

PRIMUS TELECOMMUNICATIONS PTY LTD ABN 69 071 191 396
PRIMUS TELECOMMUNICATIONS (AUSTRALIA) PTY LTD ABN 77 061 754 943

CORE TERMS
(version February 2006)

This document:

- Is the Core Terms of a standard form of agreement (“SFOA”) under section 479 Telecommunications Act 1997;
- Applies to contracts with Customers made on and after 28 February 2006;
- Does not apply if and to the extent otherwise agreed between Primus and a Customer.

1.	DEFINITIONS	1
2.	INTERPRETATION	5
3.	IMPORTANT: CONSUMER CONTRACTS CODE	5
4.	IMPORTANT: CREDIT CODE.....	6
5.	CREATING A SERVICE CONTRACT	6
6.	APPLICATIONS	6
7.	SERVICES.....	7
8.	TERM OF SERVICE CONTRACT	7
9.	CHARGES	7
10.	INVOICES AND PAYMENT	9
11.	CHARGE DISPUTES	9
12.	GST	10
13.	CREDIT LIMITS.....	10
14.	CREDIT CHECKS	10
15.	PERSONAL INFORMATION	11
16.	YOUR OTHER OBLIGATIONS.....	11
17.	WHERE YOU ACT THROUGH AN AGENT	13
18.	EQUIPMENT	13
19.	FAULTS	14
20.	TRANSFER.....	14
21.	NUMBERS.....	15
22.	SUSPENSION OR TERMINATION	15
23.	CUSTOMER SERVICE GUARANTEE	17
24.	IMPORTANT NOTICE ABOUT IMPLIED WARRANTIES AND LIABILITY LIMITATIONS	18
25.	IMPLIED WARRANTIES AND CONDITIONS	18
26.	WARRANTY AND INDEMNITY.....	19
27.	NO LIABILITY	19
28.	INTELLECTUAL PROPERTY.....	19
29.	CONFIDENTIAL INFORMATION	20
30.	FORCE MAJEURE.....	20
31.	NOTICES.....	20
32.	GENERAL.....	20
33.	SPECIAL ASSISTANCE	21
34.	CHANGES TO THESE CORE TERMS OR A SERVICE SCHEDULE	21
35.	CHANGE RULES	22

1. DEFINITIONS

Unless the context requires otherwise:

‘Acceptable Use Policy’ means a published document that imposes limits in specific circumstances on Your use of a Service, including for network integrity, commercial, operational or legal reasons.

'Act' means the Telecommunications Act 1997 (Cth). 'Agreement' (when used in an Application or a Service Schedule) means the same thing as 'Service Contract'.

'Application' means an application submitted or request made by You to Us, in any format acceptable to Us, for a Service.

'Apply' means to make an Application.

'Billing Period' means the interval at which We propose to render Invoices – normally one month, but We may vary it.

'Broadband' means each of the forms of Internet Access which We designate as Broadband (at present including ADSL, other xDSL, satellite, ISDN, fibre optic and wireless (but not Internet Access via 56k dial-up modem)).

'Bundle' means a Plan under which Service/s and/or Feature/s are supplied by Us as a package and/or for a Minimum Term, on such terms and conditions as are specified.

'Carriage Service Provider' means the same thing as in the Act.

'Change Rules' has the meaning given by clause 35.

'Charge' means amounts payable to Us by You for the Services.

'Confidential Information' means all information (except information that is in the public domain other than as a result of a breach of an obligation of confidentiality) regarded by that party or any Related Body Corporate as being confidential, whenever the other party became aware of the information.

'Consumer' has the meaning given by clause 3.3.

'Consumer Contracts Code' means ACIF Code C620:2005 *Consumer Contracts* or any amended or replacement version of it.

'Consumer Legislation' means the Trade Practices Act 1974 (Cth), the Fair Trading Act relevant to each State, and other equivalent or like legislation of an applicable jurisdiction.

'Core Terms' means these clauses headed as such.

'Corporate Customer' means a Customer of a Corporate Service.

'Corporate Service' means a Service which is of a type, or which is supplied on terms, which We designate for "corporate" users, as opposed to residential or private users.

'Credit Code' means ACIF Code C541:2003 *Credit Management* or any amended or replacement version of it.

'Credit Limit' means an amount We specify as such.

'Credit Reporting Agency' means the same thing as in the Privacy Act 1988.

'Customer' means You.

'Customer Equipment' means Equipment (including Equipment Sold) that is owned by, or in the possession, custody or control of You, and which is not Our Equipment.

'Customer Service Guarantee' means The Telecommunications (Customer Service Guarantee) Standard 2000 (No 2) (CSG).

'Direct Debit' means an automatic payment from Your nominated financial institution or credit card account.

'Due Date' means the date which is 14 days after the date of the Invoice on which that Charge first appears, unless that Invoice or a Service Contract specifies another date.

'Emergency' means any actual or apprehended event or condition that in Our reasonable opinion of may endanger the safety or health of a person, or damage any property or cause

interruption to any Service or affect in any way the normal operation of the Our Network or any interconnected network or expose any person to legal liability or to any loss, damage or expense.

'Equipment' means any hardware, software or other infrastructure used in connection with a Service.

'Equipment Sold' means Equipment sold by Us to You.

'Fair Trading Act' means any of the following that apply to a Service Contract: the Fair Trading Act 1999 (VIC), Fair Trading Act 1987 (NSW), Fair Trading Act 1989 (QLD), Fair Trading Act 1987 (SA), Fair Trading Act 1987 (WA), Fair Trading Act 1990 (TAS), or Fair Trading Act 1992 (ACT).

"Features" means Services or attributes of Services identified by Us as Features in a Service Contract.

'Fixed Charge' means a Charge that is not calculated by reference to volumes of data transferred or stored, or time on line, or any other variable factor.

'Fixed Term Contract' means a Service Contract with a fixed term of more than a month, and includes a Service Contract with a Minimum Term, but only for period of the Minimum Term.

