- i in breach of any Law;
- ii to breach the rights of any person;
- iii to copy, download, supply to anyone else or communicate to the public copyright material without permission;
- iv to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Providers into disrepute;
- v to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications Equipment;
- vi to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act;
- vii in a way that is misleading or deceptive, where that is contrary to Law;
- viii in a way that results, or could result, in damage to property or injury to any person; or
- ix in any way that damages or interferes with our Services to other customers, our
- x Providers or any Facilities or exposes us to liability.

13.8 Services you acquire for others

- a) You may enter into a Contract where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your children).
- b) If the previous clause applies then you are responsible for all use of the Service and all Charges incurred under the Contract.

13.9 Access to your Services

- a) You should treat all information that allows control of your Service as secret.
- b) If you give anyone else sufficient information about your Service (e.g. by giving them your user name, password or other credentials), they may be able:
 - i to uncap or unlimit any cap or other limits that apply to it,
 - ii to change Plans,
 - iii to disconnect Service, and
 - iv to do anything else that you could do.
- c) Internet and telephone Services can be used to buy goods and services from third parties. You may be liable for debts incurred to these third parties.

13.10 Customer provided services and Equipment

- a) Using a Service may depend on you having services or Equipment supplied by other parties. For instance:

In order to use a dial up internet Service, you must have a telephone line, and your modem will make calls using it.

In order to use a local call Service, you must have a suitable handset.
- b) You are solely responsible for the costs of Equipment and services you acquire from other parties. Refer to Section 19 Equipment for more information.

14 Transfers of Service

14.1 Transfer to us

- a) If you wish to transfer a service from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.

- b) By making an Application for a Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.
- c) You must promptly pay your current supplier all amounts you owe it.

14.2 Transfer from us

- a) If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
- b) If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply. Refer to clause 4.13- Charges relating to suspension and early termination by you.

15 Telephone Numbers

15.1 New numbers

- a) If you do not already have a phone number for use with a Service you apply for, we can issue you a phone number.
- b) All phone numbers are selected, issued and used in accordance with the Australian Communications and Media Authority's Numbering Plan and Telecommunications Numbering Plan Number Declarations (numbering regulations).
- c) Additional charges will apply if you wish to apply for a specific phone number.

15.2 Changing your number

- a) We may be required to recover and replace a phone number we have issued you, in order for us to comply with the numbering regulations.
- b) We will give you as much notice as is reasonably practicable if we have to do this.

15.3 Ownership

- a) You do not own the phone number and your right to use the phone number starts when we issue the phone number to you.
- b) Your right to use the phone number ends if you no longer obtain the service unless you properly transfer your phone number.
- c) If you stop obtaining the Service and do not transfer your phone number, your number may be quarantined or issued to new users in accordance with numbering regulations.

15.4 Liability & undertakings

- a) We are not liable to you for any expense or loss incurred by you or your business due to:
 - i any recovery or recovery and replacement of your phone number, or
 - ii you ceasing to have the right to use your phone number.
- b) You undertake to not knowingly or deliberately:
 - i do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it, or
 - ii relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

15.5 Transferring your number

- a) You may be able to transfer a phone number you have obtained from another Provider when you connect to the Service.
- b) We will not charge you a fee for transferring a phone number from another Provider. However, before you transfer your phone number you should confirm the terms of your agreement with them to determine what consequences, including for example any cancellation or porting fees.

- c) You can transfer your phone number from us to another Provider, but we may charge you a fee if you do this. The fees for this can be found in the Admin Charges Schedule.
- d) You must not cancel your Service before you transfer your phone number. The Provider to which you have transferred your phone number will inform us that you have transferred your phone number and we will cancel the service.
- e) You can only transfer your phone number. You cannot transfer any enhanced call Features.
- f) You may only transfer a phone number for which you are the authorised customer.
- g) To use some of our Plans and Services you may be issued a number that cannot be transferred. In these cases the Service Description for the applicable Service will detail this.

16 Internet Identifiers

16.1 IP addresses, email addresses and domain names

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

16.2 Dynamic IP addresses

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

17 Maintenance and faults

17.1 Maintenance

- a) From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

17.2 Faults

- a) Reporting faults
 - i You may report faults in relation to a Service or the Network by contacting our Help Desk during its operating hours.
 - ii Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by Equipment which is not part of the Network
 - iii You must not report a fault directly to one of our Providers unless we ask you to do so.
 - iv If you do, you may incur support Charges from that Provider (which we will re-bill you).

- v If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.
- b) Repairing faults
 - i We will use reasonable efforts to repair faults in Our Facilities within a reasonable period. ii We will use reasonable efforts to have our Providers repair faults in Provider Facilities within a reasonable period.
 - ii You are responsible for maintaining and repairing your own Equipment (except where we supplied it and you have warranty rights in relation to a fault).

