



**MOBCONNECT**

**Standard Form of Agreement**

**July 2021**

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## General Terms

### 1. OUR AGREEMENT WITH YOU

- 1.1 By entering into this standard customer agreement (“SFOA”), you contract with us for the supply of Services, Equipment, Software and Maintenance as relevant to you. This SFOA has been filed with the ACMA and is a standard form of agreement for the purposes of Part 23 of the Act.
- 1.2 You may request us to supply the Services, Equipment, Software and Maintenance to you in a manner accepted by us from time to time which may include completing and providing to us our relevant approved service application form which may also be described as your Customer Contract (“Application”). If you complete a written Application we may accept and rely on, and you will be bound by, a facsimile copy or an electronic copy (from you by email) or a voice authorization of your Application as if it were an original. As described in your Application, you can acquire Services, Equipment, Software and Maintenance either:
  - 1.1.1 as a Package – by which you will enter one or more separate contracts with us; or
  - 1.1.2 by entering into a separate contract with us for the supply of Services – as described in the other Parts of this SFOA.
- 1.3 This SFOA is structured as follows:
  - 1.1.3 clauses 1 to 20 comprise the General Terms. The General Terms apply to each Part of your agreement with us, as relevant to you;
  - 1.1.4 the other Parts specify the terms and conditions that apply to the various Services available to you; and
  - 1.1.5 the following documents are expressly incorporated into this SFOA:
    - Application Rate Sheet
    - Customer Service Guarantee Privacy Policy
    - Acceptable Use Policy Fair Use Policy
    - Financial Hardship Policy Customer Complaints Policy
- 1.4 This SFOA is not legally binding on us until we accept your Application, except that we may undertake credit checking and use information supplied by you in accordance with clause 7 and 8, and we may process your Application and prepare to activate the Services, order required Purchase Equipment (if any), order required Data & Internet Services Related Equipment (if any) or order required Voice Services Related Equipment. If your Application is refused or cancelled, we may charge you an amount equal to our costs for this work. Your Application will be deemed to be accepted by us at the earlier of the date that your Services are activated, any Purchase Equipment is ordered, any Data & Internet Services Related Equipment is ordered or any Voice Services Related Equipment is ordered.
- 1.5 If you require assistance reading or understanding any part of this SFOA, you may contact:
  - 1.1.6 our customer assistance line on the number specified on the Application Form and on our web page;
  - 1.1.7 the National Relay Service (NRS) on 13 36 77; or
  - 1.1.8 the Translating & Interpreting Service (TIS) on 13 14 50;

## **2. PROVISION OF SERVICES AND EQUIPMENT**

- 2.1 We will provide you with the Services nominated, or reasonably assumed to be nominated by you in your Application and other services we may agree in writing to provide to you from time to time, on the terms of this SFOA.
- 2.2 We will provide you with the Equipment nominated, or reasonably assumed to be nominated, by you (if any) in your Application and other Equipment that we may agree in writing to provide to you from time to time, on the terms of this SFOA.
- 2.3 Equipment, Maintenance and Software is only available to you if you nominate Voice Services, Data & Internet Services, Mobile Services, or any other Services in your Application as a Package.
- 2.4 From time to time, we may vary a term of this SFOA (and, for the avoidance of doubt, any document forming part of this SFOA in accordance with clause 1.3.3) in accordance with the following:
  - 1.1.9 where the variation is likely to benefit or have a neutral or minor detrimental impact on you, the variation will take effect upon us giving written notice to you;
  - 1.1.10 where we acquire a carriage service from a third party for resale to you and variations to this SFOA are required because of an amendment made by our third party supplier to the contract between us and our third party supplier, we will provide you with prior written notice explaining the variation and its effect and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
    - 1.1.10.1 usage or network access charges incurred up to the date of termination; and
    - 1.1.10.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination and any outstanding amounts that cover installation costs unless such Purchase Equipment is not compatible with other suppliers' services; and
  - 1.1.11 where the variation has a more than minor detrimental impact on you, we will provide you with at least 21 days' notice and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
    - 1.1.11.1 usage or network access charges incurred up to the date of termination; and
    - 1.1.11.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination and any outstanding amounts that cover installation costs unless such Purchase Equipment is not compatible with other suppliers' services.

## **3. CHARGES AND PAYMENT**

- 3.1 You must pay the charges for the provision of the Services or the Package, at the relevant rates as notified to you from time to time, as well as any other charges incurred by you in accordance with this SFOA.
- 3.2 We will usually invoice you monthly for charges due under this SFOA. Our first invoice will be issued either in the month that we commence provisioning Services to you or, in our discretion, the following month. We may vary invoice frequency at our discretion. We may issue interim invoices. We may bill you more often if you exceed your spend limit (see clause 4.2).
- 3.3 Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for periodic charges, connection and service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases. We will endeavour to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per 8.2.2 of ACIF CS42 - Industry Code - Billing, we will not bill charges older than 190 days from the date the charge was incurred by the customer.
- 3.4 All charges are due and payable by the due date shown on the invoice ("Due Date"). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by us.
- 3.5 If an invoice is paid by cheque or direct debit from your bank account and that cheque or direct debit



is dishonoured, cancelled or otherwise fails, you may be liable for a charge which will be added to your next invoice.

- 3.6 Supplier charges:
- 1.1.12 Our charges to you may pass on any charges another Supplier charges to us (including increases and special or one-off charges).
  - 1.1.13 You will pay us any charge which any other Supplier or other person renders to us:
    - a) if you approach that other Supplier or person directly, or otherwise than through us; or
    - b) for connection or initiation of any service or for cancellation of any service.
  - 1.1.14 If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with this clause 3.6.
- 3.7 If you do not pay to us any part of the charges by the due date on any invoice, we may impose a late payment charge.
- 3.8 If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we may recover these amounts from you in addition to the overdue amounts.
- 3.9 Unless expressly stated otherwise, charges for the Services or the Package are exclusive of government taxes, duties (including stamp duty), imposts or levies, which will be your responsibility and will be itemised on your invoice. Unless expressly stated otherwise, all fees, charges and other amounts payable (and all quotes given) under or in accordance with the terms of this SFOA (including charges for Services or the Package, repair fees, late payment charges, Services Early Termination Charge, reconnection fees, installation costs) are exclusive of GST and you must pay to us in addition to the charges an amount equal to any GST payable on the supply of the Services or the Package. That additional amount is payable at the same time as any part of the charges for the Services or the Package is payable. We will issue a tax invoice to you for the supply of those Services or the Package at or before that time.
- 3.10 You must pay all charges without any set off, counter claim or deduction. We may set off any amount payable to you against any amount payable by you to us.
- 3.11 Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.

#### **4. SECURITY DEPOSIT & SPEND LIMITS**

- 4.1 We may from time to time set a dollar limit for the amount we will allow you to spend on the Services or the Package during a month ("spend limit"). The spend limit is only a guideline for our credit management action, which may be varied depending on the amount by which you have exceeded your spend limit, and may include the following:
- 1.1.15 verbal advice to you of total cumulative charges;
  - 1.1.16 written correspondence (including transmitting the notice to your email address) to you advising the value exceeding the spend limit; and
  - 1.1.17 an interim invoice, upon which payment must be received, in order to continue supply of the Services or the Package.
- 4.2 We may also monitor your Service for excessive or unusual usage or your level of liability for charges for such usage, but do not promise to do so. You acknowledge and agree that in addition to our rights under clause 12 we can suspend, cancel or Bar your Service upon reasonable verbal or written notice to you (including transmitting the notice to your email address) if we have reasonable grounds for believing that you represent a credit risk in relation to the Service, including:
- 4.3 Where the Services are being used in an excessive or unusual way or an unusually high volume or spend for the relevant Service when compared with previous account activity for that Service. For example, there may be excessive or unusual use if you have a call that remains connected for an



unusually long period of time or where an unusually large volume of calls to premium-rate or international services start being made from your Service.

1.1.18 your failure to respond to notices from us about unusual high volume or spend;

1.1.19 your failure to pay a current bill in circumstances where your payment history indicates a series of late payments, dishonoured payments or failures to pay. If we do suspend, Bar or cancel your Service, you still have to pay for any charges incurred for any excessive or unusual usage (regardless of how caused) and the provisions relating to liability and indemnity also remain unaffected. If you wish to Bar access to premium rate services from the Services we provide you, please contact us

4.4 We will not be responsible for any equipment tampering or service fraud. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to a Service or telecommunications equipment, please contact us and we will endeavour to provide such information or direct you to an appropriate source of information.



## **5. PERIOD OF AGREEMENT**

- 5.1 This Agreement starts when you sign the Application, complete a voice recording, or when you first access our Services after receipt of these terms and conditions and continues until terminated.
- 5.2 The provision of Services commences:
- 1.1.20 if you are transferring from another Supplier, when your accounts are transferred from your current Supplier to us and any other arrangements with another Supplier for the provision of the Services have been completed; or
  - 1.1.21 if you are not transferring from another Supplier, within a reasonable period of the commencement of this SFOA.
- 5.3 If the Agreement is a non-fixed length agreement we will provide the service to you in accordance with the Agreement until the Service is cancelled in accordance with Clause 12.
- 5.4 For fixed-length agreements, this contract will continue
- (i) for the fixed term of the contract; or
  - (ii) until it is terminated in accordance with Clause 12.
- 5.5 If the Agreement is a fixed-length agreement and neither you nor we cancel the service at the end of the fixed term the agreement becomes a non-fixed length agreement and we will continue to supply the Service to you on a month to month basis in accordance with the Agreement. If you do not wish to continue to use the Service on a month to month basis after the end of the fixed term of your Agreement you must inform us, in accordance with clause 9.1 below, by giving us 30 days notice in writing, before the end of the minimum term, that you wish to cancel the service at the end of the fixed term.
- 5.6 We will not be able to automatically renew the Agreement for the same duration as the initial Contract period for a fixed term contract without your written consent.

## **6. TRANSFER OF YOUR SERVICES TO US**

- 6.1 If in providing the Services or the Package we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause.
- 6.2 Transferring to us:
- 1.1.22 You authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name.
  - 1.1.23 You agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request.
  - 1.1.24 You will immediately pay to your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to our name.
- 6.3 If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.
- 6.4 If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you must pay your previous Supplier that amount.

## **7. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER**

- 7.1 If you (or a Supplier acting with your authority) ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.
- 7.2 The provision of Services ceases on the date on which we transfer your Services to another Supplier.
- 7.3 We will endeavour to invoice you for Services which you transfer to another Supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become



aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.

