

# **Standard Form of Agreement**

## **General Terms**

**My Net Fone Australia Pty Ltd**  
**ABN 73 109 671 285**  
Level 3  
580 George Street  
Sydney NSW 2000

## GENERAL TERMS

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# STANDARD FORM OF AGREEMENT

## 1 GENERAL TERMS

- (a) **(What is the SFOA)** The SFOA is a “standard form of agreement” under section 479 of the Telecommunications Act 1997 (Cth). The SFOA governs the supply by us and the acquisition by you of the Service, and you and we must comply with the terms and conditions contained within it. The SFOA is made up of the following documents:
- (i) your order (including the terms and conditions to which you agreed, and the waivers and acknowledgements you gave, during the ordering process);
  - (ii) the Critical Information Summaries;
  - (iii) the Service Terms (if any);
  - (iv) the Acceptable Use Policy; and
  - (v) these General Terms.
- (b) **(How to read these General Terms)** You need to read these General Terms, your order, the Service Terms, the Acceptable Use Policy and the Critical Information Summary for the Service you order to understand the SFOA and your rights and obligations. Words that start with a capital have defined meanings, set out in clause 16. You need to read the definitions in that clause to understand the meanings of those words.
- (c) **(Inconsistencies)** If there is any inconsistency among the documents which make up the SFOA, the SFOA is interpreted by giving priority first to clause 10 (Liability) of these General Terms, second to your order, third to the Critical Information Summary, fourth to the Service Terms, fifth to the Acceptable Use Policy and sixth to these General Terms (excepting clause 10 (Liability)).
- (d) **(For a copy and assistance)** You can obtain a copy of these General Terms, the Service Terms (if any), the Acceptable Use Policy and the Critical Information Summaries from our website or by contacting our customer service team. For assistance to read this document, contact our customer service team, the National Relay Service on 133 677 or the Translating and Interpreting Service on 131 450.
- (e) **(Carriers and Carriage Service Providers)** You represent and warrant to us that you are not a Carrier or Carriage Service Provider. You must notify us immediately, if you are, become, or operate as a Carrier or Carriage Service Provider. You may not resell or resupply the Service or use the Service for the purpose of reselling or resupplying the Service. We may cancel or suspend the Service immediately by notice to you if we reasonably believe that you are, become, or operate as a Carrier or Carriage Service Provider or are reselling or resupplying the Service and, in that case, we may enter into an agreement with you for the supply of wholesale services.

## 2 TERM

- (a) If you order a Service with a Fixed Contract Period, the Service will be supplied from the Start Date and continue, subject to the terms and conditions of the SFOA, for the Fixed Contract Period and after that period, month to month unless either you or we give notice of cancellation 30 days before expiry of the Fixed Contract Period. Either you or we can cancel the Service earlier as set out in clause 9, but you may incur a Break Fee if the Service is cancelled, or if you wish to change the

plan for the Service, within the Fixed Contract Period. On expiry of the Fixed Contract Period, we can vary the Charges and other terms by giving you 30 days' notice beforehand.

- (b) If you order a Service with no Fixed Contract Period, the Service will be supplied from the Start Date and continue, subject to the terms and conditions of the SFOA, on a month to month basis until you or we cancel it as set out in clause 9.

### **3 SERVICE ORDERS AND CHANGES**

- (a) Your order specifies the equipment, the Service, the plan and the Fixed Contract Period (if any) which you order. The Service is described in the Critical Information Summary for that Service.
- (b) To place an order, you must be at least 18 years of age. You must provide us with complete and accurate information as requested in our order form (or otherwise) and all consents we reasonably require in connection with the Service. If you do not do this, it may affect the way we assess your order and any credit terms, as well as cause delays, and you may incur additional costs of equipment delivery and provisioning the Service. You must promptly notify us of any change to your contact or other details stated in the order.
- (c) All orders are subject to our acceptance. When we receive your order, we assess it based on factors including your eligibility for the Service, availability of the Service to you and your credit risk. As part of this assessment, we may carry out a credit check. We may decide to accept or reject an order, or accept an order subject to provision of financial security or other conditions. If we reject your order, we will tell you our reasons. Any additional terms and conditions you state on an order are excluded from the SFOA unless we agree otherwise in writing.
- (d) Before you place an order, you must identify your own requirements and verify that the Service and any equipment you order meet those requirements.
- (e) After we have accepted your order, you can only cancel your order or the Service as permitted under clause 9.1, and you can only change your order or the Service as permitted under clause 14, and you may incur a Break Fee or other charges as a result.
- (f) By ordering the Service, you:
  - (i) represent and warrant that you meet the customer eligibility criteria for the Service, if any, specified in the SFOA;
  - (ii) acknowledge and agree that the Service has the limitations, restrictions and qualifications stated in the SFOA;
  - (iii) warrant that you have authority to order the Service to be installed and connected as specified in the Order and you authorise us to undertake any work, order any equipment, and appoint us your agent to deal with other network suppliers, as required to connect and supply the Service in accordance with the SFOA; and
  - (iv) agree to pay us all Charges in connection with the Service, and to comply with any conditions and your obligations stated in the SFOA.