17.3 Repairs

- a) If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

18 Termination & Suspension

18.1 Termination by us

- a) Under normal circumstances (and subject to the TCP Code). provided you have completed the minimum term of your Contract we can terminate your Contract and disconnect your Service at any time after we give you 30 days'-notice of our intention to do so.
- b) Except as otherwise set out in clause 18.3, we may terminate your Contract immediately, without liability if any of the following circumstances apply to you or any of your Contracts or Services:
 - i you fail to pay us any money that is due;
 - ii you die or become bankrupt, insolvent or subject to a winding-up order or similar insolvency event or if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract;
 - iii you threaten not to pay us money that you owe us, or will owe us in the future;
 - iv you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement);
 - v you are in material breach of your Contract;
 - vi we are unavoidably required to do so by legislative or regulatory requirements, the order of a court or lawful direction of a competent authority;
 - vii we supply you with a mobile telecommunications Service and it is Non-Tolling for three months;
 - viii you become insolvent;
 - ix we reasonably believe that you have vacated your Premises without notice to us;
 - x we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm;
 - xi it becomes technically infeasible for us to continue Service;
 - xii you use a Service in a way that places unreasonable demands on our Network;
 - xiii we are unable to obtain access to your Premises as required to provide, maintain or repair the Service;
 - xiv there is an emergency that warrants it;
 - xv you have told us that you no longer require the Service;
 - xvi if we reasonably suspect fraud or attempted fraud involving the Service;
 - xvii we become entitled to suspend the Service, and the suspension continues for more than a month;

- xviii you breach your Customer Agreement, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;
- xix you breach your Customer Agreement, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- xx you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that); or
- xxi in any other circumstances stated elsewhere in our Customer Agreement.

18.2 Suspension of Service

- a) Except as otherwise set out in clause 18.3, we may suspend or limit your Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency in which case no notice will be given), if any of the following circumstances apply to you or any of your Contracts or Services:
 - i there are problems with the Network, or we or our Provider's need to suspend the Services to conduct operational and maintenance work on the Network;
 - ii if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract;
 - iii we are unavoidably required to do so to comply with a warrant or other court order, or as otherwise required or authorised by law;
 - iv if there are reasonable grounds for believing a serious threat or risk exists to the security or integrity of the Network;
 - v the provision of the Service may cause death, personal injury or damage to property;
 - vi in cases of emergency, including for the provision of support to emergency and other essential services;
 - vii you fail to pay any amount owing to us in respect of the Service under your Customer Agreement (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
 - viii you breach your Customer Agreement, including terms relating to your use of the Service or any Acceptable Use Policy;
 - ix you are the subject of an Insolvency Event;
 - x if we believe there has been excessive use or unusual activity on the Service;
 - xi we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
 - xii we reasonably believe that you may be a credit risk in relation to the Service;
 - xiii you are a natural person (and not a company) and you die;
 - xiv you exceed a Credit Limit;
 - xv there is an emergency;
 - xvi an Intervening Event occurs;
 - xvii if your Equipment is causing interference with the Facility;
 - xviii if we or the Provider reasonably believes your Equipment infringes the Intellectual Property Rights of any person.
 - xix if we or a Provider reasonably believe that the you are jeopardising the operation or quality of the Facility or the services supplies to their customers; or

xx we are otherwise entitled to do so under your Customer Agreement.

18.3 TCP Customers – Disconnection, Suspension and Restriction

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

18.4 Termination by you

- a) You may terminate your Contract:
 - i (except during a fixed or minimum term) at any time, on notice; or
 - ii by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 14 days.
- b) You may also terminate your Contract:
 - i if we provide you with notice in writing that you have a termination right (and, unless the TCP Code, this Contract or our notice expressly provide otherwise, clause 4.13c) will apply to that termination);
 - ii in any other circumstances where your Contract provides for it; or
 - iii (in a case where you have a non-excludable legal right to do so) by transferring the Service from us to another supplier. We will cancel the Service and terminate your Contract immediately once the other supplier has informed us that you have elected to transfer the Service from us to that other supplier.

18.5 Post-termination

- a) If a Contract ends:
 - i Our obligations to you under that Contract are at an end;
 - ii We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract;
 - iii All bills are payable immediately;
 - iv You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit;
 - v You must return to us, promptly, any of our Equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.);
 - vi Any cause of action that either of us had against the other predating the termination is not affected;
 - vii The limitations of our liability, and our rights of indemnity, under our Customer Agreement continue;
 - viii No other Contract is affected unless we also terminate it; and
 - ix Otherwise, that Contract is at an end for all purposes.

18.6 Charges during a period of suspension

- a) If we suspend Service:
 - i because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension; and
 - ii otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

Equipment

19 Equipment

19.1 You are responsible for equipment

- a) Unless agreed with us otherwise, you are responsible for:
 - i the purchase, installation, configuration, and maintenance of required, suitable cabling, Equipment and software to access the Service;
 - ii using such Equipment and software in accordance with relevant legislation, guidelines and user guides;
 - iii providing any required cabling and power supply; and
 - iv any telecommunications costs to access the Service, where applicable.

19.2 Purchased Equipment:

- a) Where we supply you Equipment under a purchase agreement:
 - i You assume risk in Equipment upon delivery.
 - ii We retain title to Equipment:
 - a for Equipment rented or loaned to you – at all times;
 - b for Bundled Equipment – until completion of the minimum term; and
 - c for any other Equipment – until full payment has been made – each a Security Period.
 - iii While we retain title to Equipment, you hold it in a fiduciary capacity as bailee for us.
 - iv We retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- b) We will supply a reasonable warranty in line with the requirements of state fair trading acts.
- c) If you purchase the wrong Equipment, you may exchange it provided that it is returned to us undamaged and complete with all components and with the packaging intact, within 14 days of delivery to your nominated delivery address. Charges may apply as specified in the Pricing Schedule.