- 7.4 We will not accept liability for any amounts owing by you to a Supplier or other person. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.
- 7.5 We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer

## 8. PERSONAL INFORMATION AND BUSINESS INFORMATION

- 8.1 This clause 8 applies where you are a natural person or a business. If you are a natural person, we may collect Personal Information about you including but not limited to your electronic contact details such as email ("your Personal Information"). If you are a business customer, we may collect information about your business including but not limited to your electronic contact details such as email ("business information").
- 8.2 You acknowledge and agree that:
- 1.1.25 if you do not supply the information we request on our Application, we may not be able to provide the Services or the Package to you;
- 1.1.26 we will use your Personal Information or business information:
- a) to assess any Application by you for Services or the Package to be provided by us;
  - b) to collect payments that are overdue in respect of any Services or the Package provided by us;
  - c) to provide the Services or the Package to you (including the investigation or resolution of disputes relating to any Services or the Package provided to you); and
  - d) we may use your Personal Information or business information to send commercial electronic messages, as defined under the *Spam Act 2003*(Cth);
- 1.1.27 we will also disclose or transfer your Personal Information or business information:
- a) to other Suppliers for the purpose of enabling us to provide the Services or the Package to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services);
  - b) to other Suppliers about your account, including particulars of calls and call charges;
  - c) to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and ACMA) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services or the Package for the purpose of enabling investigation and resolution of those disputes or complaints;
- 8.3 You acknowledge that in certain circumstances, we may be permitted or required by applicable laws to use or disclose Personal Information or business information about you, including your name, address, service number and other details. Such uses or disclosures may include, without limitation:
- 1.1.28 disclosures to the operator of the Integrated Public Number Database ("IPND");
- 1.1.29 disclosures to law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
- 1.1.30 uses or disclosures to assist in the recovery of lost or stolen equipment.
- 1.1.31 uses or disclosures in accordance with orders made by a court or if required or authorised by law;
- 1.1.32 uses or disclosures to lessen or prevent serious threats to an individual's life, health or safety, or to public health or safety; or
- 1.1.33 uses to assist in our internal investigations into suspected fraud or other unlawful activities.
- 8.4 Unless you ask us not to, you acknowledge that any calls you make to our customer call centres, the content of those calls, and any emails that you send us, may be monitored and/or recorded for

- quality assessment, administration and/or customer information purposes.
- 8.5 Unless you ask us not to, we will use your Personal Information or business information to:
- 1.1.34 provide information to you about other goods or services which we or any of our Related Body Corporate or any of our partners, associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents may offer to you;
  - 1.1.35 provide information to our Related Body Corporate, our partners and associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents so that they can provide information to you about goods and services they offer; and
  - 1.1.36 send commercial electronic messages as defined under the *Spam Act 2003*(Cth).
- 8.6 If you do not want us to use your Personal Information or business information in this way, you may ask us not to by contacting our privacy officer and/or customer service team.
- 8.7 We will provide you with access to most Personal Information or business information that we have about you, but sometimes that will not be possible, in which case we will tell you why. If you want to find out what information we have about you contact our privacy officer and/or customer service team.
- 8.8 If you think that any Personal Information or business information, we hold about you is not accurate, complete and up to date, you may request us to correct that information. We will take reasonable steps to correct such Personal Information or business information unless we disagree with you about whether the information is accurate, complete and up to date.
- 8.9 Clause 9 contains further information on how we may also use your Personal Information and business information to perform credit checks.

## **9. CONSENT TO CREDIT CHECK**

- 9.1 If you are a company, please note that we will be performing credit checks on you.
- 9.2 If you are a natural person you:
- 1.1.37 understand that the Privacy Act allows us to give a Credit Reporting Agency certain Personal Information about you. The information we disclose to a Credit Reporting Agency includes permitted information which will allow you to be identified, the fact that you have applied for credit and the amount, the fact that we are a current credit provider to you, repayments that are overdue and for which debt collection action has started, information that in our opinion you have committed a serious credit infringement (i.e. acted fraudulently or shown an intention not to comply with your credit obligations);
  - 1.1.38 agree to our obtaining from a Credit Reporting Agency a credit report containing information about your personal credit worthiness for the purpose of assessing your application and for the purpose of assisting in collecting overdue payments; and
  - 1.1.39 agree to our obtaining information about your commercial activities or commercial creditworthiness from any business which provides information about the commercial credit worthiness of persons, your accountant or any other supplier to you;
  - 1.1.40 agree to our giving to and obtaining from any credit provider named in your Application or in a credit report on you issued by a Credit Reporting Agency, information about your credit arrangements for the purposes of:
    - a) assessing your Application;
    - b) notifying a default by you;
    - c) allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers; and



d) generally assessing your credit worthiness.

1.1.41 You understand the information exchanged can include any information about your personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

## 10. YOUR OBLIGATIONS

- 10.1 You will ensure that you always comply with all laws and obligations, including licence conditions, applicable to the Services or the Package, and their use.
- 10.2 You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACMA under the Act unless such connection is made in accordance with a connection permit issued under the Act or connection rules made under the Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- 10.3 You must not resupply the Services, Equipment, Software, and/or Maintenance to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- 10.4 You are liable to us for all charges in relation to the Services or the Package whether or not you authorised the use of that Service or any and all components of the Package by another person.
- 10.5 If you change your address, phone number or other billing contact details, you must notify us before the end of your billing period. Please contact our customer service team if you do not know when the end of your billing period is.
- 10.6 You must not use the Services, Value Added Features, Software, any of the Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment or any and all components of the Package in such a manner that may:
  - 1.1.42 menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person.
  - 1.1.43 expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute.
  - 1.1.44 involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;
  - 1.1.45 damage our, or our Supplier's, network or systems or cause the quality of the Services to be impaired;
  - 1.1.46 infringe any person's intellectual property, personal (as set out in Privacy Act), or other rights; or
  - 1.1.47 be unlawful.
  - 1.1.48 You agree to comply with the Acceptable Use Policy set out on our website.
- 10.7 You must not use the Services, Voice Services Related Equipment, Data & Internet Services Related Equipment, Value Added Features, Equipment or Software, to send unsolicited information to third parties.

## 11. SERVICE NUMBERS, CLI & IPND

- 11.1 You acknowledge that:
  - 1.1.49 The Government owns service numbers such as telephone numbers and mobile numbers ("Service Numbers");
  - 1.1.50 The Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan. Information about your rights of use of your Service Number may be obtained by calling us;
  - 1.1.51 You do not own or have any legal interest or goodwill in any Service Number or PIN issued to

- you and:
- 1.1.52 you are entitled to continue to use any Service Number we issue to you except in circumstances where the Number Plan allows us to recover the Service Number from you; and
  - 1.1.53 you can transfer a Service Number or PIN to another person if you get our consent first.
- 11.2 Caller Line Identification ("CLI"):
- 1.1.54 If you do not Bar CLI in respect of calls made from your equipment then you agree that when a call is made or any text message sent from your equipment your Service Number may be sent automatically to the equipment of the called party.
  - 1.1.55 You agree that if a party calling your equipment has not Barred CLI in respect of a call made from their equipment then the Service Number of the calling party may be displayed on the screen of your equipment at the time the call is made.
- 11.3 We, like other Suppliers, are required by law to provide your name, address, Service Number and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only provided for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have your IPND data altered in any way.

## **12. TERMINATION, SUSPENSION & CANCELLATION**

- 12.1 We may terminate this SFOA or suspend, limit or cancel the provision of any Service or Package by notice in writing to you if:
- 1.1.56 you fail to pay any amount due under this SFOA by the due date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within the specified number of days after we give you that notice;
  - 1.1.57 you breach any material provision of this SFOA;
  - 1.1.58 you are declared bankrupt, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;
  - 1.1.59 a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;
  - 1.1.60 any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you do not function because we are unable to enter your premises in order to update or rectify such equipment;
  - 1.1.61 you cease receiving any service that we rely upon in providing the Service or Package through no fault of ours or our Suppliers;
  - 1.1.62 you are in breach of a licence, permit or authorisation relating to the use of your telecommunications equipment, the Equipment, the Package, or the Services;
  - 1.1.63 you do not provide security as required by us;
  - 1.1.64 we reasonably suspect you of fraud or attempted fraud;
  - 1.1.65 you vacate the premises to which we had been supplying Services or a Package to you;
  - 1.1.66 you change your address or phone number; and
    - 1.1.66.1 you do not notify us in accordance with clause 10.5; or
    - 1.1.66.2 the Service may not be provided at your new address or phone number through no fault of ours or our Supplier;
  - 1.1.67 we reasonably believe that your usage of the Services is unusually high (as referred to in



- clause 4.2);
- 1.1.68 we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;
- 1.1.69 we are permitted or required to do so by law;
- 1.1.70 you are in breach of the Acceptable Use Policy or the Fair Use Policy;
- 1.1.71 any of our or our Supplier's Data & Internet Services Related Equipment is lost, stolen or substantially destroyed;
- 1.1.72 any of the Purchase Equipment is lost, stolen or substantially destroyed;
- 1.1.73 the physical infrastructure and site conditions for your service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study; or
- 1.1.74 you die.
  
- 12.2 We may, without liability, suspend, limit or terminate the provision of any Service or Package if there is no Minimum Term in place, by giving 30 days notice in writing to you.
- 12.3 You may terminate this SFOA or cancel the provision of any Service or Package by giving us 30 days notice in writing.
- 12.4 On termination of this SFOA under clause 12.1 or clause 12.3:
  - 1.1.75 You must:
    - 1.1.75.1 pay all charges incurred by you under this SFOA up to the time of termination which will become immediately due and owing upon termination;
    - 1.1.75.2 pay all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination;
    - 1.1.75.3 if we request and at our option, either immediately return all of our or our Supplier's Voice Services Related Equipment (at your cost) or make such equipment available for our, or our Suppliers, collection;
    - 1.1.75.4 either pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and any costs of making repairs that we think necessary or if we are unable to repossess such Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Rate Sheets and any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment;
    - 1.1.75.5 if we request and at our option, either immediately return all of our or our Supplier's Mobile Equipment (at your cost) or make such Mobile Equipment available for our, or our Supplier's, collection; and
    - 1.1.75.6 pay the applicable Early Termination Fee (if any) to us.
  - 1.1.76 If there is credit remaining on your account at the time of termination, we will, at our option, deduct the credit off any amount you owe us under clause 12.4.1 or pay you the credit or if the credit exceeds any amount you owe us, we will refund you by cheque or EFT.
- 12.5 On termination of this SFOA under clause 12.2:
  - 1.1.77 You must pay all charges incurred by you under this SFOA up to the time of termination, which amounts will become immediately due and owing upon termination;
  - 1.1.78 If we request and at our option, either immediately return all of our or our Supplier's Voice Services Related Equipment (at our cost) or make such equipment available for our, or our Suppliers, collection;
  - 1.1.79 if we are unable to repossess any Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Rate Sheets;
  - 1.1.80 if we request and at our option, either immediately return all of our or our Supplier's Mobile