'Force Majeure' means an unforeseen or uncontrollable force or event, such as fire, flood, earthquake, storm or other disturbance caused by the elements, an act of God, war, strike, lockout, riot, explosion, insurrection, governmental action or another event of the kind mentioned above, which is not reasonably within the control of the party affected, but excludes in Your case, a failure to pay Charges by Due Date or a delay resulting from an inability to obtain financing.

'GST' means goods and services tax under A New Tax System (Goods and Services Tax) Act 1999.

"Internet Access" means being able to access the Internet.

"Internet Services" means Services that provide Internet Access and related Services, including if it is so agreed, access to email.

'Invoice' means an account rendered by Us for Charges.

'iPrimus' means Us.

'Minimum Term' means any period We specify as the minimum term of a Service Contract.

'National Relay Service' is designed to provide access to a standard telephone service to people who have a speech impediment, who are deaf, or who have a hearing impairment. It has the same meaning as in Section 95 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).

'New Version' means an amended or replacement version of these Core Terms or a Service Schedule.

'Notice in Writing' means providing the information in writing by any of the following methods:

- (a) delivering the information to You in person;
- (b) sending the information by pre-paid post to the address listed in our records for You;
- (c) transmitting the information to Your electronic mail address;
- (d) including the information on or in your Invoice, including an Invoice made available to You in electronic format via our web site; and

(e) in the case of Service Contracts for Pre-Paid Products, any of the above means, or by making the information available to You by means such as through a web site or at a retail outlet and informing You (by means of a recorded message or text message, or in writing) how You can obtain the information.

'Other Supplier' means a third party supplier (whether to Us or to You directly) of goods or services in relation to the Services.

'Other Supplier Infrastructure' means Equipment provided by Other Suppliers used in the provision of Services.

'Our Equipment' means Equipment supplied by or on behalf of Us (other than Equipment Sold).

'Our Network' means the telecommunications network owned or operated by Us and includes the Our Equipment and where the context permits includes any connected telecommunications network.

'Plan' means the terms on which We offer a specified Service or Services, usually under a distinguishing name, including for example eligibility, characteristics, entitlements, pricing, Minimum Term, Bundle conditions and other conditions of supply.

'Pre-Paid product' means any product that You must pay for in full prior to the product being used and that We expressly market as a 'pre-paid' product.

'Pre-Payment' means specified advance payment of Your Charges.

'Primus' means Primus Telecommunications (Australia) Pty Limited (ABN 77 061 754 943) or Primus Telecommunications Pty Limited (ABN 69 071 191 396) of Level 3, 538 Collins Street, Melbourne, Victoria 3000, Australia – whichever supplies a Service to you.

'Primus Telecom' means Us.

'Priority Assistance' has the meaning set out in Priority Assistance Code.

'Priority Assistance Code' means ACIF Code C609:2003 Priority Assistance for Life Threatening Medical Conditions as amended or replaced from time to time.

'Priority Customer' has the meaning set out in the Priority Assistance Code.

'Residential Customer' means a Customer of a Residential Service.

'Residential Service' means a Service which is of a type, or which is supplied on terms, which We designate for residential or private use.

'Resold Service' means a service that We acquire from an Other Supplier and re-supply to a Customer.

'Security Bond' means any security provided or to be provided by You to Us under a Service Contract, for example a bank guarantee, a letter of security over a bank deposit.

'Service' means (a) a standard telephone service within the meaning of the Act; or (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or (c) ancillary goods of a kind specified in the Telecommunications Regulations 2001; or (d) an ancillary service of a kind specified in the Telecommunications Regulations 2001.

'Service Contract' means a contract for the supply of a Service, comprising any Application, these Core Terms and any Service Schedule for that Service.

'Service Schedule' means any additional terms that We publish or advertise for a particular Service.

'Site' means a location owned, occupied or used by You at which there is Our Equipment or Customer Equipment or to which We provide Services.

'Specified Software' means software that We specify as suitable for use in relation to a Service.

'Suspend' means: (a) in relation to a telephone service – to bar all outgoing and/or incoming calls, except for access to Emergency Services (if applicable); and (b) in relation to any other Service – to deny or restrict access to the Service or part of it.

'TIO' means the Telecommunications Industry Ombudsman.

'Website' means a collection of connected pages on the World Wide Web sharing an IP address.

'You' (sometimes also referred to in a Service Schedule or elsewhere as the 'Customer') means a person to whom We supply a 'Service'.

'We' and 'Us' and 'Our' and the like mean Primus.

In measuring volumes of data and the like, We may use the following meanings:

"Kilobyte" and "KB" meaning 1000 bytes;

"Megabyte" and "MB" meaning 1000 Kilobytes;

"Gigabyte" and "GB" meaning 1000 Megabytes;

and like rounded numbers for multiples of bytes or bits.

2. INTERPRETATION

In a Service Contract the following rules of interpretation apply unless the context requires otherwise

- 2.1. Headings are for convenience only and do not affect the interpretation.
- 2.2. The singular includes the plural and vice versa.
- 2.3. Reference to any gender includes all genders.
- 2.4. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 2.5. Reference to a person includes a body corporate, an unincorporated body or other entity and vice versa.
- 2.6. Reference to a party means Us or You and includes the party's executors, administrators, successors and permitted assigns
- 2.7. Reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- 2.8. Reference to an agreement, document, manual or other instrument includes any variation or replacement of any of them;
- 2.9. All dollar amounts are expressed in Australian dollars.

3. IMPORTANT: CONSUMER CONTRACTS CODE

- 3.1. The Consumer Contracts Code gives special rights to Consumers. These Core Terms reflect those rights.
- 3.2. Where these Core Terms set out a provision headed 'Consumer Contracts' it only applies to You if You are a Consumer.
- 3.3. A 'Consumer' means:

- 3.3.1. a person who acquires a Service for the primary purpose of personal or domestic use; or
- 3.3.2. a business or non-profit organisation (including a body corporate, sole trader, partnership, trust, or registered charity) which at the time it enters into the Service Contract:
 - 3.3.2.1. does not have a genuine and reasonable opportunity to negotiate the terms of the Service Contract; and
 - 3.3.2.2. has or will have an annual spend with Us which is, or is estimated on reasonable grounds by Us to be, no greater than \$20,000 (calculated in accordance with the Consumer Contracts Code),but excludes any person or entity acquiring a Service for the purposes of resale.