### **4 SUPPLYING THE SERVICE**

- (a) We will supply the Service from the Start Date subject to the terms and conditions of the SFOA.

- (b) We will supply the Service and any equipment within a reasonable time after accepting your order and receiving any initial payment which may be required. We may choose not to commence the process until after a cooling off period (if any) has expired. Before we can connect a service, we may need to order, configure or install equipment and make arrangements with our suppliers, which may impact connection and delivery dates. We aim to meet any service and equipment connection and delivery dates we have given you but those dates are estimates and not guarantees, and except as required otherwise by law, we are not liable for any failure to meet them.
- (c) Given the technology, we do not guarantee that we can provision and connect every service and we may cancel a Service under clause 9.2 if we determine that we will be unable to provision or connect it within a reasonable time after accepting your order.
- (d) We choose the method of provisioning and supplying the Service and we can use a combination of infrastructure and services of our own or provided by third parties. We may at any time vary the method, infrastructure and services which we use to supply the Service and we and our suppliers may make changes to the Service and the infrastructure and services used to supply the Service at any time provided such variation or change does not materially impair supply of the Service.
- (e) We will supply the Service using due care and skill but given the technology, we do not guarantee voice quality or data download speeds or other quality of service of a particular standard, or continuous access to the Service at all times, or that the Service will be fault free or uninterrupted or in the case of a data service, that any material sent or received will be sent or received correctly, except if we have agreed otherwise with you in writing or if the law requires otherwise. Quality of service can vary by location and is affected by many factors outside our control, including the customer equipment you use, distance from the exchange and the quality of the line connecting the exchange to your premises.
- (f) You are responsible for providing, installing, operating, upgrading and keeping in good working order all Customer Equipment unless stated otherwise in the Critical Information Summary or Service Terms, or we agree otherwise in writing. You are also responsible for obtaining all necessary consents and approvals (including landlord or building manager approval if required) in connection with the Service, and for providing adequate power supply and a suitable physical environment for equipment.
- (g) You must arrange to give us and our suppliers' safe access to your premises promptly when we ask if we or our supplier need access to provision, connect, supply, install, maintain, support, upgrade, or repair the Service, and on cancellation to remove the Service. You must also, if we ask, arrange that your suitably qualified representative is available onsite to assist. If you do not, you may incur additional charges and connection, service and repair times may be impacted.

## **5 EQUIPMENT**

### **5.1 Customer Equipment**

- (a) You must ensure that all Customer Equipment complies with applicable Australian laws and standards and our reasonable directions and is suitably provisioned and configured, and compatible for use with the Service.
- (b) You must upgrade or reconfigure the Customer Equipment as we may reasonably request at any time, including as a result of changes to the infrastructure used to supply the Service.
- (c) We may disconnect Customer Equipment from the Service if, in our reasonable opinion, it may interfere with or disrupt the Service.

- (d) You acknowledge and agree that if Customer Equipment is faulty or not compatible, it may affect your ability to access the Service, the quality of the Service or our ability to provide support to you.