19.3 Customer Provided Equipment or Services

- a) If you use in connection with a Service any Equipment or Services we have not approved or provided: it must comply with all applicable Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
- b) you are responsible for ascertaining what those technical standards and requirements are, since we will not be familiar with the Equipment; and
- c) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
 - i our negligence, or
 - ii our breach of the Consumer Guarantees.

19.4 Vendor owned Equipment

- a) In some circumstances we may allow you to use our Equipment in connection with the Service and in these circumstances, we will provide you with clear notice of this and you acknowledge that:
 - i ownership or title in Our Equipment is not transferred to you; ii risk in Our Equipment passes to you on delivery;
 - ii you must comply with our reasonable directions relating to our rights of ownership of our Equipment;
 - iii you must only use our Equipment in accordance with the manufacturer's specifications and our written directions;
 - iv you are responsible for our Equipment and must pay us for any loss or damage to our Equipment, except to the extent that it is caused by us or for fair wear and tear;
 - v you must not part with possession of our Equipment except to us and you must keep our Equipment free from any encumbrance;
 - vi you must allow us to inspect, test, service, modify, repair, remove or replace our
 - vii Equipment, or to recover it after the Service is cancelled;
 - viii you must ensure that our Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by us;
 - ix you must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain our Equipment at the Premises; and
 - x you must provide adequate and suitable space, power supply and environment for all Our equipment located on the Premises.

19.5 Substituted Equipment

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

19.6 Delivery of Equipment

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

19.7 Installation and connection of Equipment

- a) This clause only applies if we expressly agree to install or connect Equipment.
- b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- c) You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
 - i appropriate electricity supply;
 - ii appropriate electrical and mechanical fittings;
 - iii appropriate environmental conditions;
 - iv a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;

- v v all relevant facilities for the location of the Equipment;
 - vi vi access to all relevant personnel including your technical personnel;
 - vii vii where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
 - e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis) in connection with such entry and installation, except to any extent that we cause or contribute to it by:
 - i our negligence, or
 - ii our breach of the Consumer Guarantees.
 - f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
 - g) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

19.8 Installation Charges

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

19.9 Additional Equipment services

- a) You may ask us to supply additional services in relation to Equipment including without limitation repairs.
- b) If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Providers at rates they determine).

19.10 Lost, stolen and damaged Equipment

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

19.11 Return of Equipment

- a) On the termination of your Contract for any reason, you must return all our Equipment requested by us without delay.

Support

20 Help Desk

- 20.1 Unless we agree with you otherwise we will provide you with customer support such as Website functions and information, Help Desk and Help Desk support and interactive voice response services.
- 20.2 Generally, we will only supply business hours Help Desk customer service and support.

- 20.3 You acknowledge that any calls you make to our Help Desk may be monitored or recorded for quality and/or training purposes and you consent to us monitoring or recording such calls.
- 20.4 If you experience any fault with the Service, you may report that fault to us by telephoning (or any such other number notified to you by us from time to time) or by sending an email to us.
- 20.5 You acknowledge that whilst we will use our best endeavours we may not be able to resolve all problems encountered.

Consumer Laws, Rights & Obligations

21 Telecommunications Consumer Protections (TCP) Code

21.1 TCP Customers

- a) The TCP Code applies to TCP Customers (these are consumers and some business customers, more fully described in clause 42).
- b) A term or note in our Customer Agreement headed 'TCP Customers' only applies to you if you are a TCP Customer.
- c) If you are a TCP Customer, nothing in your Contract is intended to:
- i exclude any rights you may have under the TCP Code that we are not permitted to exclude;
 - ii limit any rights you may have under the TCP Code that we are not permitted to limit; or
 - iii impose an obligation on you if by imposing that obligation we would contravene the TCP Code,

and any provision of your Contract that purports to do any of those things is not valid or enforceable.

21.2 TCP Customers and Authorised Representatives

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

21.3 TCP Customers and Advocates

- a) You can use an Advocate to communicate with us if you require.
- b) We presume that an Advocate is not authorised to establish or make changes to your account or Services, unless the Advocate is also your Authorised Representative.

- c) A person acting as your Advocate has no power to act on your behalf and has no access to your information without you being present and agreeing to such action.

22 Australian Consumer Law (ACL)

22.1 ACL Customers

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

22.2 ACL Consumers and Unfair Contract Terms

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

22.3 Consumer Guarantees

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

22.4 Rights and remedies for PDH goods and services

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

Important consumer information: Full details of the consumer rights and remedies referred to in this clause can be obtained from the Australian Competition and Consumer Commission (ACCC) at www.accc.gov.au or from a local consumer protection agency.