- Equipment (at our cost) or make such Mobile Equipment available for our, or our Supplier's, collection; and
- 1.1.81 If there is credit remaining on your account at the time of termination, we will refund you by cheque or EFT, or, with your prior agreement, deduct the credit off any amount you owe us under clause 12.5.1.
  - 12.6 We may, without liability, suspend the provision of any Service or Package for a reasonable period for operational reasons.
  - 12.7 We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.
  - 12.8 If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (*except if our action resulted from our or a supplier's mistake or manifest error*).
  - 12.9 The termination or expiry of the Purchase Equipment specified in Part D, will not automatically terminate your contract(s) for the supply of Services.
  - 12.10 This clause and the following clauses will continue to apply despite termination or expiry of this SFOA or the suspension, limitation or cancellation of any Services or any and all components of the Package:
    - 1.1.82 General Terms: clause 3 (charges and payments), clause 8 (personal information and business information), clause 9 (consent to credit check), clause 12 (termination, suspension & cancellation), clause 13 (our limitation of liability), clause 14 (your indemnity), clause 15 (confidentiality), clause 17 (assignment), clause 19 (general), clause 20 (interpretation and definitions);
    - 1.1.83 Part A: voice service charges, access to premises, termination, and definitions;
    - 1.1.84 Part B: data & internet service charges, shifts/moves/upgrades, indemnity, inspection or testing, clause removal, destruction, our action, termination, and definitions;
    - 1.1.85 Part C: minimum term, Minimum Monthly Spend, mobile service charges, mobile number portability, mobile equipment & mobile plans, changing plans, termination, and definitions); and
    - 1.1.86 Part D: additional termination rights, payment, ownership, things you must do, things you must not do, insurance, destruction, our action, termination, and definitions.

### 13. OUR LIMITATION OF LIABILITY

- 13.1 To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied by legislation, the common law, equity, trade, custom or usage or otherwise relating to the provision by us of the Services, Maintenance, Software, Equipment, or any other equipment or otherwise in connection with this SFOA are expressly excluded.
- 13.2 Limitation of liability:
  - 1.1.87 To the maximum extent permitted by law, we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, any and all components of the Package, or any other equipment under this SFOA or otherwise in connection with the relationship established by this SFOA, including any loss or damage caused by our negligence or any fundamental breach of this SFOA.
  - 1.1.88 Subject to clause 13.2 our liability, and that of our Related Body Corporate, for any direct, indirect or consequential loss or damage arising out of or otherwise in connection with this SFOA, including for any breach of any term, condition, warranty or under any remedy implied by law (which cannot be excluded), will be limited at our option to any one or more of the following:



- 1.1.89 if the supply relates to goods, the repair or replacement of the goods or the payment of the cost of having the goods repaired or replaced; and
  - 1.1.90 if the supply relates to services, the resupply of those or equivalent services or the payment of the cost of having those services resupplied.
  - 1.1.91 Clause 13.2 only applies where those goods or services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption and section 68A(2) of the Trade Practices Act 1974 (Cth) does not apply.
- 13.3 Exclusion of liability:
- 1.1.92 To the maximum extent permitted by law, we, have no liability to you or to any other person for:
    - 1.1.93 acts or defaults of any Supplier or other person;
    - 1.1.94 faults or defects in any facility or equipment (including the Equipment and Software) we supply to you or the Services, which are caused by or contributed to by your, or a third party's, conduct or misuse; or
    - 1.1.95 faults or defects that arise in services not provided under this SFOA (even if they are connected, with our consent, to Services which we have arranged under this SFOA), which are due to incompatibility with the Services, Software and Purchase Equipment, or any other equipment that we or our Suppliers provide to you.
  - 1.1.96 To the maximum extent permitted by law, our Suppliers have no liability to you in connection with this SFOA.

## 14. YOUR INDEMNITY

- 14.1 You indemnify us and will keep us, and our Related Body Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:
  - 1.1.97 your breach of this SFOA;
  - 1.1.98 any claim or demand against us (including for negligence) by any person other than you, which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
  - 1.1.99 any claim or demand (including for negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
  - 1.1.100 any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property;
  - 1.1.101 the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
  - 1.1.102 any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving the use of the Services, or any and all components of the Package, or any other equipment by you.

## 15. CONFIDENTIALITY

- 15.1 We retain all intellectual property rights in any information relating to the Services, any and all components of the Package, the design or operation of the Services and any and all components of the Package and other technical information relating to the provision of the Services and any and all components of the Package ("Confidential Information").
- 15.2 You will keep the Confidential Information confidential and will not allow any written or electronically recorded material to be copied.
- 15.3 On the termination of the SFOA for any reason, you will return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.

- 15.4 You will keep confidential the manner in which we arrange Services, any and all components of the Package, including our charges, savings, and other financial information.
- 15.5 You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

## **16. FORCE MAJEURE**

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



## 17. ASSIGNMENT

- 17.1 You must not assign, transfer or otherwise deal with any of your rights or obligations under this SFOA, except with our prior written consent (acting reasonably).
- 17.2 We may upon notice, assign, transfer, sell or otherwise deal with our rights under this SFOA and/or Equipment and/or any component of the Package, and your consent is not required.

## 18. CARRIERS & CARRIAGE SERVICE PROVIDERS

- 18.1 You represent that you are not a carrier or a carriage service provider (as those terms are defined in the Act). If you are or become a carrier or carriage service provider, you must promptly notify us of that fact, and we may immediately terminate this SFOA by notice to you.

## 19. GENERAL

- 19.1 If you are a business customer then you agree that if we need your consent to undertake certain actions, then provided we act in good faith, we may rely upon the authority of any of your employees, who warrants to be authorised to provide consent on your behalf.
- 19.2 You warrant that you have provided full and accurate Personal Information and business information to us in connection with this SFOA and your Application and you have full power and authority to enter this SFOA and Application.
- 19.3 Governing law:
  - 1.1.108 This SFOA and your Application are governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you ordinarily reside or do business (as stated in your Application).
  - 1.1.109 with respect to any applicable cooling-off period legislation, the governing law will be the law of the state or territory in which you state in your Application you reside in or do business in.
- 19.4 This SFOA contains the whole understanding between us and supersedes all prior arrangements and understandings between us in connection with it.
- 19.5 From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this SFOA and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.
- 19.6 The failure by either party to exercise any right or remedy under this SFOA in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.
- 19.7 If a provision of this SFOA is void or voidable or unenforceable or the invalid part severed, the remainder of this SFOA will not be affected.
- 19.8 You may complain in writing or orally by calling our Customer Service number or the contact number located at our website. We will comply with our customer complaints policy located at our website, when endeavouring to resolve your complaint. If we are not able to resolve your complaint to your satisfaction, you may refer your complaint to the Telecommunications Industry Ombudsman or the ACMA.
- 19.9 Any notice, demand, consent or other communication required to be given to either of us must be delivered personally or sent by prepaid mail, email or by facsimile to the address of the other last notified.
- 19.10 You authorise us to complete any blank spaces or incomplete information in your Application and including but not limited to the serial numbers and other identification details of the Equipment, any and all components of the Package and any other equipment being provided to you.
- 19.11 We may engage an agent, dealer, contractor or franchisee to conduct any aspect of service or equipment provision and maintenance under this SFOA. You acknowledge that we may enter into this SFOA as principal or as agent. Where we enter into this SFOA as an agent, all references to our rights are to be read as references to us and our principal. Our performance of this SFOA may, at our



discretion, be carried out by a Related Body Corporate of ours or any other party arranged by us or a Related Body Corporate (and your obligations under this SFOA will be owed to us or that Related Body Corporate or that other party, as relevant).

- 19.12 No reliance: You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement
- 19.13 Release: You accordingly release us and each of our officers, agents and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it
- 19.14 Standard Form of Agreement: These terms and conditions have been formulated under section 479 of the Telecommunications Act and filed with the Australian Communications Authority and will be referred to as the Standard Form of Agreement or SFOA.

## 20. INTERPRETATION & DEFINITIONS

- 20.1 The following definitions apply unless the context requires otherwise:
  - 1.1.1 ACMA means the Australian Communications and Media Authority.
  - 1.1.2 ACT means the Telecommunications Act 1997 (Cth).
  - 1.1.3 age-restricted audio-visual service means a service that enables an end-user to access age-restricted content other than material supplied as part of a telephone sex service.
  - 1.1.4 age-restricted service means an age-restricted audio-visual service; or an age-restricted text service.
  - 1.1.5 age-restricted text service means a service supplied solely or primarily by way of a text service about which it would be concluded that a majority of persons who use the text service are likely to do so with the sole or principal object of deriving sexual gratification from the service.
  - 1.1.6 Application and Customer Contract has the meaning given to it in clause 1.2 of the General Terms.
  - 1.1.7 Rate Sheets means our standard rate sheets for the Services or any and all components of the Package as amended from time to time, copies of which are available on our website, on your Application or by contacting our customer service.
  - 1.1.8 Barring or Bar means restricting the supply of one or more (where possible) or all eligible Services on a Service so that the customer is unable to acquire the restricted eligible Services.
  - 1.1.9 Business Hours means 9am to 5pm on a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.
  - 1.1.10 Credit Limit means the monthly spend limit on eligible Services applied to a Customer's Service account.
  - 1.1.11 Credit Reporting Agency has the meaning given in section 6 of the Privacy Act.
  - 1.1.12 Data & Internet Services means our internet access, e-mail facilities, wide area networking services, web-page facilities, broadband, digital subscriber line, frame relay and any other related facility or services that we may provide from time to time, including any technical and other advice provided by us, to be provided to you under Part B and as specified in your Application.
  - 1.1.13 Data & Internet Services Related Equipment means equipment that is not Equipment, Other Equipment or Voice Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services as specified in Part B.
  - 1.1.14 Data & Internet Equipment means equipment which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services and as specified in your Application.