## **5.2 Purchase of equipment from us**

- (a) This clause 5.2 applies if you purchase equipment from us (including by instalment payments or by bundling with the Service).
- (b) If you receive the equipment in damaged or incomplete condition, you must notify us immediately and follow our directions.
- (c) Your ownership of equipment we sell you commences when you have paid in full for it, and your responsibility for all risk of loss or damage to it commences on delivery of the equipment to you.
- (d) The equipment we supply you may be locked and programmed to work only with the infrastructure used to supply the Service. If you ask us, we may (but are not obliged to) agree to unlock the equipment and in that case, we will not be liable to you for any associated loss, damage, expense or liability, except if we have been negligent.
- (e) If you change the electronic serial number or equipment identifier of the equipment or perform a factory reset of equipment we supply you, we will not be liable to you for any resulting impact on our ability to supply the Service or to provide you with remote support, and you must pay our reasonable charges for any additional costs incurred as a result. It may also affect any rights and remedies you may have in relation to supply of the equipment.
- (f) You are responsible for installation, upgrade and maintenance of all equipment you purchase from us unless we agree otherwise in writing.
- (g) Until your ownership commences under clause 5.2(c), we retain legal and equitable ownership of the equipment. If you sell equipment in which we retain ownership, you sell as principal not as our agent, you must hold the proceeds of sale in a separate account on trust for us and you have a duty to account to us for the proceeds. This retention of ownership constitutes the grant of a purchase money security interest by you in favour of us in respect of all present and after-acquired equipment which we supply to you (refer to clause 5.4).
- (h) Until ownership passes to you under clause 5.2(c), you must comply with the obligations set out in clause 5.3(d).
- (i) If the equipment we supply you has the benefit of a warranty, details will be stated in the warranty information on our website.
- (j) If for any reason we provide you replacement equipment in advance of receiving the original equipment from you, we will bill you our standard retail price for the equipment. The charge will be cancelled when we receive the original equipment from you. If we do not receive the original equipment, or we have no obligation to repair or replace the equipment under warranty or other legal obligation, then you must pay us the charges billed.

## **5.3 Our Equipment**

- (a) This clause 5.3 applies if we loan or rent Our Equipment to you in connection with the Service.
- (b) We own Our Equipment at all times and ownership of Our Equipment does not pass to you even at the end of the loan or rental period.
- (c) You are responsible for any loss of or damage to Our Equipment from the time of delivery to you until it is returned to us.

- (d) You must, in respect of Our Equipment:
- (i) keep it in your control at all times and at the premises to which we delivered it or other premises we have agreed to in writing;
  - (ii) not loan, rent, give or sell Our Equipment to any other person, or allow a security interest, charge, lien or encumbrance to be created over it, not attach it to any real property and not remove from it any nameplate identifying Our Equipment as our property;
  - (iii) only use it in connection with the Service and for the manufacturer's intended purpose;
  - (iv) obtain all necessary consents and approvals (including landlord or building manager approval if required) for installation;
  - (v) provide a suitable physical environment for installation and operation including an adequate power supply;
  - (vi) install, operate and maintain the equipment in accordance with manufacturer's requirements and our directions;
  - (vii) not change the electronic serial number or equipment identifier or perform a factory reset of it without our prior written consent;
  - (viii) comply with our directions; and
  - (ix) make sure that anyone using the equipment complies with your obligations under this clause 5.3(d).
- (e) You must allow us to inspect, service, upgrade, reconfigure, repair, replace or disconnect Our Equipment at any time we reasonably request and ensure that no other person modifies, services, upgrades, reconfigures, repairs or disconnects Our Equipment except with our prior written consent.
- (f) You must notify us immediately, and follow our directions, if Our Equipment is damaged or incomplete when you receive it, or if at any time Our Equipment is lost, damaged, stolen or becomes faulty while in your care custody or control.
- (g) On cancellation of the Service for any reason, the loan or rental of Our Equipment is automatically cancelled. We may cancel the loan or rental of Our Equipment immediately at any time by giving you notice:
- (i) if, in our reasonable opinion, you are in breach of any obligation under this clause 5.3; or
  - (ii) if we are entitled to cancel the Service.
- (h) On the sooner of expiry or cancellation of any agreed loan or rental period, you must permit us to enter onto the premises where Our Equipment is located and to disconnect and remove it, or if we request, at your cost, and in accordance with our directions, immediately return Our Equipment to us in good condition (except fair wear and tear).

#### **5.4 PPSA & Security Interest**

- (a) This clause 5.4 applies to the extent that the SFOA creates or evidences a security interest in equipment (and in proceeds of sale of equipment) including equipment to which we retain ownership under clause 5.2(g), and Our Equipment, for the purposes of the Personal Property Securities Act 2009 (Cth) ('PPSA'). The terms 'accession,' 'perfected security interest,' 'security

agreement,' 'security interest', and 'verification statement' have the meanings given them in the PPSA.