4. IMPORTANT: CREDIT CODE

- 4.1. The Credit Code gives special rights to certain persons. These Core Terms reflect those rights.
- 4.2. Where these Core Terms set out a provision headed 'Credit Code', it only applies to You if You are a "Customer" as defined in the Credit Code.

5. CREATING A SERVICE CONTRACT

If:

- 5.1. You Apply for a Service; and
- 5.2. satisfy any technical or other preconditions for the supply of that Service; and
- 5.3. We accept your Application and agree to supply the Service (which may be by way of commencing to supply it, or notifying you that it is ready to access, or entering an arrangement with a third party to enable Us to provision it) –

then there is a 'Service Contract' for that Service on the terms of:

- 5.4. the Application (which ranks highest in case of any inconsistency);
- 5.5. the Plan (which ranks next in case of any inconsistency); and
- 5.6. these Core Terms (which rank next in case of any inconsistency); and
- 5.7. any Service Schedule for that Service (which ranks lowest in case of any inconsistency).

Consumer Contracts: re clause 5.7 – If a term in a Service Schedule is contrary to the Consumer Contracts Code, it must be read down so that the Service Schedule complies with the Consumer Contracts Code.

6. APPLICATIONS

- 6.1. All information set out in an Application that You submit to Us must be complete and correct.
- 6.2. We are not obliged to accept any Application.
- 6.3. You appoint Us to be your agent to do all things (including executing all documents) necessary or desirable to enable Us to provide the Services on Our Network or the network of any Other Supplier, including without limit the exercise of any customer

authorisation necessary to port, transfer, cancel or otherwise deal with a telephone number or a service supplied in whole or part by another supplier. In acting as Your agent, We will act in a manner as We reasonably consider to be in your interests.

7. SERVICES

- 7.1. We will provide a Service to You on the terms of the Service Contract.
- 7.2. We will supply the Services using Our Network and facilities and services of Other Suppliers as We see fit.
- 7.3. We may publish or vary an Acceptable Use Policy for a Service, which forms part of a Service Contract for that Service, and a breach of an Acceptable Use Policy is a breach of the Service Contract.

Consumer Contracts: re clause 7.3 – An Acceptable Use Policy will itself comply with the Consumer Contracts Code.
- 7.4. You must comply with any reasonable directions from Us regarding Our Network, Customer Equipment and Services.

8. TERM OF SERVICE CONTRACT

- 8.1. A Service Contract commences when We have accepted Your Application and agreed to supply the Service, or when You first access the Service, whichever occurs first.
- 8.2. A Service Contract continues until it is terminated in accordance with its terms.

9. CHARGES

- 9.1. Subject to (a) any written agreement between Us and You about Charges and (b) any Charge that We have expressly advertised or notified to you in writing as being fixed for a specified period or until a specified date, the Charges for a Service are as published on our web site at the time you use the Service or as otherwise notified to you.
- 9.2. We may vary Charges by notice to You (e.g. by publishing the new Charges on our web site), except that if You are on a Fixed Term Contract that states that Charges are fixed, We will not vary Your Charges during the Minimum Term.

Consumer Contracts: re clause 9.2 – If you are a Consumer on a Fixed Term Contract, new Charges do not take effect unless either (a) clause 9.3, 9.5, 9.6 or 9.7 applies to them or (b) We have:

- 9.2.1 issued a Notice in Writing to You at least 21 days earlier; and
- 9.2.2 offered You in the notice the right to terminate the Service Contract within 42 days of the date of the notice above without incurring fees or charges other than:
 - 9.2.2.1 usage or network access charges incurred up to the date on which the Service Contract ends; and
 - 9.2.2.2 any outstanding amounts that cover installation costs or equipment (where such equipment can be used in connection with services provided by other suppliers).

This does not apply to (a) changes in Charges for international telephone calls or international roaming, which can vary at any time or (b) where the Charge is a tax imposed by law, which We can introduce or vary at any time.

- 9.3. We may introduce or vary a Charge for a matter ancillary to the supply of a Service (such as, without limit, a billing fee, late payment fee or credit card or other payment method transaction fee).

Consumer Contracts: re clause 9.3 – We will only do so if We have offered You a reasonable alternative at no additional Charge or given You the right to terminate the Service Contract without incurring Charges other than usage or network access Charges incurred up to the date of termination.

- 9.4. Our preferred payment method is direct debit. We accept other methods subject to a processing surcharge not exceeding \$5.
- 9.5. We may make changes to the characteristics, including Charges, of Services provided under a Service Contract, if the changes are likely to benefit You or have a neutral or minor detrimental impact on You.

Consumer Contracts: re clause 9.5 – Where Your Service Contract has a Minimum Term and You demonstrate to Us that a change under clause 9.5 has had more than a minor detrimental impact on You, We will offer You the right to terminate the Service Contract, without incurring Charges other than Charges for usage or network access (incurred up to the date of termination) and other than outstanding Charges to cover installation costs or Equipment (where such Equipment can be used in connection with services provided by Other Suppliers).

- 9.6. We may vary immediately Charges for a content Service or premium Service provided by an Other Supplier if the variation results from an increase in price by the Other Supplier.

Consumer Contracts: re clause 9.6 – in respect of price increases under this clause:

- 9.6.1 We must within a reasonable period give reasonable notice of the increase to You (if You have used that Service within the previous 6 months); and
- 9.6.2 You have the right to elect not to use that Service without attracting any additional Charge.

- 9.7. Where a Service that We provide is acquired from an Other Supplier and resold to you, We can pass on any price increase in the charges We pay to the Other Supplier.

Consumer Contracts: re clause 9.7 – price increases under this clause do not take effect unless and until We have:

- 9.7.1. issued a Notice in Writing explaining the change; and
- 9.7.2. offered You in the notice the right to terminate the Service Contract within 42 days of the date of the notice above without incurring fees or charges other than:
- 9.7.2.1. usage or network access charges incurred up to the date on which the Service Contract ends; and
- 9.7.2.2. any outstanding amounts that cover installation costs or equipment (where such equipment can be used in connection with services provided by other suppliers).