- 1.1.15 Early Termination Fee means the fee payable by you if the contract with you is terminated before its Minimum Term has expired, the calculation of which is set out in Annexure A.
- 1.1.16 Equipment means all or any of the Data & Internet Equipment, Mobile Equipment, Purchase Equipment, or other equipment specified in your Application but does not include Other Equipment.
- 1.1.17 Equipment Charge means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA.
- 1.1.18 GST has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.1.19 Intellectual Property Rights means any and all intellectual and industrial property rights throughout the world including but not limited to any copyright, trade mark, domain name, business name, design, patent, circuit layout, semi-conductor or other similar proprietary rights and licences and sub-licences of such rights (irrespective of whether or not such rights are registered, or formal or informal); trade secrets, technical or non-technical data, knowledge, information or documentation; secret or confidential operations or information; business systems, business methods or business plans (whether registered, registrable, formal, informal or otherwise); customer lists, supplier lists and other proprietary lists, names, addresses or information not generally known; techniques, diagrams, data, proofs, prints, particulars, inventions and prototypes.
- 1.1.20 LNP Authorisation means the LNP Customer Authorisation in your Application on the terms of this SFOA.
- 1.1.21 Maintenance means any Maintenance we provide as specified in your Application and under the terms of Part C of this SFOA.
- 1.1.22 Maintenance Agreement means the Customer Contract with us for the supply of Maintenance under this SFOA.
- 1.1.23 Maintenance Charge means the charge for Maintenance as specified in your Application and as varied in accordance with this SFOA.
- 1.1.24 Minimum Monthly Spend means the Minimum Monthly Spend as specified in your Application and as varied from time to time in accordance with this SFOA.
- 1.1.25 Minimum Term or Minimum Term Contract means the term of this SFOA as specified in your Application.
- 1.1.26 Mobile Equipment means equipment which is provided to you by us or our supplier for use in connection with the provision of Mobile Services and as specified in your Application.
- 1.1.27 Mobile Premium Service means a premium SMS or MMS service; or a proprietary network service.
- 1.1.28 Mobile Premium Services Determination means the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) including any amendments to the determination.
- 1.1.29 Mobile Services Related Equipment means any equipment as specified in your Application that is not Equipment, Data & Internet Services Related Equipment, Voice Services Related Equipment or SIM cards, but may include handsets, accessories and equipment supplied by us.
- 1.1.30 Mobile Services means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you under Part C and as specified in your Application.
- 1.1.31 MNP Customer Authorisation means the MNP Customer Authorisation in your Application on the terms of this SFOA.
- 1.1.32 Numbering Plan means the Telecommunications Numbering Plan (1997) as amended from time to time.
- 1.1.33 Other Equipment means equipment that is not Equipment provided by us.
- 1.1.34 Other Software means software that is not Software provided by us.



- 1.1.35 Package means a bundled offering of any or all Services, Equipment, Software and/or Maintenance and as described in your Application.
- 1.1.36 Part refers to any section of this SFOA so described.
- 1.1.37 Peripheral equipment means the peripheral equipment in your Application marked with an asterisk (\*), and which is part of the Purchase Equipment, but it is not serviced by us as part of Maintenance.
- 1.1.38 Personal Information means any information or document referred to in section 276(1) of the Act and any personal information within the meaning given in section 6 of the Privacy Act.
- 1.1.39 Premium SMS or MMS service means a carriage service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199; or a content service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199.
- 1.1.40 Privacy Act means the Privacy Act 1988 (Cth).
- 1.1.41 proprietary network means a telecommunications network that enables Customers to access, by way of a mobile device, a premium content service that is not otherwise generally available.
- 1.1.42 proprietary network service means a public mobile telecommunications service that enables customers to access a proprietary network.
- 1.1.43 Purchase Equipment means the equipment specified in your Application and supplied to you in accordance with Part D, in which ownership of that equipment transfers to you on the expiry of the Minimum Term.
- 1.1.44 Purchase Equipment Agreement means the contract with us for the supply of Purchase Equipment under this SFOA.
- 1.1.45 Purchase Equipment Charge means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA, including any residual amounts owing to us at the expiry of the Minimum Term (such amounts which must be paid by you before ownership transfers to you, in accordance with Part D).
- 1.1.46 Related Body Corporate has the same meaning as in section 9 of the Corporations Act 2001 (Cth).
- 1.1.47 Services means the Data & Internet Services, Mobile Services, Mobile Premium Services, Voice Services or other services specified in your Application that we supply to you under this SFOA.
- 1.1.48 Services Agreement means the contract with us for the supply of Services under this SFOA.
- 1.1.49 Service Level Agreement means the Service Level Agreement as specified in your Application and available at our website.
- 1.1.50 Site means the site described in your Application.
- 1.1.51 Software means the software we provide as specified in your Application but does not include Other Software.
- 1.1.52 Short Message Service (SMS) is the ability to send Short Messages and receive Short Messages in relation to GSM and in relation to CDMA.
- 1.1.53 standard customer agreement and SFOA mean each of the contracts described in Clause 1 of these General Terms.
- 1.1.54 Supplier means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.
- 1.1.55 Value Added Features means any of the Mobile Services value added features as specified in your Application.
- 1.1.56 Voice Services means the telecommunications services to be provided to you under Part A and as specified in your Application.
- 1.1.57 Voice Services Related Equipment means equipment that is not Equipment, Other Equipment or Data & Internet Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Voice Services as specified in Part A.



- 1.1.58 we, us means the entity defined as 'The Company' in the policies section of our webpage and on our Service Application Form.
- 1.1.59 you, your means the customer, as specified in your Application.
- 20.2 Interpretation:
  - 1.1.60 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.
  - 1.1.61 The singular includes the plural and conversely.
  - 1.1.62 A gender includes all genders.
  - 1.1.63 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - 1.1.64 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - 1.1.65 A reference to a clause or schedule is a reference to a clause of or a schedule to, this SFOA.
  - 1.1.66 A reference to an agreement or document (including a reference to this SFOA) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this SFOA or that other agreement or document.
  - 1.1.67 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - 1.1.68 A reference to dollars and \$ is to Australian currency.
- 20.3 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

## PART A – VOICE SERVICES

### 21. APPLICATION OF THIS PART

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

### 22. SERVICE NUMBER PORTABILITY

- 22.1 Subject to Clause 5, provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.
- 22.2 Subject to Clause 5, by signing the Service Number Portability Customer Authorisation ("LNP Authorisation") which forms part of your Application, you acknowledge and agree:
  - 1.1.69 to your current Supplier transferring to us your Service Number;
  - 1.1.70 that we are only transferring your Service Number not your Voice Service. This means you may lose value added services and other features provided by your current Supplier. When you are connected to the Voice Services you will use the Voice Services specified in your Application, which may be different to the service and features that you had with your current Supplier;



- 1.1.71 that by transferring your Service Number, the service and/or any features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
- 1.1.72 that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you transfer to us;
- 1.1.73 that your current Supplier may or may not disconnect your existing service and/or value added services;
- 1.1.74 if you are transferring between different voice service platforms, you may need to purchase certain software, modems, new handset and/or Voice Equipment;
- 1.1.75 that you may need to purchase approved Voice Equipment to access the Voice Service;
- 1.1.76 that you can only withdraw your authority to transfer prior to the port cutover notification being received by us from your current Supplier. Withdrawing your LNP Authorisation does not change your contractual obligations to us under your Application and this SFOA;
- 1.1.77 that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to transfer the Service Number, if the information you provide is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to transfer the Service Number or dispute the rejection with your current Supplier;
- 1.1.78 that if your Service Number cannot be transferred to us then you may accept a new Service Number from us;
- 1.1.79 that your authorisation to transfer your Service Number to the Voice Services is valid for 90 days from the date of the LNP Authorisation;
- 1.1.80 that in the event of a withdrawal or reversal to your current Supplier, we:
  - a) are not responsible for any period of outage of the service or features or your current service or any value added service provided by your current Supplier;
  - b) do not warrant that your Service Number will be transferred to us within any specified timeframe; and
  - c) to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of the Service Number(s), withdrawal or reversal, including a negligent act or omission by us;
- 1.1.81 that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and
- 1.1.82 that we reserve the right to charge for transferring your Service Number to and from us.

## **23. PROVISION OF VOICE SERVICES**

- 23.1 We will provide the Voice Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Voice Services have been completed or when your account with us has been established.
- 23.2 If you fail to nominate the required Voice Services option in your Application, we will assume you wish to select us as your full service telecommunications provider.
- 23.3 We will provide you with the relevant Voice Services, unless you dial another override code or, if required for access, you dial our override code as notified to you from time to time.
- 23.4 We will provide the Voice Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.



- 23.5 We will provide the required Voice Services subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Voice Services where capacity, geography, or technical capability, affect the application or installation of the Service to your premises. We do not warrant that the Voice Services will be free of interruption, delays, or fault.
- 23.6 To the extent we provide you with a standard telephone service (as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) ("CSG"). This code is available at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_1668](http://www.acma.gov.au/WEB/STANDARD/pc=PC_1668). Certain specified enhanced call handling features, we may be obliged to comply with the CSG, you acknowledge and agree:
- 1.1.83 The CSG sets performance standards for service connection times, fault repair times and keeping appointments to provide you with these services. The CSG does not apply to customer equipment (including Equipment) or to customers who have more than five telephone lines;
  - 1.1.84 Where you have nominated in your Application to waive (where applicable to the Voice Services nominated in your Application) in whole or part your CSG rights in relation to certain Voice Services that we are not obliged to provide you with the CSG.
  - 1.1.85 Where applicable, if we fail to meet CSG performance standards you may be entitled to specified monetary compensation. Our CSG policy is available on our website
- 23.7 You acknowledge that we reserve the right to Bar access to 1900 numbers, data calls, internet service providers and any other calls as set out in clause 4.2 or in a fair use policy or as we deem necessary from time to time. If you wish to Bar access to premium rate services from your Voice Service, please contact us.
- 23.8 If you are on a Minimum Term Contract:
- 1.1.86 the fixed minimum term of your Minimum Term Contract specified in your Application commences on the date that you sign your Application;
  - 1.1.87 for the fixed term of your Minimum Term Contract you agree:
  - 1.1.88 to maintain us as your carrier for, as a minimum, the voice services; and
  - 1.1.89 to maintain the same level of business (or more) with us than as at the date that you sign your Application;
  - 1.1.90 you agree to give us reasonable notice in advance of any significant changes in your telecommunications requirements so that we can plan for these changes; and
  - 1.1.91 you acknowledge that the pricing available to you under the SFOA is subject to you maintaining us as your carrier for, as a minimum, the voice services.

## 24. VOICE SERVICES CHARGES

- 24.1 The charges applicable to the Voice Services are specified in the Rate Sheets and your Application.
- 24.2 We may vary any of the charges applicable to the Voice Services in accordance with clause 2.4.

## 25. PROVISION OF VOICE SERVICES RELATED EQUIPMENT

- 25.1 For the avoidance of doubt, this clause applies to any equipment provided by us that is Purchase Equipment, Mobile Equipment, Mobile Services Related Equipment and is not Data & Internet Services Related Equipment and may include equipment supplied by a Supplier.
- 25.2 If you purchase any Voice Services Related Equipment from us, risk in the equipment passes to you on delivery to the delivery address you nominate in your Application.
- 25.3 You are responsible for maintaining any Voice Services Related Equipment supplied by us or a Supplier. You indemnify us or the Supplier against any loss or damage to the Voice Services Related Equipment unless it is due to fair wear and tear.
- 25.4 You will ensure that any Voice Services Related Equipment supplied to you or facilities and connections used in providing the Voice Services, are not altered, maintained, repaired or connected



to or disconnected from any power source or line except by a person approved by us.