- (b) If we ask you, you must promptly sign any document and do anything else we reasonably require to ensure that our security interest is a perfected security interest. You must not enter into any security agreement that permits any other person to have or to register any security interest in respect of the equipment or proceeds of sale of the equipment until we have perfected our security interest.
- (c) If you are a business or a non-profit organisation, you acknowledge and agree that the equipment is not used predominantly for personal, domestic or household purposes and accordingly you and we agree to contract out of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 to the extent permitted by section 115(1) of the PPSA. You waive any rights you may otherwise have to receive notices under sections 95, 118, 121, 130, 132 or 135 of the PPSA, to apply to court for an order concerning the removal of an accession under section 97 of the PPSA, to object to a proposal by us to retain any collateral under sections 130 and 135 of the PPSA, and to receive a verification statement in relation to registration events in respect of the equipment supplied to you from time to time.
- (d) You and we agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. You must do everything on your part necessary to ensure that section 275(6)(a) of the PPSA continues to apply.

## **6 NETWORK MAINTENANCE, SUPPORT SERVICES AND FAULT REPAIR**

### ***Our responsibility and obligations***

- (a) We and our suppliers may perform maintenance, upgrade or repair services at any time on Our Equipment, and the infrastructure we and they use to supply the Service and will try to minimise any interruption to the Service or adverse impact on quality.
- (b) We provide remote support for use of the Service in Australia within the hours stated in the Critical Information Summary, or if not stated there, those stated on our website for the Service. We may agree to provide additional support services, for additional charges.
- (c) We are only responsible for repairing a fault in the Service which you notify to us if the fault is created or caused within Our Equipment or the infrastructure we and our suppliers use to supply the Service, up to our side of the Network Boundary.
- (d) If we are responsible for repairing a fault in the Service we will take reasonable steps to restore the Service as soon as we reasonably can. We aim to meet any fault repair times that we give you but (except if we have agreed otherwise with you in writing or if the law requires otherwise) those times are estimates only and we do not guarantee to meet them. If we become aware that a fault in the Service is on your side of the Network Boundary, our sole responsibility is to notify you. We may, but are not obliged to, provide additional help.

### ***Your responsibility and obligations***

- (e) You are responsible for, and must repair or arrange the repair of a fault in the Service created in or caused by Customer Equipment or on your side of the Network Boundary. You are responsible for providing all support services in respect of the Customer Equipment and infrastructure on your side of the Network Boundary.

- (f) You must promptly report any fault in the Service which you reasonably believe is our responsibility, and you must make any request for other support services, by contacting our customer service team by telephone or online inquiry as stated in the Critical Information Summary, or if not stated there, those stated on our website for the Service. Before reporting a fault to us, you must try to ensure that the fault is not in the Customer Equipment or on your side of the Network Boundary.
- (g) You must notify us promptly of any changes to the Customer Equipment which may be relevant to the Service.
- (h) You must arrange access to the premises if we request and provide other help if needed to enable us and our suppliers to investigate and repair a fault and provide support services.

## **7 USING THE SERVICE**

### ***Your responsibility and obligations***

- (a) You must ensure that the Service is used only for its intended use as specified in the Critical Information Summary or Service Terms.
- (b) You must comply with our Acceptable Use Policy and with our policies in relation to fair use, if any, referred to or specified in the Critical Information Summary or Service Terms.
- (c) You are responsible for keeping secure the means of access to the Service to ensure that unauthorised access does not occur. You must keep secure any equipment you connect to the Service and any data stored on that equipment (including keeping user names and passwords secure) and you are responsible for the risk of unauthorised access, misuse and loss or corruption of that data. You must take reasonable steps to keep the Service and your account secure from unauthorised access. You must notify us immediately you become aware of any actual or attempted unauthorised use of the Service or breach of security, giving us your account number and full details of the security breach. Information about security tools is available on our website.
- (d) You are solely responsible for all use of the Service and for all risks associated with your activities when you use the Service (including risks associated with transmitting, communicating, accessing, downloading, or publishing material, content of communications, making purchases or providing personal or confidential information, ensuring that material is sent or received correctly, and data loss, corruption or interception, whether by using the internet or other means). We are not liable for any loss, cost, damage or liability arising from your activities when using the Service.
- (e) You must ensure that anyone you authorise to use the Service complies with your obligations under this clause 7 and you are responsible if they fail to do so.
- (f) You must comply with our reasonable directions and all directions of any regulatory body in connection with use of the Service. Where you access third party content or where a third party network is used to transmit material in connection with the Service, you must comply with any applicable acceptable use terms or other rules of those third parties.
- (g) You must provide us all the information and assistance we reasonably require to enable supply of the Service and compliance with any request or direction of a government agency, emergency services organisation or other authority, and to investigate if we reasonably suspect unauthorised use of the Service or if you have misused the Service or breached the terms and conditions of the SFOA.
- (h) You must use the Service only for lawful purposes and activities and must comply with all laws, regulations and industry codes of practice which apply to your use.