- 9.8. If Your Service is used to access a service provided by an Other Supplier, and We are charged for that other service, You must pay Us for that Service.

- 9.9. You are responsible for the payment of all Charges arising out of the use of a Service. You must take reasonable measures to prevent any unauthorised person from accessing any Service.

10. INVOICES AND PAYMENT

- 10.1. We issue Invoices to You on a regular basis.
- 10.2. The Invoice will include most Charges relating to a Billing Period. However, there may be times when an Invoice may include Charges from previous Billing Periods but not any Charges that were incurred more than 190 days previously.
- 10.3. Our records are sufficient proof that a Charge is payable unless they are shown to be incorrect.

Consumer Contracts: re clause 10.3 – If there are any legal proceedings between You and Us, this clause does not impose the evidential burden on you.
- 10.4. You must pay Us the Charges by the Due Date and in a manner specified in the Invoice.
- 10.5. We can deliver Invoices, and You must accept them, by such means as We choose from time to time, including without limit, in electronic format sent by email or made available to You via Our web site. The presentation of Invoices in electronic form may be affected by the type and quality of Your equipment and, as such, We are not responsible for consequential presentation distortions.
- 10.6. Where You have elected to pay by Direct Debit, We may, without any further authorisation or notice, debit the amount due from Your nominated account on the Due Date.
- 10.7. If You do not pay an Invoice by its Due Date, We may:
 - 10.7.1 charge You interest at the rate in the Penalty Interest Rates Act 1983 (Victoria) on overdue Charges from the Due Date until paid, together with any expense incurred by Us as a result of Your default; and
 - 10.7.2 charge You an amount up to a maximum of \$20, to offset administration costs incurred as a result.
- 10.8. If We incur bank or financial institution charges because your cheque, credit card payment or Direct Debit is not honored, We may charge you for the reimbursement of those charges.
- 10.9. We will advise You of changes to billing frequency, either prior to, or at the time of introducing the change.

11. CHARGE DISPUTES

- 11.1. You must notify Us immediately if You reasonably believe that a Charge is incorrect.
- 11.2. Any claim that a Charge is incorrect must be made within 12 months of the Due Date.
- 11.3. In the event that You dispute any Charge:
 - 11.3.1. You must pay all undisputed Charges included on the Invoice.
 - 11.3.2. If You provide detailed and accurate information about any disputed Charge by the Due Date, then You may be allowed to withhold payment of the disputed amount whilst the dispute is being investigated.
- 11.4. If a dispute is correctly raised, We will not terminate or Suspend any Service for non-payment of the disputed amount whilst the dispute is being investigated.
- 11.5. If You fail to dispute a Charge by the Due Date, You must either (a) pay the full amount on the Invoice or (b) give us reasonable evidence that the dispute is

genuine, despite the fact that it was not raised by the Due Date – before lodging a dispute.

- 11.6. Credit Code: We will not take any credit management action (e.g. Service suspension or debt recovery) with respect to genuinely disputed amounts while the dispute is unresolved and being investigated by Us, the TIO or a relevant recognised agency.

12. GST

Unless otherwise expressly stated, all Charges payable for the Services are inclusive of GST. Where Charges are not expressed to be GST-inclusive, You will pay to Us at the same time when any part of the Charges for the Service is payable, an amount equal to any GST payable on supply of that Service. We will issue a tax invoice to You for any supply on which GST is imposed.

13. CREDIT LIMITS

- 13.1. We may notify you of a Credit Limit, and vary it from time to time. This is not an optional Credit Limit as referred to in the Credit Code.

- 13.2. If accrued but unpaid Charges (whether or not they have been Invoiced) exceed your Credit Limit, We may Suspend Services. If that happens, We at Our absolute discretion may terminate the Service Contract, or require You to provide a Security Bond or Pre-Payment before reconnection.

Consumer Contracts: re clause 13.2 – We will not Suspend Service under this clause without first taking reasonable steps (within the meaning of the Credit Code) to give notice to You of the Suspension.

Credit Code: re clause 13.2 – We will not Suspend a Service other than in accordance with the Credit Code.

14. CREDIT CHECKS

- 14.1. You authorise Us to conduct credit checks and searches and to use the information obtained as a result of these checks and searches to assess Your creditworthiness, so long as in doing so We comply with the Privacy Act.

Credit Code: We will only act under this clause 14 in accordance with the Credit Code.

- 14.2. When conducting a credit check, We may give to a Credit Reporting Agency the following information:

- 14.2.1. information reasonably necessary to identify You;
- 14.2.2. the fact that You have applied for credit and the amount;
- 14.2.3. the fact that We are a current credit provider to You;
- 14.2.4. payments which become overdue more than 60 days and for which collection action has commenced;
- 14.2.5. advice that payments are no longer overdue;
- 14.2.6. a cheque for at least \$100 drawn by You that has been dishonoured more than once;
- 14.2.7. that in Our opinion, You have committed a serious credit infringement (within the meaning of the *Privacy Act 1988*);

- 14.2.8. that the credit provided to You by Us has been paid or otherwise discharged.
 - 14.3. For the purpose of performing a credit check, We may give to or seek from any credit provider named in a credit report issued by a Credit Reporting Agency information about Your personal identity information and arrangements. This information may include any information about Your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other (Section 18N(1)(b) Privacy Act). You acknowledge that the information may be used for the following purposes:
 - 14.3.1. to assess an application by You for credit;
 - 14.3.2. to notify other credit providers of a default by You;
 - 14.3.3. to exchange information with other credit providers as to the status of this credit where You are in default;
 - 14.3.4. to assess Your credit worthiness.
 - 14.4. If We consider it relevant to assess Your application for credit, You understand and acknowledge that We may:
 - 14.4.1. obtain a report about Your commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of persons;
 - 14.4.2. obtain from a Credit Reporting Agency a credit report containing personal information about You in relation to commercial credit provided by Us;
 - 14.4.3. receive from a Credit Reporting Agency a credit report containing personal information about You in relation to collecting overdue payments.
 - 14.5. If, having conducted a creditworthiness assessment, We reasonably consider that You may not be able to pay any Charges as and when they become due and payable, We may require You to provide a Security Bond or a Pre-Payment. If the Credit Code applies to You, Our creditworthiness assessment and any requirement will be in accordance with it.
15. PERSONAL INFORMATION
- 15.1. We will comply with the Privacy Act 1998 when dealing with Your personal information.
 - 15.2. Our Privacy Policy can be viewed on Our website. Alternatively, a copy can be obtained by calling Customer Service.
16. YOUR OTHER OBLIGATIONS
- 16.1. You must not use a Service or any of Our Network other than in accordance with the Service Contract or otherwise as authorised by Us.
 - 16.2. You must not use a Service fraudulently, or in the course of any fraud or other unlawful activity.
 - 16.3. You must not do or allow anything in relation to Your Service which is illegal, or which may expose Us to the risk of legal action, or which breaches any law or regulation, or which causes Us to reasonably suspect that You or another person are doing any of those things.
 - 16.4. You must not vacate a Site or cease to use a Service for 30 consecutive days without giving notice or without obtaining prior approval from Us.