- 25.5 We, or a person approved by us, or our Supplier may require access to your premises from time to time in connection with the provision, inspection and maintenance of Voice Services Related Equipment or Voice Services, including the installation, replacement or modification of necessary telecommunications connection, facilities, wiring or cabling in order for you to receive the Voice Services. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or any contractor, agent or representative approved by us, and our Supplier against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, which must be during Business Hours, we may limit, suspend or cancel the Voice Services. We reserve the right to charge you, at our standard rates, should we, or our Suppliers, not be able to access your premises at the agreed appointment time (regional services will attract an additional charge).

## 26. FAULT REPORTING

- 26.1 We will provide a 7 day fault reporting service. You should notify any faults regarding your Voice Services to our faults team, or the contact number for which is located on your invoice at our website
- 26.2 Actions:
- 1.1.92 We are responsible for correcting faults in supplying the Voice Services. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
  - 1.1.93 We are not responsible for any fault which is on your side of the network termination point, except in relation to Purchase Equipment, or Other Equipment that we are maintaining
  - 1.1.94 We are not responsible for any fault which is within the network of a Supplier. However, we will notify that Supplier of the fault and request that the fault be corrected promptly.

## 27. SERVICE LEVELS

- 27.1 There may be Service Levels applicable to the Voice Services you have chosen in your Application. If Service Levels are applicable, then these are as referred to in your Application and/or as provided to you after you sign your Application or otherwise as varied by us and notified to you from time to time. Details of such Service Levels may also be provided on our website
- 27.2 We are committed to upholding the Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2) issued by the Australian Communications and Media Authority (CSG Standard) for eligible voice services. Please refer to our Customer Service Guarantee Policy Document available through our website.

## 28. TERMINATION

- 28.1 The services described in this Part of the SFOA may be terminated in accordance with clause 12.

## 29. DEFINITIONS

- 29.1 In this Part A, unless the context requires otherwise:
- 1.1.95 13 Calls means the relevant 13 inbound services provided to you by us.
  - 1.1.96 1300 Calls means the relevant 1300 inbound services provided to you by us.
  - 1.1.97 1800 Calls means the relevant 1800 inbound services provided to you by us.
  - 1.1.98 Data Calls means a call enabling carriage of voice, data, text or image by means of digital data.
  - 1.1.99 Eligible Calls for Voice Services are Local Calls (voice not data), National Calls (voice not data), International Calls (voice not data), Fixed to Mobile Calls (voice not data), 13, 1300, 1800 Inbound Services. For clarity, they do not include PSTN Data Calls, calls to 13, 1300, 1345, calls to international mobiles, calls to time and weather and or any other call type not specifically identified as being an Eligible Call (including where so identified under a Rate

Sheet).

- 1.1.100 Fixed to Mobile Calls means calls made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.
- 1.1.101 International Calls means a call made from a PSTN or ISDN telephone service from Australia to another country; from Australia (excluding Norfolk Island) to Norfolk Island; from Norfolk Island to the rest of Australia; or from Australia's bases in the Antarctic to Australia and other countries.
- 1.1.102 Local Calls means a call between a telephone service and a telephone service where: the A-Party and the B-Party are in the same Standard Charging Zone; the A-Party and the B-Party are in adjoining Standard Charging Zones; or either the A- Party or the B-Party is located in a Charging Precinct and the other is in its designated Standard Charging Zone, as defined in the Act, the Numbering Plan, and the Telstra PSTN SFOA.
- 1.1.103 Long Distance Preselection Option means that we will be your default provider for your International Calls, National Calls and Fixed to Mobile Calls.
- 1.1.104 National Calls means a call made within Australia from a PSTN or ISDN telephone service to a PSTN or ISDN telephone service, which is not a Local Call or a Fixed to Mobile Call.
- 1.1.105 ToIP means Telephony over internet protocol as specified in your Application.
- 1.1.106 VoIP means Voice over internet protocol as specified in your Application.

## **PART B – DATA INTERNET SERVICES**

### **30. APPLICATION OF THIS PART**

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

### **31. PROVISION OF DATA & INTERNET SERVICES**

- 31.1 We will provide the Data & Internet Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Data & Internet Services have been completed or when your account with us has been established.
- 31.2 We will provide the required Data & Internet Services and its coverage subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Data & Internet Service is connected. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with Data & Internet Services where capacity, geography or technical capability, affect the application or installation of the Service to your premises. For certain Data & Internet Services, coverage may only be available in selected metropolitan and regional areas
- 31.3 We do not warrant that the Data & Internet Services will be free of interruption, delays or faults. You acknowledge and agree:
  - 1.1.107 that certain Data & Internet Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
  - 1.1.108 that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.
- 31.4 We are not obliged to provide Data & Internet Services to you if the physical infrastructure of your premises or site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.
- 31.5 You agree that we may not supply a 'standard telephone service' (for the purposes of the Act) under this Part B with the internet access component and as such the Data & Internet Services are not subject to the Customer Service guarantee standard administered by the ACMA.

### **32. PERIOD OF AGREEMENT**

- 32.1 You must take the Data & Internet Services for the Minimum Term if specified in your Application, subject to your rights
- 32.2 The Minimum Term commences when:
  - 1.1.109 if you are arranging for self installation of the required equipment and:
  - 1.1.110 you supply the required equipment yourself, on the date we activate your Data & Internet Services; or
  - 1.1.111 if we supply you with the required equipment, on the date of delivery of the required equipment; or

- 1.1.112 if we are installing equipment for you and:
  - 1.1.113 the equipment is being installed at a single Site, the date that we install the equipment at the Site; or
  - 1.1.114 the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.
- 32.3 Unless you notify us in writing prior to the expiration of the Minimum Term that you wish to cease receiving the Data & Internet Services at the expiration of the Minimum Term, the Minimum Term of this SFOA will be automatically extended from month to month ("Holding Over Period") at the same rate, including the same Minimum Monthly Spend, and on the same terms and conditions.

### **33. DATA & INTERNET SERVICES CHARGES**

- 33.1 The charges applicable to the Data & Internet Services are specified in the Rate Sheets and the applicable Schedule attached to your Application.
- 33.2 The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and the Rate Sheets. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.
- 33.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.
- 33.4 We may vary any charges for the Data & Internet Services in accordance with clause 2.4.

### **34. SHIFTS/ MOVES/ UPGRADES**

- 34.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule attached to your Application. If Data & Internet Services cannot be provided at your new address, we may terminate this SFOA by notice to you.
- 34.2 You may be able to change your Data & Internet Service if it is specified in the applicable Schedule attached to your Application. Changes to your plan involving a downgrade on the Data & Internet Service or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

### **35. CLAUSE IS NOT USED**

### **36. SERVICE LEVELS**

- 36.1 We will use reasonable endeavours to meet the Response Target where response target/SLA's are advertised and/or advised by us as specified in the Terms and conditions.
- 36.2 We will use our reasonable endeavours to meet the Restore Target and the Availability Target.
- 36.3 The Availability Target will be calculated in accordance with the formula set out:  $(\text{Available Hours during month} \times 100) \div \text{hours in month}$
- 36.4 The Available Hours are measured at a point in the relevant network designated by us to be indicative of the availability experienced by you.
- 36.5 At your request, we will calculate the Available Hours in a calendar month. If a Service is unavailable to you for any period of time as a result of an outage, this period of time will only be excluded from your Available Hours if you notify our Help Desk within five days of the outage.
- 36.6 Availability Guarantee:
  - 1.1.115 If the Availability Target is not met then, for each hour of Service unavailability or fraction thereof in any calendar month above the Service unavailability time which meets the Availability Target, at your request your account shall be credited by an amount equivalent to



one day of Charges (on a pro-rata basis) for the Service with respect to which the Availability Target has not been met.

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

## **37. ACCEPTABLE USE POLICY**

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

## **38. SOFTWARE**

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

## **39. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

- 39.1 In order to access the Data & Internet Services, we or our Suppliers may provide you with Data & Internet Services Related Equipment or you may use your own equipment, as nominated in your Application and approved by us.
- 39.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

## **40. INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

- 40.1 We may either install your Data & Internet Services Related Equipment at the Site or you may install the Data & Internet Services Related Equipment yourself as specified in your Application.
- 40.2 You are responsible for all costs of delivery (as specified in the applicable Schedule attached to your Application) and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.
- 40.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.



- 40.4 If we are installing your Data & Internet Service Related Equipment, you must provide us or our Suppliers with reasonable access to your premises during Business Hours unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.
- 40.5 You are responsible for all additional installation service charges where the work required on Site is greater than two hours unless otherwise stated in your Application. The installation charge is payable on commencement of the Service (pro rated where the network is delivered to you in stages).
- 40.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- 40.7 Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Schedule attached to your Application. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application.
- 40.8 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the Data & Internet Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.
- 40.9 Telephone line configuration changes are only available for our supported modems and routers.
- 40.10 Changes made by you to the supplied configuration are at your risk and will not be supported by us.

## **41. YOUR OBLIGATIONS IN RELATION TO DATA & INTERNET SERVICE RELATED EQUIPMENT**

- 41.1 If you are supplied with Data & Internet Services Related Equipment by us or by our Suppliers on our behalf, other than where you purchase such equipment, then the whole of this clause 41 applies to you. If you purchase Data & Internet Related Equipment from us, then only clauses 41.4, 41.7, 41.8, 41.12 apply to you.
- 41.2 We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of this SFOA.
- 41.3 The Data & Internet Services Related Equipment is and remains our property unless specified by us (or the property of our Suppliers or of an entity related to us or our Suppliers) and you hold it for us or our Suppliers (as the case may be). We may change the Data & Internet Services Related Equipment at any time by giving you three days notice.
- 41.4 Risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.
- 41.5 You must not do anything to give rise to an adverse claim to our rights (or the rights of our Suppliers or of an entity related to us or our Suppliers) in or ownership of the Data & Internet Services Related Equipment.
- 41.6 The Data & Internet Services Related Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Data & Internet Services Related Equipment without our written permission.