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

- a) If we supply you with goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and cost no more than \$40,000 you have important rights under the ACL including consumer guarantees and remedies but:
 - i in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
 - a replacing the goods or supplying equivalent ones;
 - b repairing the goods;
 - c paying the cost of replacing the goods or of acquiring equivalent ones; or
 - d paying the cost of having the goods repaired; and

- ii in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:
 - a supplying the services again; or
 - b paying the cost of having the services supplied again.
- b) If we supply you with non-PDH Goods or Services that cost no more than \$40,000, and you are told they come with a 'manufacturer's warranty' or 'one year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

23 Customer Service Guarantee Waiver

23.1 Customer Service Guarantee

- a) The Telecommunications (Consumer Protection and Service Standards) Act 1999 outlines the Customer Service Guarantee Standard (the "CSG"). The CSG covers the supply of standard fixed line telephone services. The CSG sets out timeframes for the connection of standard telephone services, the repair of faults and for appointments.
- b) Only voice telephony faults are covered by the CSG. This means that non-voice faults such as Internet or fax faults and enhanced services such as call waiting and forwarding are not covered.
- c) The CSG also does not apply to customer Equipment or to customers who have more than five telephone services and in certain situations such as mass disruptions, where the customer denies access or where the customer waives their CSG rights.

23.2 Customer Service Guarantee Waiver

- a) We do not offer the CSG and ask customers to waive their rights to it.
- b) From submitting your Application you have 5 days (the CSG cooling off period) to determine if you are willing to continue with your Contract while waiving your CSG rights.
- c) If you are not willing to waive your rights, you must advise us of this within 5 business days. In such circumstances we may choose to decline to continue to provide you with the relevant Service.
- d) If choose to waive the CSG the protections and rights you agree to waive are:
 - i The provision of written information: The CSG requires carriage Service providers to, at least every two years, give written information to each customer about the performance standards that apply to supply of specified Services, the obligations of the
 - ii provider under those standards, the customer's entitlements to damages under the Act for contravention of the performance standards; and on request, provide information to the customer about a performance standard.
 - iii Guaranteed maximum connection periods: The CSG prescribes maximum timeframes within which connection to Services should occur.
 - iv Guaranteed maximum rectification periods: The CSG prescribes maximum timeframes within which rectification of Service faults should occur.
 - v Making and changing appointments: The CSG requires carriage Service providers to make appointments with customers at times that are convenient for the customer, make appointments with customers that are either for a particular time of the day or to nominate a five hour period during which the appointment will occur, and change appointments by giving at least 24 hours'-notice or by obtaining the agreement of the customer to the change.
- e) By agreeing to waive your protection and rights afforded by the Customer Service Guarantee you will not be able to claim compensation from us for any failure by us to meet the prescribed performance standards.

24 Priority Assistance

24.1 Background

- a) Priority assistance is a service that gives priority for the connection and fault repair of fixed- line home telephone services for customers with a serious medical condition who are at risk of suffering a rapid, life-threatening deterioration in their condition.
- b) To be eligible, someone living in a customer's household must have such a diagnosed life-threatening medical condition, where access to a telephone could assist in a life-threatening situation.
- c) Priority assistance customers are entitled to faster connection and fault repair of their fixed- line telephone service.
- d) Telstra is the only carrier required to provide priority assistance services to its customers as a condition of its licence.

24.2 We are unable to provide priority assistance

25 Emergency Services Calls

25.1 Some of our voice Services are delivered over the internet using Voice Over Internet Protocol technology. Where this is applicable to you it will be detailed on your Pricing Schedule, and the relevant Service Description.

25.2 Some of our voice Services are delivered using Facilities located onsite within a Village, and are reliant on equipment housing, power supply and cabling provided and maintained by a Village Operator. Where this is applicable to you it will be detailed in the relevant Service Description.

25.3 You acknowledge and agree that:

- a) Our voice services support access to emergency call Services (000 or other emergency service telephone numbers);
- b) Whilst we will endeavour to provide fail-over services, in the event of a power outage at your location or interruption of your internet services, your voice Service may not be available;
- c) We are not liable to you for any loss or damage you suffer or for any costs, expenses or charges you incur arising from any inability to access emergency call services using the our voice Service and which is not a direct result of our fault or negligence;
- d) Your full address details set out in your Application will be provided when notifying emergency call services organisations of your location in the event of an emergency. It is your responsibility to ensure that this information is current and to contact us if this information changes by calling our Help Desk; and
- e) You may be required to reset the Equipment at your location in the event of a power failure or power outage.

26 Privacy

26.1 Our Services are provided in accordance with our Privacy Policy which is available from us via our Help Desk or our website.

27 PPS Law

27.1 Application of clause

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

27.2 Registration and rights

- a) We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
 - i ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - ii enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
 - iii enabling us to exercise rights in connection with the security interest.
- b) Our rights under your Customer Agreement are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our agreement and/or under such other law, as we see fit.

27.3 PPS Law exclusions and waivers

- a) The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are 'contracted out' of your Customer Agreement in respect of goods that are not used predominantly for personal, domestic or household purposes:
 - i section 95 (notice of removal of accession to the extent it requires us to give a notice to you);
 - ii section 96 (retention of accession);
 - iii section 125 (obligations to dispose of or retain collateral);
 - iv section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - v section 132(3)(d) (contents of statement of account after disposal);
 - vi section 132(4) (statement of account if no disposal);
 - vii section 135 (notice of retention);
 - viii section 142 (redemption of collateral); and
 - ix section 143 (re-instatement of security agreement).
- b) The following provisions of the PPS Law:
 - i section 123 (seizing collateral);
 - ii section 126 (apparent possession);
 - iii section 128 (secured party may dispose of collateral);
 - iv section 129 (disposal by purchase); and section 134(1) (retention of collateral)
 - v confer rights on us.