- (i) You must not use the Service in any manner which could cause you or us to violate a law, regulation or industry code, commit an offence, endanger any person, damage any property, infringe a person's rights (including copyright), or which could give rise to us incurring a liability. You must not use the Service to transmit, communicate, access or publish any material which is unlawful, offensive, indecent, defamatory, abusive, menacing or harassing, material which is unsolicited and material known to contain a virus or similar.
- (j) You must not knowingly do anything, or use the Service in any manner, which might compromise the security or safety of, or which might damage, interrupt or interfere with the operation of, the Service, the infrastructure used to supply the Service, Our Equipment or any other computer, system, network or services, including hack or otherwise obtain unauthorised access to any of them.

***Our Rights to intercept, monitor and take other action***

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

***Your obligations***

- (m) You must comply with the following requirements specified by Network Operator.
- (n) You consent to us disclosing to Network Operator information about you and Network Operator, disclosing and using the information to enable Network Operator to provide services, exercise its rights and perform its obligations under our agreement with it, and for its internal business purposes including analysis for general marketing purposes.
- (o) You acknowledge that the Network Operator may:
  - (i) block access or suspend the supply of the Service or both (immediately without notice) if you attempt to access its mobile network (other than to make emergency calls) using a device which Network Operator reasonably believes is causing a fault or that may have a detrimental effect on its mobile network or other users of it;
  - (ii) change the coverage area for any mobile Service, or change the mobile network, from time to time;
- (p) You must:
  - (i) ensure that everything connected to the network by you is technically compatible with the network, complies with generally-accepted industry codes or standards, and otherwise

complies with all reasonable procedures, standards or other requirements notified by Network Operator from time to time;

- (ii) ensure that in using the Service you comply with our Acceptable Use Policy and any provisions notified to you as “restrictions on use” for the purpose of this clause;
- (iii) not connect anything to the network, use the Service or do anything at Network Operator’s sites or facilities in a way that endangers the health or safety of any person or negatively impacts the normal operation of any network or system over which the Service is supplied, damages or interferes with any Network Operator site or facility or telecommunications equipment owned or operated by Network Operator or third parties, or interrupts or degrades the normal operation of the Service or of a product or service supplied by Network Operator to another customer or supplied by a customer of Network Operator;
- (iv) arrange for Network Operator and its suppliers and contractors to have safe and timely access to your sites including so that the Service can be supplied and any equipment relating to the Service or the network can be installed or maintained, repaired, enhanced or removed;
- (v) give all information and assistance reasonably required by Network Operator, and comply with all of its reasonable directions, to enable it to confirm whether you are complying with this clause;
- (vi) ensure that your use of the NBN-related networks, or any downstream product, is lawful and does not give rise to a breach of any provisions of our agreement with Network Operator;
- (vii) comply with, any instructions, policies or procedures given to us by Network Operator that relate to protecting the health or safety of any person;
- (viii) ensure that you do not use, the NBN-related networks in a way that creates a risk to the integrity of the NBN-related networks, the integrity of any other NBN Co customer network, systems, equipment or facilities used in connection with the NBN-related networks, the quality of any product or service supplied by NBN Co, or the health or safety of any person;
- (ix) promptly notify us upon you becoming aware of any material damage to any NBN Co equipment on your premises or otherwise used to connect your premises to the NBN-related networks; and
- (x) ensure that you do not use the Service to generate mobile terminating access or SMS message terminating access payments (for example, by using SIM boxing), to transit, refile or aggregate domestic or international traffic on Network Operator’s network, as a call collection service and/or for call redirection to call centres, call sinks or mass termination services, for M2M Uses or with devices that switch or reroute calls to or from Network Operator’s network or any third party without Network Operator’s consent.