- 16.5. You must comply with any reasonable directions from Us regarding Our Network, Customer Equipment and the Services.
- 16.6. You may use a Service only for the purpose for which, and subject to the restrictions or conditions on which, it is supplied by Us.
- 16.7. You may use a Residential Service only for residential or private use and not for business or commercial purposes.
- 16.8. You will provide to Us timely and safe access to each Site and all the Equipment and any reasonable assistance and facilities that We may require for the purpose of inspection, maintenance, repair, or removal of Our Equipment or the Services.
- 16.9. You will use only Customer Equipment approved by Us. In using this Equipment, You will ensure that all Customer Equipment meets the standards that are from time to time specified by Us, and that Customer Equipment is compatible with Our Network and is at all times in good working order.
- 16.10. You must ensure that all information You give to Us, in connection with an Application or request for a Service is true.
- 16.11. You acknowledge that the availability of calls through Our Network depends largely on the suitability of Customer Equipment.
- 16.12. You are responsible for monitoring the use of Services including excessive and unusual use and are responsible for all Charges incurred in relation to those Services.
- 16.13. You must advise Us of any relevant changes to Your telecommunications service or equipment inventory.
- 16.14. You must not resupply to another person a Service except to the extent expressly permitted under the relevant Service Contract or with Our consent.
- 16.15. You must ensure that no other person does anything that, if done by You, would constitute a breach of a Service Contract.
- 16.16. For the benefit of Other Suppliers as well as Us, You agree in respect of each of the Services to comply with (and to ensure that any other person who uses the Service also complies with) the following obligations:
 - 16.16.1. not publish, copy or distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing or illegal under any law at any place where transmissions are sent from, viewed or received;
 - 16.16.2. not publish, copy or distribute material if there is no right to do so (for example, someone else's copyrighted works or confidential information);
 - 16.16.3. not do anything that may expose Us or You or any Other Supplier to civil or criminal liability;
 - 16.16.4. not do anything that may damage, interfere with or make unsafe Our Network or any Other Supplier Infrastructure;
 - 16.16.5. obtain any necessary consents and provide safe and lawful access to Us and Other Suppliers on any Site;
 - 16.16.6. if We or any Other Supplier requires modifications to any Customer Equipment to avoid danger or interference, to make those modifications;
 - 16.16.7. not connect to Our Network or Other Supplier Infrastructure any Equipment which does not meet any applicable standards made or declared by the Australian Communications & Media Authority under the Act;

- 16.16.8. comply with such other lawful requirements of Us or Other Suppliers as notified to You by Us.
- 16.17. You acknowledge (without limiting your rights under any other agreement or mandated by statute) that:
 - 16.17.1. under a Service Contract, no Other Supplier makes any warranties, whether express or implied to You in respect of the Services or has any other liability to You in respect of the Services; and
 - 16.17.2. under a Service Contract, no Other Supplier is responsible to You for any damage arising from or in connection with any of the Services (including loss of data, delays, non deliveries, misdeliveries or service interruptions) caused by any Other Supplier's acts or omissions, intentional, negligent or otherwise or for any content accessed through a Service (including without limitation offensive, illegal, inaccurate, incomplete or out of date information);
 - 16.17.3. if you do not comply with the terms applicable to a Plan (including a Bundle) you may cease to be eligible for the Plan or for specified benefits applicable to the Plan and if all or any of the Services are continued, it may be on other terms which are specified as being applicable.
- 17. WHERE YOU ACT THROUGH AN AGENT
 - 17.1. You may appoint an agent to deal with Us on Your behalf. This clause applies where (a) You have appointed an agent or (b) someone contacts Us claiming to be your agent.
 - 17.2. If someone contacts Us claiming to be your agent, We in Our discretion accept that they are truly your agent if they quote your account password or such information as We reasonably accept as indicating they have your authority.
 - 17.3. You authorise Us to comply with the instructions of your agent and You release Us from responsibility for anything We do on the basis of them.
 - 17.4. As long as we act in good faith, You release Us from responsibility for anything We do on the basis of the instructions of someone who falsely claims to be Your agent.
 - 17.5. We may in Our discretion decline to accept that someone is your agent, and You release Us from responsibility for so declining.
- 18. EQUIPMENT

This clause applies if the Services include the provision of Equipment to You.

 - 18.1. EQUIPMENT SOLD

You agree to buy from Us any Equipment Sold on the terms set out in this clause and the relevant Service Contract:

 - 18.1.1. Unless otherwise agreed, We will deliver any Equipment Sold to the agreed Site at a mutually agreed time.
 - 18.1.2. You will pay Us for the Equipment Sold upon delivery, less any deposit already paid.
 - 18.1.3. We shall retain ownership of any Equipment Sold until You have made full payment for that Equipment Sold.
 - 18.1.4. You will be responsible for any Equipment Sold from the time that Equipment is delivered to You or to the agreed Site.