## **42. FAULT REPORTING AND MAINTENANCE**

- 42.1 If we have a Service Level agreement with you then the Service Level nominated in your Application applies and details of such Service Levels are available at our website or available from us on request. You should notify any faults regarding your Data & Internet Services to our help desk, the contact number for which is located on your invoice and on our website

- 42.2 Before reporting a fault to us, you should ensure that the fault is not due to hardware, software or networks that are not being managed by us. We reserve the right to charge you our standard on-site visit fee if no fault is found.
- 42.3 We are:
- 1.1.120 responsible for correcting faults in the Services and you must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility;
  - 1.1.121 not responsible for any fault which is on your side of the network termination point; and
  - 1.1.122 not responsible for any fault which is within the network of a Supplier and we will notify that Supplier of the fault and request that the fault be corrected promptly.
- 42.4 If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays) or if Service Levels apply to your Data & Internet Service, at the times specified in the Service Level Agreement.
- 42.5 We reserve the right to charge you in accordance with the relevant Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time. Regional services may attract an additional charge which is also specified in the relevant Schedule attached to your Application. A charge may be due where line fault requires an on-site visit to rectify.
- 42.6 You are responsible for the supply and maintenance of any additional hardware required to make the Data & Internet Services operational as a result of incompatible services being used.

### **43. TERMINATION**

- 43.1 The services described in this Part of the SFOA may be terminated in accordance with clause 12.

### **44. DEFINITIONS**

- 44.1 In this Part, unless the context requires otherwise:
- 1.1.123 Acceptable Use Policy means the policy relating to your use of the Internet Services which can be accessed on our website.
  - 1.1.124 Internet Services means that part of the Data & Internet Services which is accessible via the public internet. This includes internet access, email facilities, web-page facilities and any other related internet facility or services that we may provide from time to time. This specifically does not refer to wide area networking services that are not accessible via the public internet.
  - 1.1.125 Minimum Monthly Spend means the total monthly recurring charge specified in the Rate Sheets or your Application for the Data & Internet Service.
  - 1.1.126 Service Levels means the service levels applicable to the Data & Internet Service you have chosen in your Application and details of such Service Levels are available on our website or available from us on request.
- 44.2 In this Part, any references to 'standard' or 'regional' coverage, is to such coverage as determined by us from time to time.

## **PART C – MOBILE SERVICES AND MOBILE EQUIPMENT**

### **45. APPLICATION OF THIS PART**

- 45.1 This Part C applies if you have requested in your Application that we supply you with Mobile Services, and if nominated in your Application, Mobile Equipment. This Part C sets out the terms and

- conditions on which we will supply you with Mobile Services and (if applicable) Mobile Equipment.
- 45.2 To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part C and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Voice Services, or Purchase Equipment.
- 45.3 The Minimum Term, the Minimum Monthly Spend, the Mobile Equipment, as varied in accordance with this Part C.
- 45.4 We will provide the Mobile Services to you, for the Minimum Term specified in your Application, when your accounts are transferred from your current Supplier to us in accordance with the MNP process and any other arrangements with another Supplier for the provision of the Mobile Services have been completed or when your account with us has been established.
- 45.5 We will provide the Mobile Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.
- 45.6 We will provide the required Mobile Services subject to availability, geographical and technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G network or GPRS Network is connected. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Mobile Services where capacity, geography or technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G Network or GPRS Network is connected affect the Mobile Services or Mobile Equipment. If you require a coverage map or further information you may telephone Customer Service.
- 45.7 We do not warrant that the Mobile Services or Mobile Equipment will be free of interruption, delays or faults. The Mobile Service is only available (as the case may be):
- 1.1.127 within the limitations of the GSM Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable;
  - 1.1.128 within the limitations of the 3G Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
  - 1.1.129 within the limitations of the GPRS Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
- 45.8 You acknowledge and agree:
- 1.1.130 that the Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
  - 1.1.131 that you are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative telecommunications services suitable for such purposes.

## **46. APPROVED EQUIPMENT**

- 46.1 You may only access the Mobile Service and the Value Added Feature with equipment, SIM cards and other devices approved by us. You may only use the Mobile Service and the Value Added Feature with a handset or other device as being compatible with the Value Added Feature. However, you agree that:
- 1.1.132 we do not represent or guarantee the extent to which a handset, Mobile Equipment or other device we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature; and
  - 1.1.133 your ability to use a Value Added Feature and each of its features will depend upon the features and functionality of your handset or Mobile Equipment.
  - 1.1.134 The use of Optus network sim cards on an untimed or timeless voice plan in any device other than a mobile handset device is strictly prohibited. For further information please refer to the reason use section of our Fair use policy.

## **47. MINIMUM TERM**

- 47.1 If you are on a Minimum Term Contract the fixed minimum term specified in your Application commences on the provision of the Mobile Services or when the SIM is activated.
- 47.2 The reference in this Part C to a Minimum Term Contract relates to one SIM only and (where applicable) one handset and/or other Mobile Equipment. As nominated in your Application, you may acquire as a Package more than one Minimum Term Contract by which you will enter into one or more separate contracts with us.
- 47.3 At the end of the Minimum Term we will continue providing the Mobile Service to you until you notify us that you no longer require the Mobile Service. After we receive your notice we will stop providing the Mobile Service from the date received or future date that you advise us. If you wish to cancel the Mobile Service before the end of the Minimum Term you must give us notice and pay all Charges under this SFOA. Subject to you having paid all Charges and complying with all other obligations under the SFOA with you, this SFOA will terminate.

## **48. MINIMUM MONTHLY SPEND**

- 48.1 Each monthly payment will comprise:
  - 1.1.135 the amount of the Minimum Monthly Spend for Eligible Calls (Mobile Services), Mobile Equipment as specified in your Application (the "Minimum Monthly Spend"); and
  - 1.1.136 charges for Mobile Services relating to non-Eligible Calls and calls above the Eligible Call spend.
- 48.2 There may also be charges which are identified in your Application and any other charges which we can charge under this SFOA. We will invoice you in advance for the Minimum Monthly Spend.
- 48.3 Minimum Monthly Spend:
  - 1.1.137 You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.
  - 1.1.138 You agree to pay the Minimum Monthly Spend even if your actual spend on Eligible Calls, which is a component of this Minimum Monthly Spend, is less than the Minimum Monthly Spend specified in your Application.
  - 1.1.139 If you do not reach your Eligible Call spend in a month, this amount will not accrue and will not roll-over into the following month, unless we agree in your Application to roll-over.
  - 1.1.140 Your Eligible Call spend is calculated based on all Eligible Calls made by you using the Mobile Services which are captured and recognised by us within a billing period, regardless of when the Eligible Call was actually made.
  - 1.1.141 You agree to pay, if any, the charges for Mobile Services used in excess of the Eligible Call spend and charges relating to non-Eligible Calls each month throughout the Minimum Term.
  - 1.1.142 In calculating the charges for Mobile Services included in your Minimum Monthly Spend, we may include other charges which are additional to the Minimum Monthly Spend.
  - 1.1.143 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of Service supply in the relevant month.
- 48.4 Your Minimum Term Contract or plan will be calculated by us based on your Minimum Monthly Spend commitment.
- 48.5 Your right to vary the Minimum Monthly Spend:
  - 1.1.144 At any time during the Minimum Term you can choose to increase the Minimum Monthly Spend, with our agreement.
  - 1.1.145 If the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the Minimum Monthly Spend based on the Rate Sheet (at the commencement of your Minimum Term).
  - 1.1.146 You may not decrease your minimum monthly commitment during the agreement period.

## **49. SIM**

- 49.1 You will receive only one SIM card for one GSM or 3G Mobile Service.
- 49.2 We may charge you a SIM card replacement fee or a fee for a new sim card.
- 49.3 You must inform us immediately if the SIM card is lost, stolen or damaged by calling Customer Service. We will then disconnect or Bar your connection (you will be responsible for all charges up to this time) until the SIM card is replaced or repaired. We may charge you a SIM replacement fee unless we were at fault.

## **50. VALUE ADDED FEATURES AND MOBILE PREMIUM SERVICE**

- 50.1 The Mobile Service has the Value Added Features specified in your Application or at the time of provisioning.
- 50.2 We may vary the Value Added Features in accordance with clause 2.4 of the General Terms.
- 50.3 The Mobile Service has the Mobile Premium Service nominated in your Application. You agree and acknowledge
  - 1.1.147 that the amount of charges for the Mobile Premium Service component of your Mobile Service, including requests for Content from content providers and charges for Content purchased from content providers, will be included in your invoice for the Mobile Service;
  - 1.1.148 we will not charge you for our provision of credit in relation to the Mobile Premium Service Content charges;
  - 1.1.149 we may prevent, suspend or terminate your access to the Mobile Premium Services in certain circumstances, including in response to notices issued by ACMA under the Mobile Premium Services Determination;
  - 1.1.150 that you must direct any queries or complaints about the Content supplied by a content provider directly to that content provider in the first instance. Alternatively, you may complain to Customer Service;
  - 1.1.151 unless otherwise advised by us, access to age-restricted services by way of the Mobile Premium Service is not permitted or available;
  - 1.1.152 resupply or resale of Content obtained from content providers and by using the Mobile Premium Service is prohibited;
  - 1.1.153 unlawful use of Content obtained from content providers and by using the Mobile Premium Service is prohibited.

## **51. MOBILE SERVICES CHARGES**

- 51.1 The charges applicable to the Mobile Services are specified in the Rate Sheets and your Application.
- 51.2 Only calls captured and recognized by us within the bill period are included in Minimum Monthly Spend calculation. Certain call types such as international calls may take up to 3 months to appear on your bill.
- 51.3 International call rates and international roaming rates are subject to variation. Please contact Customer Service to confirm any prices before calling or travelling overseas.