## **8 CHARGES, BILLING AND PAYMENT**

### **8.1 Charges**

- (a) You must pay all Charges in connection with the equipment and the Service set out in the SFOA, the Special Offer (if any) and our Standard Fee Table.

- (b) Charges for the Service accrue from the Start Date and may include set up Charges (which may be payable before we commence provisioning), usage based Charges and recurring Charges and any other charges set out in the SFOA, the Special Offer (if any) and our Standard Fee Table.
- (c) You are responsible for all Charges for use of the Service whether or not you authorised the use, including those arising from toll fraud or other unauthorised or fraudulent usage, or from your failure to keep your Service secure. You are also responsible for any Charges arising from your failure to access or disconnect a call properly or from your failure to disconnect a Service when vacating premises.
- (d) Recurring Charges are payable from the Start Date until cancellation of the Service. The recurring Charges continue to be incurred during any period of interruption to the Service including if caused by your failure to connect equipment to the Service, failure of Customer Equipment or other fault of you or anyone else who uses the Service, relocation of the Service, failure of services provided to you by anyone else (including broadband internet service where this is not provided by us), interruption for an insignificant period, or suspension of the Service for any reason. Recurring Charges also continue to be incurred during any period when the Service is not available because you failed to pay the Charges or in the case of a prepaid service, you failed to maintain the minimum balance required for the Service. If the interruption was caused by our fault or negligence, you may claim a credit for the recurring charge for the period of interruption as set out in clause 10.1(c).
- (e) If you ask us to provide services onsite, or outside the support hours specified in clause 6(b), or if you ask us to provide services in connection with Customer Equipment which are outside any warranty or Consumer Guarantee obligations we may have, you must pay our reasonable charges for those services. We will advise you of our charges before you incur them.
- (f) You must pay our reasonable charges to repair, replace, modify or service the Service or Our Equipment if required as a result of:
  - (i) failure of Customer Equipment arising from any act or omission of you, your employees, agents or contractors or anyone authorised by any of them;
  - (ii) your failure to return Our Equipment in good condition (excepting fair wear and tear) when required under the SFOA or loss, theft or damage of Our Equipment (except to the extent caused or contributed to by us); or
  - (iii) any negligence, fraud or breach of the SFOA by you, your employees, agents or contractors or anyone authorised by any of them.

We will try to advise you of these charges before you incur them but given their nature, we may not always be able to do so.

- (g) You must pay our call out fees if we make an onsite visit after giving you reasonable prior notice, and you fail to give us access or to have a suitably qualified representative onsite to assist us.
- (h) We may from time to time make a Special Offer with Charges and terms and conditions that differ from those in the Critical Information Summary. If you accept a Special Offer from us, the Charges and terms and conditions of the Special Offer take priority over the Critical Information Summary, to the extent they differ, only for the limited period specified in the Special Offer.
- (i) All Charges are in Australian dollars. If a Charge is stated to exclude GST, and we are liable to pay GST on supply of the Service to you, we may increase the Charge by the amount of GST and you must pay us the whole of that amount when we ask. If the charge is stated to be inclusive of GST, but the GST rate used is incorrect or changes, the amount of the charge will be adjusted to reflect the actual GST rate.

## **8.2 Billing and Payment**

### ***When we bill you***

- (a) We may bill and require payment of certain Charges as set out in the SFOA before we commence to deliver equipment or connect the Service. Typically these are Charges for equipment and set up and provisioning of the Service. We may bill and require payment of Charges for any additional services before we provide those services. Unless otherwise stated in the Critical Information Summary, recurring Charges are billed in advance and usage based Charges are billed in arrears, except in the case of a prepaid service.
- (b) We will bill you monthly, commencing on the date which is one calendar month after the date we accept your order, unless otherwise specified in the Critical Information Summary. We will try to include all Charges relating to the current billing period on your bill but usage based Charges and some other Charges may not appear on your bill until up to 160 days from the date you incurred the charge. We may bill and you must pay any minimum monthly Charge stated in the Critical Information Summary even if you have not incurred the services related to those Charges.
- (c) We may ask you to make interim payments at other times if there is unusually high usage on your account, to maintain your account within any credit limit we have approved or to maintain any minimum account balance stated in the Critical Information Summary, if we have reason to be concerned about your ability to pay at any time or if permitted under another provision of the SFOA. We may bill you after a Service has been cancelled for Charges you incurred before or when the Service was cancelled, but we will bill them within a reasonable time after cancellation.