You agree that in addition to those rights, we shall, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment during its Security Period, not only under those sections but also, as additional and independent rights, under your Customer Agreement and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- c) You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

27.4 Non-disclosure

- a) We and you agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this clause.

27.5 No competing security interest

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

27.6 Sub-hiring Equipment during Security Period

- a) You must not lease, hire, bail or give possession of (sub-hire) the Equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our agreement with you.

27.7 Enforceability under PPS Law

- a) You must take all steps including registration under PPS Law as may be required to ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - i enabling us to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
 - ii enabling each of us to exercise our respective rights in connection with the security interest.

27.8 Costs

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

28 Liabilities

28.1 Personal injury or death

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

28.3 Service Level Agreements

- a) If you are a business customer your Service or Plan may include a Service Level Agreement (SLA).
- b) If you have an SLA then:
 - i we are liable for any remedy or rebate specified by the SLA; and
 - ii subject to the ACL and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

28.4 Exclusion of implied terms and limitation of liability

Important consumer information: Nothing in this clause limits your ACL consumer rights and remedies.

TCP Customers: Nothing in this clause 28 applies to the extent it excludes or limits your TCP Code rights or remedies in manner that we are not permitted to do,

- a) Any representation, warranty, condition or undertaking that would be implied in your Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law.
- b) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- c) We are never liable to you for, and you release us from any Claim for, any Contract Loss.

28.5 Your liability to us – General

- a) You must pay us all Charges and other amounts due under your Contract.
- b) You must pay us the fair value of any Equipment that you fail to return to us when required.

- c) You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- d) You must indemnify us for any loss or damage we suffer as a result of or in connection with:
 - i your breach of your Contract;
 - ii your use of a Service or Equipment; or
 - iii a claim against us by an End User in relation to a Service we supply to you.

TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.
- e) You indemnify us for any loss or damage we suffer in connection with any Claim made against us by a third party arising out of or in relation to your use of a Service or Equipment.
- f) Your obligations under this clause survive termination of your Contract.

28.6 Your liability to us – legal requests, etc

- a) This clause applies where we reasonably incur expense as a result of or in connection with:
 - i a police request for information or evidence in relation to you or your use of a Service; or
 - ii a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
 - iii a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- b) You must reimburse our expenses on request.

28.7 Your liability to us – (alleged) illegal use, etc

- a) This clause applies where:
 - i your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
 - ii we suffer loss or reasonably incur expense as a result.
- b) You must make good our loss and reimburse our expenses on request.

28.8 The liabilities of our Provider's

- a) As far as the law allows our Providers are not liable to you in contract, tort (including negligence) or otherwise our Providers are never liable to you for, and you release them from any Claim for, any Contract Loss and you indemnify them against all costs, expenses, liability, loss or damage incurred or suffered by them in conjunction with any Claim, arising out of the Service including:
 - i disruption of a Service or connected Equipment of services (eg alarms, monitoring services or Equipment);
 - ii suspension or cancellation of the Service telephone numbers or Internet Identifiers;
 - iii refusal to provide a Service or Equipment
 - iv the inability to obtain or retain a Feature of a Service (eg Incompatible Features);
 - v your use of the Service including any Third Party Content you access or breaches of your privacy and security by others through a Service;
 - vi possible breaches of the Customer Service Guarantee standard in respect of you.

29 Variations

29.1 General power to vary your Contract

- a) We may vary your Contract (including the Providers used by us in delivering your Service) from time to time however variations do not have retrospective effect and if a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:
- i the nature of the variation; and
 - ii the means by which notice is to be provided; and
 - iii the length of time remaining before the variation is to occur; and
 - iv any other matter that is reasonably relevant.

ACL Consumers and TCP Customers: We may both give you notice and offer you Walk Away Rights as explained in clause 29.2 (ACL Consumers and Contract variations).

29.2 ACL Consumers and TCP Customers and Contract variations

- a) This clause only applies to ACL Consumers and TCP Customers.
- b) If a Contract variation will have a beneficial, or only a minor detrimental, impact on you:
- i we will not give you notice, and
 - ii we will not give you Walk Away Rights.
- c) If a Provider supplies a service to us, and we resupply that service to you (either as a separate service or as part of another service), and the Provider insists on a variation to a term of our agreement with it (either during the term of the agreement, or on a renewal or extension or renegotiation), and we believe in good faith and on reasonable grounds that the Provider has required or will require its wholesale customers or resellers generally to accept a term to the same or similar effect as the varied term, and that variation gives rise to a variation of your Contract then:
- i we will give you notice of the variation, but
 - ii we will not give you Walk Away Rights.
- d) In any other case:
- i We will give you notice of the variation.
 - ii We will also offer you Walk Away Rights which permit you to terminate your Contract within 14 days of the date of the notice without incurring charges other than:
 - a usage or network access charges to the date your Contract ends; and
 - b outstanding amounts for installation of Equipment; and
 - c outstanding amounts for Equipment that is compatible with other suppliers' services.

29.3 When variations take effect

- a) Contract variations take effect:
- i at the end of any applicable notice period; or
 - ii if no notice period applies, immediately.