## **52. MOBILE NUMBER PORTABILITY**

- 52.1 Subject to clause 5, provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.
- 52.2 If in providing the Mobile Services to you, we need to change your arrangements with your current Supplier, then we will do so in accordance with clause 5 and this clause 52. By signing the Mobile Number Portability Customer Authorisation ("MNP Authorisation") which forms part of your Application, you acknowledge and agree:

- 1.1.154 to your current Supplier transferring to us your Service Number;
  - 1.1.155 that we are only transferring your Service Number not your mobile service. This means you may lose value added services and/or Value Added Features provided by your current Supplier. When you are connected to the Mobile Services you will use the Mobile Services and Value Added Features specified in your Application, which may be different to the features that you had with your current Supplier;
  - 1.1.156 that by transferring your Service Number, the Mobile Service and/or any Value Added Features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
  - 1.1.157 that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you transfer your Service Number to us;
  - 1.1.158 that your current Supplier may or may not disconnect your existing service and/or value added services;
  - 1.1.159 if you are porting between GSM and 3G or any other mobile platform, you may need to purchase new handset and/or Mobile Equipment;
  - 1.1.160 if you intend to use your existing handset and/or Mobile Equipment, you may need to get it unlocked or reprogrammed prior to porting. You may also need to get new Mobile Equipment;
  - 1.1.161 that you may need to purchase approved Mobile Equipment to access the Mobile Service;
  - 1.1.162 that you have not cancelled your existing mobile service with your current Supplier;
  - 1.1.163 that you can only withdraw your MNP Authorisation prior to the port cutover notification being received by us from your current Supplier. Withdrawing MNP Authorisation does not change your contractual obligations to us under your Application and this SFOA;
  - 1.1.164 that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to port, if the information you provide in the MNP Authorisation is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to port or dispute the rejection with your current Supplier;
  - 1.1.165 that if your Service Number cannot be transferred then you may accept a new Service Number from us; that your authorisation to transfer your Service Number to the Mobile Services is valid for 30 days from the date of the Mobile Number Portability Authorisation Form;
  - 1.1.166 that in the event of a reversal, we:
  - 1.1.167 are not responsible for any period of outage of Mobile Service or Value Added Features or your current service or any value added service provided by your current Supplier;
  - 1.1.168 do not warrant that your Service Number will be transferred to us within any specified timeframe; and
  - 1.1.169 to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of your Service Number to us, port, withdrawal or reversal, including a negligent act or omission by us;
  - 1.1.170 that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and
  - 1.1.171 that we reserve the right to charge for transferring your Service Number to and from us.
- 52.3 We will not accept any liability for any amounts owing by you to another Supplier for services which the other Supplier provided to you prior to the commencement of the Mobile Services. You agree to indemnify us against any claims made on us by your previous Supplier in relation to such amounts.



## **53. MOBILE EQUIPMENT AND MOBILE PLANS**

- 53.1 For the avoidance of doubt, this clause only applies to Mobile Equipment.
- 53.2 To be eligible to receive Mobile Equipment you must:
- 1.1.172 apply for Mobile Services in your Application;
  - 1.1.173 apply for Mobile Equipment in your Application;
  - 1.1.174 agree to our Minimum Term and Minimum Monthly Spend requirements;
  - 1.1.175 use the Mobile Services and Mobile Equipment for business or personal use only; and
- 53.3 meet our minimum credit requirements.
- 53.4 If you purchase outright any Mobile Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery. We will retain ownership in all Mobile Equipment purchased from us until you have paid for them in full in accordance with Part D. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Mobile Equipment will not pass to you until this residual amount is paid in accordance with your Application.
- 53.5 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Mobile Equipment. You cannot sell or use the Mobile Equipment for a loan or deal with it in any way until you own the Mobile Equipment. If you damage or lose any Mobile Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Mobile Equipment. You are responsible for arranging your own insurance for any Mobile Equipment.
- 53.6 You are responsible for maintaining and repairing any Mobile Equipment supplied by us or our Supplier and complying with the manufacturer's instructions relating to the Mobile Equipment and SIM (where applicable) and its use. You indemnify us and our Supplier against any loss, damage, malfunction or failure resulting from misuse, neglect, abuse, use for a purpose for which the Mobile Equipment was not designed or is not suited, in connection with the Mobile Equipment.
- 53.7 Lost or stolen Mobile Equipment: If:
- 1.1.176 your Mobile Equipment is lost or stolen you must contact Customer Service to request that your SIM card and/or Mobile Equipment be blocked. This will prevent the Mobile Equipment being used on the GSM Network or 3G Network;
  - 1.1.177 you obtain a handset that is lost or stolen, we or our Supplier may block your handset without your consent even if you are not aware it is stolen; and
  - 1.1.178 you obtain the Mobile Equipment and Mobile Service under false pretences, we or our Supplier may block the handset without your consent.

## **54. CHANGING PLANS**

- 54.1 We may allow you to change your original Minimum Monthly Spend or move to another plan during your Minimum Term if it is specified in your Application or if agreed by us in writing. We may require you to commit to a new Minimum Term from the date of change, and a fee may apply.

## **55. ACCEPTABLE USE**

- 55.1 You warrant that while using the Mobile Services, Value Added Features or the Mobile Equipment you or anyone else will not engage in conduct which affects the GSM Network or 3G Network or another person's network including the sending of commercial electronic messages as defined under the SPAM Act 2003 (Cth).
- 55.2 You warrant that you will at all times comply with the SMS Code of Conduct irrespective of whether the SMS Code of Conduct has been registered by the ACMA under Part 6 of the Act.
- 55.3 While we will exercise due care and skill in providing the Mobile Service, you agree that your ability to use the Mobile Service to access, use, download and upload Content; or send data in any form including voice, SMS and Content will depend upon the features and functionality of your handset and the nature and quality of the Content being accessed or sent.



- 55.4 While receiving Mobile Services, you agree to comply with our Fair Use Policy set out on our website or available from us on request.
- 55.5 You acknowledge that the ability to access, view or otherwise receive Wireless Packet Data is dependent upon external factors outside our control and the control of our Suppliers, including:
  - 1.1.179 the media contained in MMS Messages;
  - 1.1.180 WAP Data and Packet Data media limitations; and
  - 1.1.181 Wireless Device type, software version and capabilities.

## 56. LOST AND STOLEN AND FAULT REPORTING

- 56.1 We will provide a seven days a week lost and stolen reporting service. You should notify our customer service team for this.
- 56.2 We will provide a fault reporting service via our help desk during Business Hours.
- 56.3 Actions:
  - 1.1.182 We are responsible for correcting faults in the Mobile Service. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
  - 1.1.183 We are not responsible for any fault which is within the network of a Supplier.
  - 1.1.184 We will notify that Supplier of the fault and request that the fault be corrected promptly.

## 57. TERMINATION

- 57.1 The services described in this Part of the SFOA may be terminated in accordance with clause 12.

## 58. DEFINITIONS

- 58.1 In this Part C, unless the context requires otherwise:
  - 1.1.185 3G means 3<sup>rd</sup> generation mobile network on the 900Mhz or 2100Mhz spectrum
  - 1.1.186 Content means any data, information, image or downloadable file provided by us or a content provider and that can be accessed using the Mobile Services.
  - 1.1.187 Eligible Calls for Mobile Services are any call type specifically identified as being an Eligible Call under a Rate Sheet and may include SMS; MMS; voicemail (while in Australia); circuit fax and circuit data (while in Australia); mobile calls while in Australia to Local Calls, National Calls, International (IDD) Calls and Australian mobile network numbers, 13, 1300 and 1800 numbers. For clarity, they do not include mobile calls to 12 prefixes, 19 prefixes, satellite services, global services, international roaming (including but not limited to access and use of your Mobile Service for SMS, MMS, internet, WAP, circuit fax, data calls, voicemail and any calls while outside of Australia) or any other call type not specifically identified as being an Eligible Call (including where so identified under a Rate Sheet).
  - 1.1.188 GSM means Global System for Mobiles as defined by ETSI and the GSM Memorandum of Understanding and as applied in Australia.
  - 1.1.189 GSM Network means the Telstra GSM mobile telephone network in the 900 MHz and 1800 MHz spectrum range.
  - 1.1.190 GPRS means general packet radio service and as specified in your Application.
  - 1.1.191 GPRS Network means the Telstra general packet radio service.
  - 1.1.192 Internet means the International network of data networks utilising the TCP/IP protocol suite of which the SMS Network forms part.
  - 1.1.193 International Calls means a call from a cellular public mobile telecommunications service from Australia to another country.
  - 1.1.194 Mobile to Local Calls means calls made from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN number which if made from a PSTN or

ISDN number would be a Local Call.

- 1.1.195 MNP Code means the code entitled ACIF C570:2003 Mobile Number Portability registered by the ACA under section 117 of the Act, as at 1 February 2003 or as otherwise agreed in writing between the parties.
- 1.1.196 Mobile Equipment means any equipment purchased from us as specified in your Application that is not Data & Internet Equipment, or Data & Internet Services Related Equipment, and may include handsets, accessories, and equipment supplied by us but does not include the SIM.
- 1.1.197 Mobile Number Portability or MNP has the meaning given to it by the Industry Code: Mobile Number Portability registered by the ACMA under Part 6 of the Act.
- 1.1.198 Mobile Services means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you on the terms and conditions of this SFOA and as specified in your Application.
- 1.1.199 National Calls means a call made within Australia from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN telephone service that is not a Mobile to Local Call.
- 1.1.200 SMS Code of Conduct means the SMS Code of Conduct developed by the Australian Communications Industry Forum and registered or published by the ACMA under Part 6 of the Act.
- 1.1.201 SIM means the subscriber identity module owned by us and we issue to you which enables you to access the Mobile Service.
- 1.1.202 WAP means Wireless Application Protocol which is a protocol that enables internet services to be delivered to small-screen mobile devices.
- 1.1.203 Wireless Packet Data means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded using the Mobile Service.

## PART D – PURCHASE EQUIPMENT

### 59. APPLICATION OF THIS PART

- 59.1 This Part D applies if you have requested in your Application that we supply you with Purchase Equipment and sets out the terms and conditions on which we will supply you with the Purchase Equipment. You are only eligible to purchase Equipment if you also purchase Voice Services, Data & Internet Services, Mobile Services, or any other Services specified in your Application that are required to be purchased with that Equipment. In addition, as stated in your Application:
  - 1.1.204 we may offer you a credit towards the purchase price of equipment (including Mobile Equipment), on the terms specified in your Application.
  - 1.1.205 To the extent relevant, the General Terms apply to the Purchase Equipment and the Purchase Equipment Charge as though specified in full in this Part D and such terms or part of such terms will be relevant except to the extent they relate to Voice Services and Data & Internet Services, and Mobile Services, and charges for Voice Services, Mobile Services, and Data & Internet Services.
  - 1.1.206 For the avoidance of doubt all your rights and obligations in relation to the Purchase Equipment and payment of the Purchase Equipment Charges are contained in this Part D.

### 60. INSTALLATION

- 60.1 We will provide the Purchase Equipment nominated by you in your Application. You acknowledge that the Purchase Equipment may be either new or refurbished.



- 60.2 You are responsible for all costs of delivery and installation and for preparing the Site for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.
- 60.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.

## **61. PERIOD OF AGREEMENT**

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

## **62. PAYMENT**

- 62.1 You agree to pay the Purchase Equipment Charges (which may be included as part of the Minimum Monthly Spend) stated in your Application each month throughout the Minimum Term. The amount of Purchase Equipment Charges can be varied in accordance with this SFOA.
- 62.2 You agree that we may (subject to your rights under this Part D) sell, transfer or assign our rights under this Part D and/or to the Purchase Equipment and that your consent to such dealing is not required.
- 62.3 Termination of any other part of the SFOA does not constitute or effect a termination of this Purchase Equipment Agreement.
- 62.4 If the Services Agreement is terminated in, you must continue paying the Purchase Equipment Charge (which may be included as part of the Minimum Monthly Spend), at the same charges specified in your Application, in accordance with the terms of this Part D, for the remainder of the Minimum Term.
- 62.5 You acknowledge that in respect of any amounts we receive from you in relation to the Minimum Monthly Spend, we will attribute them to charges for Services initially and then to any charges for Purchase Equipment.