18.2. OUR EQUIPMENT

- 18.2.1. We retain ownership of all Our Equipment.
- 18.2.2. You must take reasonable care of Our Equipment from the time it is delivered to You until it is returned to Us.
- 18.2.3. You must not sell, rent or dispose of Our Equipment or any of its parts and must return it to us upon request.
- 18.2.4. You must not give anyone any legal rights over Our Equipment.
- 18.2.5. You will be liable to Us if Our Equipment is lost, stolen, destroyed or damaged.
- 18.2.6. You will be responsible for any of Our Equipment from the time that Equipment is delivered to You or to the agreed Site.

18.3. INSTALLATION

Where You request installation of Our Equipment and/or Equipment Sold, and We agree to install it:

- 18.3.1. We will install the Equipment with due care.
- 18.3.2. You must give Us at least 24 hours notice where an installation appointment is cancelled, failing which We may charge You a reasonable cancellation fee.

19. FAULTS

19.1. You must immediately report to Us any faults in relation to

- 19.1.1. the Services,
- 19.1.2. Our Equipment; or
- 19.1.3. Our Network.

19.2. Subject to the relevant Service Contract:

- 19.2.1. We will use reasonable endeavours to correct faults for which We are responsible.
- 19.2.2. In the event of unexpected faults outside Our control, We will, where possible, take reasonable steps to restore the Service as soon as practicably possible.
- 19.2.3. You will promptly correct faults in Customer Equipment that may affect any of the Services.

20. TRANSFER

20.1. You acknowledge that:

- 20.1.1. by transferring a telephone number from another provider to Us, the service associated with that telephone number may be disconnected from the other provider's network and may result in finalisation of Your account for that service;
- 20.1.2. by transferring a telephone number from another provider to Us, any services that are provided to you using the same telephone line (e.g. a DSL or spectrum sharing associated with that telephone number) may be disconnected, which may result in finalisation of those services;

- 20.1.3. although You may have rights to transfer Your telephone number, there may be costs and obligations associated with the transfer which may include early termination fees and transfer fees;
- 20.1.4. if on termination of a service, You request the transfer of a telephone number from Us to another provider, We may charge fees in relation to that transfer;
- 20.1.5. We are not liable for any amounts owing by You to Your current provider of telecommunications and other services prior to the commencement of Services with Us.

21. NUMBERS

- 21.1. The Telecommunications Numbering Plan and instruments made under it ('Numbering Plan') sets out rules for issuing, transferring and changing telephone numbers.
- 21.2. We must comply with the Numbering Plan.
- 21.3. You have no claim against Us arising from anything We do in accordance with the Numbering Plan, including changing or withdrawing a previously allocated number.
- 21.4. You must not:
 - do anything that causes Us to breach the Numbering Plan; or
 - do anything that makes it more difficult for Us to comply with the Numbering Plan; or
 - relocate, reassign or transfer the number for any Service except in accordance with Our published procedures, or otherwise as the law permits.
- 21.5. You obtain no proprietary rights in relation to any number allocated to You, and (subject to cases where the law permits You to transfer your telephone service and its number to another service provider) You have no right to retain a particular number when your Service Contract ends.
- 21.6. If your right to use a number lapses, We may reallocate it at any time, and without notice or liability to You.

22. SUSPENSION OR TERMINATION

- 22.1. Either party may, without cause, terminate a Service Contract which:
 - has no Minimum Term, or
 - has a Minimum Term which has already expired –on 30 days' notice to the other party.

Consumer Contracts: re clause 22.1 – If We terminate a Service Contract under clause 22.1 for Our convenience, We must (a) give You Notice in Writing and (b) refund to You any unexpired prepaid credits (or, if You agree, apply those Credits for use on another Service).

Credit Code: We will not terminate a Service Contract in a manner which is contrary to the Credit Code.

- 22.2. Without waiving any of Our rights, We may Suspend or terminate Your Service immediately where:
 - 22.2.1. We reasonably suspect fraud by You or anyone using Your Service;

22.2.2. You die or become insolvent or bankrupt or have a receiver, manager, administrator or liquidator appointed over Your estate, provided that We have a reasonable belief that We are unlikely to receive or retain payments for the amounts due and payable by You under a Service Contract;

22.2.3. You fail to pay any Charge by the Due Date;

Credit Code: We will not Suspend or terminate a Service in a manner which is contrary to the Credit Code.

22.2.4. You have given to Us, in connection with an Application or request for a Service, any information which We reasonably believe is not true;

22.2.5. You vacate a Site or cease to use a Service without giving notice or without obtaining prior approval from Us;

22.2.6. We have reasonable grounds for believing that a threat or risk exists to the security or integrity of Our Network or any network it connects to or relies on;

22.2.7. You are in breach of any Service Contract;

Consumer Contracts: The breach must be a material breach. We will only Suspend or terminate the Service/s or Service Contract to which the breach relates, unless there are reasonable grounds for believing You are a credit risk;

Credit Code: We will not Suspend or terminate a Service in breach of the Credit Code;

22.2.8. We reasonably suspect or it comes to Our attention that You or another person are using Your Service illegally, or are exposing Us to the risk of legal action, or are in breach of any law or regulation;

22.2.9. We are required to Suspend or terminate Your Service in order to comply with the law or other applicable regulatory authority (such as the Australian Communications and Media Authority);

22.2.10. We are unable to provide the Service due to the termination of any agreement between Us and Other Suppliers for the provision of services – but We will give such notice as We are reasonably able to give in the circumstances;

22.2.11. Emergency occurs – but We will give such notice as We are reasonably able to give in the circumstances.

Consumer Contracts: re clause 22.2 – Where a Service is Suspended under this clause, it will be for a reasonable period in the circumstances, or until We exercise any right to terminate Your Service Contract.

Credit Code: We will not Suspend or terminate a Service in a manner which is contrary to the Credit Code.