30 Information about your rights

30.1 Information and advice about your rights can be obtained from:

- a) the Australian Communications and Media Authority;
- b) the Telecommunications Industry Ombudsman;

- c) the Australian Competition and Consumer Commission; or
- d) the relevant Department of Fair Trading or Department of Consumer Affairs in your State or Territory.

31 Contacting Us & Complaints

31.1 Our contact details are available on our website.

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

- a) Our Help Desk – 1300 650 679
- b) National Relay Service – 133 677
- c) Translating and Interpreting Service – 131 450
- d) Telecommunications Industry Ombudsman (www.tio.com.au)

31.3 Complaints

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

31.4 If you are a TCP Customer:

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

32 The Integrated Public Number Database (IPND)

- a) Some of your Services are supplied to you with a public number and we, like other suppliers, are required by law to supply your name, address, Service number and certain other details to a database known as the Integrated Public Number Database (IPND). This applies to all customers including unlisted customers.
- b) The IPND is used for purposes including to publish public number directories, provide directory assistance, operate emergency call services, assist law enforcement agencies and safeguard national security.
- c) If you have a silent line, your Service number and other unlisted service information will not be published in public number directories or be disclosed by directory assistance, even though it must be provided to the IPND
- d) You must contact us if you wish to have your basic IPND data altered in any way.

- e) The IPND is maintained by Telstra. We will not be responsible for any breach by Telstra of its obligations in relation to the IPND, including any publication or disclosure by Telstra of IPND data in public number directories or directory assistance contrary to any instructions given by you.

General

33 Agency

- 33.1 While you are our customer, you appoint us as your agent to deal with your current suppliers with full authority to act on your behalf including without limitation:
- a) to require Preselection to be changed to or from us;
 - b) to terminate your existing supply arrangements with a supplier;
 - c) to request access to any of your account information held by any supplier; and
 - d) to receive from you, and to deal with a supplier in respect of, any faults, provisioning and service change requests or maintenance issues concerning the access line or telecommunications services provided over that line.

34 Consent to Sharing Information with Providers

- a) You consent to allow us to disclose to relevant Providers your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you.
- b) You consent to allow our relevant Providers to use that information in order to facilitate the supply of carriage services to you by us.

35 GST

- 35.1 In this clause, an expression within a pair of asterisks means the same as in the GST Act.
- 35.2 Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.
- 35.3 Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any *taxable supply* for which that amount is paid. Otherwise:
- a) The *consideration* payable by you represents the *value* of any *taxable supply* for which payment is to be made.
 - b) If we make a *taxable supply* for a *consideration*, which represents its *value*, then you must pay immediately the amount of any GST payable in respect of the *taxable supply*.
- 35.4 If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an *acquisition* of a *taxable supply* from a third party, the amount you must pay, reimburse or contribute will be the value of the *acquisition* by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under this clause.
- 35.5 We may recover any GST payable under this clause in the same manner as our Charges.

36 Assignment

36.1 Assignment Generally

- a) Subject to ACL and the TCP Code, we may assign or novate all or part of our rights and obligations under your Contract without your consent.
- b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

36.2 Transfer of Contract or Service to our Provider

- a) If we terminate an arrangement with a Provider through which we supply the Service to you, you acknowledge that our Provider may arrange to supply you with the Service directly.
- b) If our rights and obligations under your Contract are assigned or novated to our Provider in order to supply the Service directly to you in accordance with clause 36.2a, then you acknowledge that the rate plan and Charges applicable to the Service may be altered to the nearest version provided by the Provider.

36.3 TCP Customers

If you are a TCP Customer, and we transfer the Service:

- a) as a result of a sale of our business or a corporate reorganisation; or
- b) to a different wholesale provider,

you may have the right to terminate your Contract. We will provide you with more information about this prior to any such transfer of the Service.

37 Notices

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

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

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

37.2 We may direct a notice to:

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

37.3 A notice is taken to have been received:

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

38 Governing law

38.1 Your Contract is governed by and must be construed in accordance with the laws of Western Australia. You and we submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

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

39 No waiver

39.1 A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Contract (such as a right that we have due to your breach of your Contract) does not operate as a waiver of the power or right.

40 Commercial Electronic Messaging

40.1 Subject to this clause, we may send you Commercial Electronic Messages regarding telecommunications goods and services, and ancillary goods and services, and you consent to us doing so.

40.2 Your consent under the preceding clause:

- a) applies while your Contract is in force and for a year afterwards; and
- b) is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 16(2) of the Spam Act; but
- c) terminates if you give us reasonable written notice that it is withdrawn.

40.3 Any Commercial Electronic Message we send you does not have to comply with section 18(1) of the Spam Act.

40.4 This clause 40 (Commercial Electronic Messaging) survives the termination of your Contract.

41 Interpreting your Contract

41.1 If an expression is defined in the Dictionary, that is what it means.

41.2 If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint red', then 'coloured' means 'painted red'.)

41.3 Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.