## **63. OWNERSHIP**

- 63.1 The Purchase Equipment is and remains our property (or the property of an entity related to us) and you hold it for us until you have paid for it in full in cleared funds. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Purchase Equipment will not pass to you until this residual amount is paid in accordance with your Application. If you damage or lose any Purchase Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Purchase Equipment.
- 63.2 The Purchase Equipment is at your risk from the time of delivery to the address you nominate in your Application for the purposes of delivery.
- 63.3 The warranty period (if any) for each item of the Purchase Equipment and installation workmanship (if installed by us) is detailed in your Application. Any warranty we provide you only covers the Purchase Equipment and not anything else, including but not limited to, things attached to the Purchase Equipment or the wiring already at the Site.
- 63.4 We will use reasonable efforts to transfer to you any manufacturer's warranty in the Purchase Equipment, from the time title passes to you.
- 63.5 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Purchase Equipment. You cannot sell or use the Purchase Equipment for a loan or deal with it in any way until you own the Purchase Equipment.
- 63.6 Manuals provided to you are subject to copyright. The Purchase Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Purchase Equipment without our written permission.
- 63.7 Unless nominated in your Application, we will not provide you with any maintenance or software as part of the Purchase Equipment.

## **64. THINGS YOU MUST DO**

- 64.1 You must:
- 1.1.207 arrange for the Purchase Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty;
  - 1.1.208 comply with the manufacturer's instructions relating to the Purchase Equipment and its use;
  - 1.1.209 comply with all laws and regulations relating to the Purchase Equipment, the use or possession of it, or any premises on which it is situated;
  - 1.1.210 keep the Purchase Equipment at the Site address indicated in your Application, or at such other place as we approve in writing;
  - 1.1.211 produce the Purchase Equipment for inspection or testing by us, or a person approved by us, at our request, and for this purpose allow us access to any place where the Purchase Equipment is kept;
  - 1.1.212 keep the Purchase Equipment under your control or the control of your employees; and
  - 1.1.213 notify us immediately in writing if the Purchase Equipment is lost, stolen or damaged or any person asserts any rights to the Purchase Equipment.

## **65. THINGS YOU MUST NOT DO**

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

## **66. INSURANCE**

- 66.1 Unless agreed otherwise in writing, you must:
- 1.1.218 insure the Purchase Equipment and keep it insured for its full insurable value under an all risks insurance policy;
  - 1.1.219 take out and maintain an adequate level of public risk liability insurance in relation to the Purchase Equipment and its use;
  - 1.1.220 take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
  - 1.1.221 punctually pay all premiums on each insurance policy and not prejudice any policy;
  - 1.1.222 if we request, provide us with adequate evidence of the insurance policies;
  - 1.1.223 irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Purchase Equipment or any injury, death, damage or loss caused by the Purchase Equipment or its use; and
  - 1.1.224 appoint us your attorney;
  - 1.1.225 to make, recover and/or compromise in your name any claim under such insurance or against any person; and
  - 1.1.226 to appropriate any insurance money or other amount received at our option towards repair or replacement of the Purchase Equipment or towards any money payable by you to us or to any third party.



## 67. DESTRUCTION

- 67.1 If the Purchase Equipment is lost, stolen or substantially destroyed we may terminate this SFOA agreement by notice to you.
- 67.2 We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you.
- 67.3 Your obligations under this SFOA continue even if the Purchase Equipment breaks down, is defective or damaged.
- 67.4 If the Purchase Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold the Purchase Equipment Charges or other money.

## 68. OUR ACTION

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

## 69. SOFTWARE

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

## 70. DEFINITIONS

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



## **PART E - MPLS SERVICES**

### **71. APPLICATION OF THIS PART**

- 71.1 This Part E applies if you have requested in your Application that we supply you with the MPLS Service and sets out the terms and conditions on which we will supply you with MPLS Services.
- 71.2 To the extent relevant, the General Terms apply to the MPLS Service as though specified in full in this Part E and such terms of part of such terms will be relevant except to the extent they relate to any services or product other than MPLS Services or where they conflict with this Part, in which case this Part E will take precedence.

### **72. MODIFICATION OF SERVICE**

- 72.1 We reserve the right to modify or substitute any MPLS Service. If there is a material adverse effect on the functionality of the Service, you may notify us in writing within 20 Business Days' of the change with sufficient detail to explain the existence and nature and the material adverse effect. If we determine that there is a material adverse effect and fail to correct it within 30 Business Days' following receipt of your written notice, you may terminate the Service with 60 days' written notice to us without incurring any Early Termination Fee.

### **73. MAINTENANCE OF NETWORK**

- 73.1 We, a supplier or another may conduct maintenance on our network or our supplier's network and this may affect the performance of the MPLS Service. We will use reasonable endeavours to conduct scheduled maintenance on our network outside normal business hours.

### **74. EQUIPMENT AND CUSTOMER EQUIPMENT**

- 74.1 We may need to install cabling and Equipment on your Premises. You authorise us and our contractors to:
  - 1.1.228 enter the Premises for the purpose of performing our obligations under the SFOA;
  - 1.1.229 install, disconnect, maintain, repair and replace any part of such Equipment and cabling;
  - 1.1.230 connect such Equipment and cabling to any equipment in order to enable us to deliver the Service; and
  - 1.1.231 enter the Premises to take all steps reasonably necessary to recover such Equipment on termination of the Service.
- 74.2 You authorise us and/or our contractors to disconnect, install or make amendments to any routers, telephone lines, equipment or cabling at the Premises to enable us to provide the MPLS Service. If you do not own the Premises where the MPLS Service is to be installed, you warrant that you have all necessary permissions to enable us to provide the Service, and for you to confer on us all rights under this SFOA.
- 74.3 You agree to provide us or our contractors with safe and timely access to the Premises to perform our obligations under this SFOA.
- 74.4 You agree to indemnify us against any damage, expense, loss or liability including consequential loss that we may incur arising from our contractors entering the Premises to perform our obligations under this SFOA.
- 74.5 All Equipment remains our property. All equipment other than the Equipment and cabling referring to in clause 74.1 must be returned to us upon the termination of this SFOA.
- 74.6 The Equipment must only be used to access the Service provided under this agreement at the Premises at which we or our contractors install the equipment.
- 74.7 You acknowledge that we are not responsible or liable for any equipment used with the Service,

including your equipment, except for any Equipment supplied by us.

- 74.8 You acknowledge that:
- 1.1.232 we are providing the Equipment to you for the purpose of supplying the Service;
  - 1.1.233 you have no right, title or interest in the Equipment, including any right to deal with the Equipment;
  - 1.1.234 you accept the risk in the Equipment from the time that we provide the Equipment to you; and
  - 1.1.235 we may retain possession of the Equipment at any time and for any reason.
- 74.9 You must not, and must not attempt, to sell, transfer, lease or otherwise deal with Equipment.
- 74.10 While the Equipment is at your Premises, you must take reasonable care to keep Equipment secure and safe from theft, vandalism and damage.
- 74.11 You must ensure that all of your equipment used in connection with the Service:
- 74.12 has all necessary regulatory approvals;
- 1.1.236 complies with all applicable regulatory standards; and
  - 1.1.237 is capable of operating with the Service.
  - 1.1.238 We may require you to immediately cease using and disconnect your equipment, or if you fail to do so we will disconnect your equipment, from the Service if:
    - 1.1.239 there are faults with your equipment that interfere with the Service;
    - 1.1.240 you fail to comply with this clause 74; or
    - 1.1.241 we reasonably consider that your equipment may:
      - 1.1.242 cause death or personal injury;
      - 1.1.243 cause damage to our property or the property of a third party; or
      - 1.1.244 materially impair the operation of our network or a supplier network.

## **75. TRANSFER OF SERVICE**

- 75.1 If you request us to transfer a service of yours that is provided by another supplier you:
- 1.1.245 authorise us to notify your other supplier and sign on your behalf any authorisation required to transfer the service to us;
  - 1.1.246 will give written instructions to your other supplier to transfer the service from your name to us if we request; and
  - 1.1.247 must immediately pay any amounts owing on the transferred services to the other supplier.

## **76. OUR RIGHT TO SUSPEND OR CANCEL A SERVICE**

- 76.1 We may, without liability, immediately cancel or suspend a Service if:
- 1.1.248 there is an emergency;
  - 1.1.249 it is necessary to allow us or a supplier to
    - 1.1.249.1 repair;
    - 1.1.249.2 maintain; or
    - 1.1.249.3 service any part of our network or a supplier network used to supply the Service;
  - 1.1.250 you breach clause 1.5;
  - 1.1.251 we reasonably suspect fraud by you or any other person in connection with the Service;
  - 1.1.252 we are required to do so to comply with a Regulator or a direction by a competent authority;
  - 1.1.253 we experience problems interconnecting our network with any supplier network;



- 1.1.254 a supplier terminates its agreement with us, or ceases to supply services to us, and we are unable to provide your Service using an alternate supplier on terms reasonably acceptable to us;
- 1.1.255 you are subject to an Insolvency Event;
- 1.1.256 we have reasonable grounds to believe that you will not or will be unable to make any payment that is due to us;
- 1.1.257 we have reasonable grounds to believe that the volume of traffic from you adversely affects our network (including but not limited to a traffic loop where you traffic is delivered by us to another carrier for termination and ultimately returned to us); or
- 1.1.258 we are otherwise entitled to do so under this SFOA.

## 77. URGENT CHANGES

- 77.1 Where a change to this SFOA is required by law or is in our reasonable opinion necessary to prevent fraud or for technical reasons, we will proceed with the change, without liability, and we will try to give you as much notice of the change as possible.

## 78. DEFINITIONS

- 78.1 The following definitions apply to this Part E:
  - 1.1.259 *Effective Date* means the date you sign the Application for MPLS Services.
  - 1.1.260 *Premises* means the premises/site for the location of the MPLS Services.



## ANNEXURE A: – EARLY TERMINATION FEES

Product	Early Termination Calculation Method /Charge
Mobile Services	Minimum monthly commitment per service x months remaining in contract
Inbound Services	Minimum monthly commitment per service x months remaining in contract
Mobile Broadband Services	Minimum monthly commitment per service x months remaining in contract
VoIP Services	Minimum monthly commitment per service x months remaining in contract
Web & Mail Hosting Services	Minimum monthly commitment per service x months remaining in contract