22.3. Consumer Contracts: If Your Service is Suspended, You are entitled to a pro-rata refund of relevant Charges for the period of Suspension, unless the suspension is:

22.3.1. at Your request;

22.3.2. for Your material breach of the Service Contract;

22.3.3. for a system or network outage that results in the Service being inaccessible for an insignificant period; or

- 22.3.4. because We have suspended or restricted a component of Your Service because We have reasonable grounds to believe that You represent a credit risk in relation to that component of the Service.
- 22.4. Subject to clause 22.3, Charges continue to apply in respect of any period of Suspension.
- 22.5. Upon reasonable notice to You, We are entitled to unimpeded access to each Site in order to remove any of Our Equipment.
- 22.6. Where We are unable to attend the Site at which Our Equipment is held, You will return Our Equipment within 60 days of termination, to Us or to an agent nominated by Us.
- 22.7. Any credits on Your account may be used to pay any undisputed, outstanding Charges.
- 22.8. We may require You to pay a reconnection Charge before We reconnect a Service that has been suspended or terminated.

Consumer Contracts: re clause 22.8 – A reconnection Charge never applies in case of suspension events caused by Our error or failure to perform obligations under the Service Contract.

Credit Code: re clause 22.8 – We will not require a reconnection Charge if the suspension or termination resulted from mistake or manifest error by Us.

- 22.9. After any Service Contract ends:
 - 22.9.1. You still have to pay Charges incurred before the end of the Service Contract;
 - 22.9.2. the provisions relating to liability and indemnity also continue to apply;
 - 22.9.3. any right of action that arose before it ended survives;
 - 22.9.4. any provision that is expressed, or by reasonable implication is intended, to survive termination continues to operate.

23. CUSTOMER SERVICE GUARANTEE

Where it is applicable, We will comply with the Customer Service Guarantee (“CSG”), including (without limitation):

- 23.1. observing minimum performance standards for the installation and repair of services, including the time frames in which We are required by the CSG to:
 - 23.1.1. action requests for connections of a standard telephone service or an enhanced call handling feature;
 - 23.1.2. repair faults or service difficulties; and
 - 23.1.3. make and attend appointments with You and advise the length of the appointment 'window';
- 23.2. observing CSG requirements regarding:
 - 23.2.1. Call waiting;
 - 23.2.2. Call forwarding;
 - 23.2.3. Calling number display; and
 - 23.2.4. Calling number display blocking.

24. IMPORTANT NOTICE ABOUT IMPLIED WARRANTIES AND LIABILITY LIMITATIONS

Australian law about implied warranties and limitation of liability can be complex. There are some rights that cannot be taken away from You or limited, no matter what any contract says. These rights may be against Us or someone else (e.g. a wholesaler of a Service).

We acknowledge these rights and encourage You to be aware of them. Nothing in any Service Contract limits them.

If You have any doubts about Your rights under a Service Contract, and especially about rights that cannot be taken away from You or limited, please contact Consumer Affairs (or equivalent) in Your State or Territory, or a community advice bureau or legal service, or Your own lawyer.

25. IMPLIED WARRANTIES AND CONDITIONS

25.1. Consumer Legislation may create rights or remedies that cannot be excluded, restricted, modified or limited.

25.2. 'Non-Excludable Term' means any warranty or condition that is implied in a Service Contract by a Consumer Legislation, to the extent to which it may not lawfully be excluded, restricted, modified or limited.

25.3. 'Non-Excludable Right' means:

a Non-Excludable Term; and

any law or its application, and any right or exercise of a right conferred by any law, (including but not limited to a Consumer Legislation) to the extent to which it may not lawfully be excluded, restricted, modified or limited or.

25.4. 'Non-Excludable Liability' means any liability to the extent to which it may not lawfully be excluded, restricted, modified or limited.

25.5. A Service Contract:

25.5.1. includes in respect of goods, the same warranty on any goods supplied by Us as the manufacturer/importer provides for those goods; and

25.5.2. includes all Non-Excludable Rights; and

25.5.3. does not exclude, restrict, modify or limit any Non-Excludable Right or Non-Excludable Liability.

25.6. To the fullest extent permitted by law, Our liability for breach of any Non-Excludable Term is limited at Our option to the following:

25.6.1. in the case of goods:

25.6.1.1. replacement of the goods or supply of equivalent goods;

25.6.1.2. repair of the goods;

25.6.1.3. payment of the cost of replacing the goods or of acquiring equivalent goods;

25.6.1.4. payment of the cost of having the goods repaired; or

25.6.2. in the case of services:

25.6.2.1. supplying the services again; or

25.6.2.2. payment of the cost of having the services supplied again.

25.7. Except for (a) Non-Excludable Terms and (b) express warranties and conditions:

25.7.1. a Service Contract excludes, and We disclaim, all conditions and warranties of any kind, including but not limited to implied warranties of merchantability and fitness for a particular purpose, whether such conditions or warranties are implied by custom, law or statute;

25.7.2. We supply all goods and services 'as is' and without warranties of any kind; and

25.7.3. We are not liable for any indirect, special, economic or consequential loss or damage or loss of revenue, profits, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings that You incur or suffer in any way, whether:

25.7.3.1. We caused it by Our negligence; or

25.7.3.2. We knew or should have known of the possibility of such loss or damage.

26. WARRANTY AND INDEMNITY

26.1. You warrant that You have not relied on any representation made by Us which has not been stated expressly in a Service Contract.

26.2. You indemnify Us (and, where applicable, each Other Supplier) against any loss (including reasonable legal costs and expenses) or liability We reasonably incur or suffer to the extent it was caused by Your breach of a Service Contract or Your misuse of a Service.

27. NO LIABILITY

We have no liability to You or to any other person:

27.1. for faults or defects in Services which are caused to any material extent by Your conduct, breach of a Service Contract or the misuse of Services by You; or

27.2. because Services under a Service Contract and other telecommunications goods or services that you obtain (whether from Us or a third party) are incompatible or may cause malfunctions in each other.

28. INTELLECTUAL PROPERTY

You acknowledge that (subject where applicable to the rights of Other Suppliers) We are the owner of all intellectual property rights, present and future, in all things related to Our Network or to the Services, including improvements developed at any time (whether or not those improvements are developed by or at Your request). To the extent necessary to give effect to this clause, You assign and will assign to Us all of Your interest in such intellectual property rights and will do all things reasonably necessary to give effect to such assignment.