41.4 A schedule to a document is part of that document.

41.5 A reference to the singular includes the plural and vice versa.

41.6 Where one thing is said to include one or more other things, it is not limited to those other things.

41.7 There is no significance in the use of gender-specific language.

41.8 A 'person' includes any entity which can sue and be sued.

41.9 A 'person' includes any legal successor to or representative of that person.

41.10 A reference to a law includes any amendment or replacement of that law.

41.11 Anything that is unenforceable must be read down, to the point of severance if necessary.

41.12 Anything we can do, we may do through an appropriately authorised representative.

41.13 Any matter in our discretion is in our absolute and unfettered discretion.

- 41.14 41.14 A reference to a document includes the document as modified from time to time and any document replacing it.
- 41.15 If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- 41.16 The word month means calendar month and the year means 12 months. The words in writing include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- 41.17 A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time.
- 41.18 Money amounts are stated in Australian currency unless otherwise specified.
- 41.19 A reference to a notice means a notice that can be read, unless stated otherwise.

42 Dictionary

The expression:	means:
Acceptable Use Policy	can be found on our website and governs use of your service and is directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service
Account Page	a web page or facility we may provide that permits you to view and / or manage details of your account
ACL	Australian Consumer Law, which is set out in Schedule 2 of the Competition and Consumer Act 2010
ACL Consumer	an individual who enters a Customer Contract for goods and/or services wholly or predominantly for personal, domestic or household use or consumption
ACMA	the Australian Communications and Media Authority (www.acma.gov.au)
ACMA's Website	http://www.acma.gov.au/
Admin Charges Schedule	a Pricing Schedule detailing non plan specific and other admin, extra and miscellaneous charges
Advocate	as in the TCP Code
Application	the request by you to acquire a Service, Plan, Plan Extra, Feature or otherwise acquire or modify a Service
Application Date	The date when you make an application for a Service
Authorised Representative	as in the TCP Code
Automatic Direct Debit	a periodic payment that is automatically deducted by us from your nominated financial institution account
Bill	an invoice from us which advises you of the total of each Charge that is due for payment
Billing Period	is the period between bills
Bundled Equipment	where you are supplied Equipment (eg a mobile handset or modem) without paying its full purchase price on delivery
Business Day	Monday to Friday excluding statutory holidays
Call Barring and Restrictions	the application of Network settings which allow restriction of specific usage types
Carriage Service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	as in the Telecommunications Act
Charge	a charge applicable under your Customer Contract

The expression:	means:
Claim	any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim)
Commercial Electronic Message	same as in the Spam Act 2003
Consumer Contract	same as in the ACL
Consumer Guarantee	same as in the ACL
Contract	same as Customer Contract
Contract Date	The date when we confirm that we can and will provide Service
Contract Loss	<p>loss or damage suffered by a party and arising in connection with or out of your Contract or any supply made under it (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which another party was or should have been aware), including but not limited to:</p> <ul style="list-style-type: none"> – economic loss; – business interruption; – loss of revenue, profits, actual or potential business opportunities or contracts; – anticipated savings; – loss of profits; – loss of data; – indirect or consequential loss; – an obligation to indemnify another person; – an obligation to contribute to the compensation of loss or damage suffered by another person
Credit Limits	a value or quantity of unbilled usage or an amount outstanding on account at which Credit Management actions may be taken eg barring a Service, issuing an interim bill, taking an advance payment or requesting a bond
Credit Management	<p>the process by which we:</p> <ul style="list-style-type: none"> – help customers to manage their expenditure on Services; – manage any credit risk to us; and – collect outstanding debts from customers and former customers
Credit Management Charges	costs charged by us to you in relation to Credit Management including Charges from third parties.
Current Pricing	our current prices at any time as made up of Pricing Schedules
Customer Contract	As defined within clause 1 of our Standard Form of Agreement
Customer Provided Equipment & Services	equipment and services obtained by the customer from other parties for use in connection with a Service
Customer Service Guarantee	means the current minimum performance standard set by ACMA under sections 115, 117 and 120 of the Telecommunications (Consumer Protection and Service Standards) Act 1999.
Customer Terms	As defined within clause 1 of our Standard Form of Agreement
Delivery Date	the date which we agree with you to expect delivery of any ordered Equipment
Dictionary	this table of defined terms
Direct Debit	a payment that is deducted by us from your nominated financial institution account,

The expression:	means:
	including an Automatic Direct Debit including credit card and standard bank accounts
Early Termination Fee	A charge for the early termination of a contract which may be: <ul style="list-style-type: none"> – n amount specified in your Plan; or may be – an amount we remain liable to pay to a third party (eg a wholesale supplier) for goods or services we cannot resell or resupply to other customers; plus
End User	A person who makes use of a Service with or without your consent or from your premises or using your equipment or log-in credentials
Equipment	a handset, modem, router or other hardware
Facility or Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
Financial Hardship	a situation where a person is unable to meet their financial commitments
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999
Help Desk	our customer care and technical support personnel
Inbound Number	a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answer points
Included Value	right to use a certain amount of usage during a certain period
Incompatible Features	features of a telecommunications service which our Service does not support for example some features of Telstra's Local Access Call Service are only available to Telstra's retail customers and are there not available to you
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts when they are due, you are wound up or become bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction
International Roaming	use of your domestic mobile telecommunications service whilst overseas
Internet Identifiers	are numbers, codes and addresses allocated to you as part of using an internet service and include IP addresses, email addresses, user names and domain names.
Internet Service	a Service that provides access to the Internet
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Suppliers, any disruption to our or our Suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations and acts of God lightning strikes earthquakes floods or other natural
Late Bill	billing for service usage or other Charges in a period beyond the bill period defined in clause within the Standard Form of Agreement
Law	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)
Monthly Payment Plan	a Plan in which you may purchase Bundled Equipment through a monthly instalment based payment plan
Network	is either Our Facilities or our third party Partner Facilities, as we decide from time to time
Non-Tolling	refers to a situation where there is no usage on a telecommunications services
Numbering Plan	the Telecommunications Numbering Plan

The expression:	means:
Off-peak	a period defined by us with respect to a specific service as an off peak usage period
Operational Directions	Instructions from us to you directed at the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency
Our Facilities	Facilities we own and/or operate
PDH	personal, household or domestic
Peak	a period defined by us with respect to a specific service as an peak usage period
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
Plan Change	a change of the Plan for your service
Plan Downgrade Fee	a charged for changing a plan during a fixed term contract period to a lower period plan fee
Plan Extras	a particular set of features, entitlements, term of contract, Charges and special conditions which may be purchased and added to a Plan and its related Service
PMSI	a purchase money security interest under the PPS Law
Post-Paid Plan	a Plan where you can use all or part of the Service before you pay for it
PPS Law	Personal Property Securities Act 2009
Premium Services	services provided by third parties which deliver content such as news, games, images and applications to mobile handsets
Prepaid Plan	a Plan where you must pay in full for Service before you use it
Preselect	to designate a particular supplier to provide Preselectable Calls over that Access Line and Preselection and Preselected have corresponding meanings
Preselectable Calls	national long distance (STD) voice calls to a geographic number, international direct- dial voice calls, operator assisted services accessed by the common operator assisted service numbers, calls to 13 and 1300 numbers and calls to
Pricing Schedule	a description of the pricing and any specific terms associated with a particular Plan or Extra.
Priority Assistance	See ACIF code ACIF C609:2007 Priority Assistance for life-threatening medical conditions
Privacy Act	Privacy Act 1988
Product	goods and / or services
Product Warranties	are warranties published and offered by us directly or with Equipment or software manufacturers such warranties
Promotion	a special pricing offer that is typically only available to specific customers or for a limited period of time and may be applied for by a customer for inclusion with a
Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Provider	a third party carrier or Carriage Service Provider (as defined within the Telecommunications Act) that, under a contract with us, provides either: (a) access to Facilities they manage or maintain; or (b) content that we resupply to you. or may in the context within which it is used refer to providers of services directly
Provider Facilities	Facilities that are managed or maintained by a Partner
Provider Requirements	requirements of our partners for using the related Services and detailed in the relevant Service Description
Fair & Safe Use Policy	can be found on our website and governs use of your service and is directed at ensuring a reasonable level of service is available for all customers and that customer can enjoy safe use of the Service

The expression:	means:
Recovery Costs	all costs arising out of your default including, but not limited to, bank, legal (on a full indemnity basis), accounting and mercantile agent fees and any cost or interest incurred by us
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or statutory body or authority and the Telecommunications Industry Ombudsman and Communications Compliance Limited
Security Period	in respect of any Equipment means the applicable period, if any, under clause Error! Reference source not found.
Service	a service (and includes Equipment) which we provide to you, including but not limited to (a) a Standard Telephone Service; or (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001
Service Descriptions	descriptions and specific terms and conditions that apply to particular Services
Service Level Agreement	a written service quality assurance titled as such
Service Start Date	unless otherwise provided within a Service Description the date when we notify you that Service is available for use (or the date you first use the Service, if that is earlier)
Site	the physical location for a Delivery or for the connection or user of a Service as the case may be
SLA	a Service Level Agreement
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Spam Act	Spam Act 2003
Standard Telephone Service	as in section 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999
TCP Code	Industry Code C628:2012 Telecommunications Consumer Protections Code
TCP Customer	a person who acquires a Telecommunications Product from us for the primary purpose of personal or domestic use and not for resale; or a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into a contract with us: <ul style="list-style-type: none"> – does not have a genuine and reasonable opportunity to negotiate the terms of the contract; and – has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000
Telecommunications Act	Telecommunications Act 1997
Telecommunications Goods	any goods we supply for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service
Telecommunications Product	Telecommunications Goods and/or a Telecommunications Service
Telecommunications Service	<ul style="list-style-type: none"> – a Listed Carriage Service or any service we supply in connection with that service; and – a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a Listed Carriage Service
Telstra	Telstra Corporation Limited ACN 051 775 556 and related bodies corporate
Third Party Content	

The expression:	means:
Unfair	in relation to a term in a Consumer Contract means the same as in section 24 of the ACL
Use-by Date	a period after which any entitlements within a Plan (including a prepaid plan) expire without refund
Village	a community of dwellings which typically have shared services
Village Operators	the owners and/or managers of a multi-dwelling or community living
Walk Away Rights	the right to cancel your Contract (even during a minimum or fixed term) and pay only usage or network access charges to the date your Contract ends, and outstanding amounts for installation of Equipment, and outstanding amounts for Equipment that is compatible with other suppliers' services
We, us, etc	Swift Networks Pty Ltd ABN 96 125 828 453
Wholesaler Supplier	a wholesale provider of Facilities and is also a Provider