Consumer Contracts: re clause 28 This clause does not require You, in relation to communications between end users, to assign, licence or otherwise transfer Your intellectual property rights to Us in a manner that exceeds the intellectual property rights We reasonably require to supply the relevant Service or to perform Our obligations under a Service Contract.

29. CONFIDENTIAL INFORMATION

Each party agrees to keep in confidence and must not use or disclose any Confidential Information of the other party. This clause will not prevent Us disclosing any information to anyone undertaking due diligence enquiries or the like in relation to transactions and to which We are a party.

Consumer Contracts: re clause 29 – This clause does not limit Your right to make a complaint or a claim to a competent body authorised to consider the complaint or claim.

30. FORCE MAJEURE

We are not responsible for any failure or delay in Our performance of any obligation under a Service Contract to the extent that the failure or delay is due to Force Majeure.

31. NOTICES

31.1. A notice may be given by Us to You at:

31.1.1. in the case of a corporation, Your registered office;

31.1.2. Your fax number, email address, street or postal address specified in an Application or otherwise notified by You to Us (whether or not that address is the billing address);

31.1.3. an email address allocated by Us for use by You;

31.1.4. by display on Our website, the address of which has been or is notified by Us.

31.2. A notice is duly given:

31.2.1. if personally delivered - at the time of delivery;

31.2.2. if given by telephone call – from the time the conversation between Us and You is conveyed;

31.2.3. if posted by mail - at 10:00 am on the business day next following posting;

31.2.4. if emailed by Us - 12 hours after sending;

31.2.5. if posted on Our website - 12 hours after posting;

31.2.6. if faxed - when the sender's fax machine indicates a successful transmission.

31.3. Without limiting other methods by which we may give notices to You, You consent to Us sending to you by email to the email address allocated by Us for use by You (or if We agree, to another email address notified by you) notices under the Service Contract or information relating to Services, including Invoices.

31.4. A notice from Us need not be signed and may be incorporated on or enclosed with an Invoice.

31.5. A notice to Us must be in writing delivered or sent by mail addressed to Our General Counsel, Level 3, 538 Collins Street, Melbourne, Victoria, 3000 Australia.

Consumer Contracts: Where You are entitled to a 'Notice in Writing', it will be given in accordance with the definition of that term in clause 1.

32. GENERAL

32.1. If a provision of a Service Contract is illegal, unenforceable, or invalid, it will be severed and the remaining provisions will not be affected.

- 32.2. The failure or delay by Us in enforcing any right under a Service Contract does not necessarily mean that right has been waived.
- 32.3. Subject to the Consumer Legislation, a Service Contract contains the whole agreement between the parties to the exclusion of any prior or collateral agreement or understanding relating to it or the Services.
- 32.4. A Service Contract is exclusively governed by and subject to the laws of Victoria, Australia. Each party submits to the exclusive jurisdiction of courts and tribunals in Victoria, Australia.

Consumer Contracts: re clause 32.4 – Victorian law and courts are not exclusive. You may choose the governing law of the State or Territory in Australia in which You ordinarily reside or the jurisdiction of the courts in that State or Territory.
- 32.5. You may only transfer or assign any of Your rights under a Service Contract with Our prior written consent, which consent may not be unreasonably withheld or delayed in the case of a person whom We would accept as a customer in the ordinary course.
- 32.6. We may assign all or any of Our rights under a Service Contract in connection with securing borrowings or other obligations or the sale, transfer or restructure of Our business. We are not required to give notice to You of such assignment.

33. SPECIAL ASSISTANCE

We can offer a range of special Services if applicable to You:

- 33.1. PRIORITY ASSISTANCE: You must be registered with Us to qualify for Priority Assistance. You may be eligible to register for Priority Assistance where a medical practitioner has certified that either You, or a member of Your household, meets certain eligibility criteria. Please telephone Us if You believe that You may eligible for Priority Assistance, or if You require further information regarding this Service.
- 33.2. ENGLISH AS SECOND LANGUAGE: We can arrange translator and/or interpreter Services for You if You have difficulties with the English language. You can telephone Us to arrange this Service. Alternatively, You may contact the Translating and Interpreting Service on 131 450 to request an interpreter to contact Us for help.
- 33.3. HEARING PROBLEMS: We can provide assistance to You if You have a hearing impairment by providing information about, and/or referring You to the National Relay Service. Please telephone Us to obtain assistance or further information regarding this Service. Alternatively, the National Relay Service can be contacted by directly by You on 133 677.
- 33.4. SPECIAL EQUIPMENT: We may be able to provide assistance to You by providing information and/or recommending suitable products specific to Your needs. For example, from time to time We may be able to provide:
 - 33.4.1. Those who have a vision impairment information about the availability of handsets with large number keypads, or;
 - 33.4.2. Those who have a hearing impairment, information about handsets with visual (eg, flashing) accessories, etc.

For further information about the availability of Special Equipment, please telephone Us, or refer to our website.

34. CHANGES TO THESE CORE TERMS OR A SERVICE SCHEDULE

Subject to anything to the contrary in these Core Terms, we can at any time amend or replace these Core Terms or any Service Schedule and we may do so by publishing

the New Version on our web site. A New Version applies to all Service Contracts that are made after it is published, but it does not apply to or affect any Service Contract that was made before it was published unless it is stated to apply to them and We have complied with the Change Rules or the Change Rules otherwise permit.

35. CHANGE RULES

- 35.1. The 'Change Rules' means the Telecommunications (Standard Form of Agreement Information) Determination 2003: Sections 11 and 12 (where they apply).

Consumer Contracts: re clause 35.1 – The Change Rules also include the Consumer Contracts Code: Sections 6.2(j), 6.3(n), 6.3(o), 6.3(p), 6.3(q), 6.3(r), 6.3(s) and 6.3(t) (where they apply).

- 35.2. Any parts of the Telecommunications (Standard Form of Agreement Information) Determination 2003 or the Consumer Contracts Code that cease to be in force cease to be Change Rules.

- 35.3. If the Telecommunications (Standard Form of Agreement Information) Determination 2003 or the Consumer Contracts Code is amended or replaced, the Change Rules will include any part/s of the new version that regulate or restrict whether or how a New Version can apply to or affect a Service Contract that was made before it was published.