### ***How we bill you***

- (d) We will send bills to your address (by email, facsimile or post and in HTML, pdf or paper format, at our option). If we send or offer to send your bill by email, and you ask us to provide a paper copy, we may charge you a paper invoice fee.
- (e) If we have taken reasonable steps to ensure you receive it, a bill remains payable even if you do not receive it because you have changed address and not notified us or because your email mailbox is full or for other reason attributable to you.
- (f) If you ask us to re-send you a bill more than 3 months after the issue date, and that billing information is available without charge through our website, we may charge you an invoice copy fee for each bill you request.

### ***Billing errors and adjustments***

- (g) If we find an error on a bill, we will apply an adjustment to your service account and this will appear on your next bill. We will credit your account with any overpayment and you must pay any underpayment by the due date. If you no longer have an account with us, we will take reasonable steps to refund any overpayment to you.
- (h) If we owe you an amount, we can provide it as a credit on your service account and deduct it from amounts you owe us.

### ***When to pay***

- (i) You must pay the Charges by the due date specified on the bill and must make any interim payment described in clause 8.2(c) by the due date notified by us.
- (j) For all prepaid accounts, you must pay all Charges in advance each month and keep your account topped up as required to maintain the minimum balance set out in the Critical Information Summary.

### **Payment Options**

- (k) You must pay the Charges using the payment method specified on the bill or on our website except that if a specific payment method is required in the Critical Information Summary, or otherwise agreed with you, you must use that payment method.
- (l) If you have agreed to pay by automatic payment or direct debit from your credit card, charge card or bank account:
  - (i) you authorise us to:
    - (A) (in the case of payments by card) disclose your card details to and obtain information from the card issuer to verify those details and your ability to pay the Charges using the card; and
    - (B) debit your credit card, charge card or bank account all Charges you owe us from time to time in accordance with the SFOA, including any Charges which may become owing as a result of cancellation of the Service;
  - (ii) you must ensure that your account has sufficient funds to allow payment when required; and
  - (iii) you must notify us promptly if there is a change to your card or bank details.
- (m) If you pay by credit card, you must pay a credit card fee if applicable as set out in the Standard Fee Table. We may choose to stop accepting credit or charge cards from one or more providers, by giving you reasonable notice.

### **Payment Default**

- (n) If you fail to pay the Charges in accordance with the SFOA, we may:
  - (i) withdraw any discounts in connection with the Service and/or restrict, suspend or cancel the Service as permitted under clause 9.2;
  - (ii) charge you a late payment fee as set out in the Standard Fee Table;
  - (iii) exercise a general lien over any Customer Equipment in our possession until any outstanding charges have been paid in full; and
  - (iv) charge you our costs of recovering payment for outstanding charges, including reasonable debt recovery agent costs and legal costs.
- (o) If your payment is dishonoured by the bank or credit or charge card issuer, we may charge you a dishonour fee.

### **Financial Hardship**

- (p) Our Financial Hardship Policy sets out how we can assist customers who are experiencing financial hardship. You can obtain a copy from our website or by contacting our customer service team.

### **Changes to credit accounts**

- (q) If at any time we have reason to become concerned about your ability to pay the Charges, we may in respect of your credit account (if any), decline to extend further credit or vary your credit limit and any related conditions.

- (r) If you fail to pay any amount when due or otherwise breach the SFOA, become bankrupt, insolvent, enter into an arrangement with your creditors, receivership, liquidation or similar, or if we become concerned about your ability to pay the Charges for any other reason, we may cancel your credit account (if any) without prior notice and all balances owing will become immediately due and payable.

### **8.3 Billing Disputes**

- (a) If you have reason to believe there is an omission or error in relation to a charge on a bill, you may dispute the bill, by giving written notice to our customer service team before the due date for payment of the bill. Your notice must set out the date and number of the disputed bill, itemised details of the charges in dispute, your detailed reasons and any documentation to support your claim and enable us to investigate it. You must pay any undisputed amount by the due date.
- (b) We are committed to ensuring that our bills are accurate and unless you provide reasonable substantiation of your claim, we may rely on our records as proof of usage and Charges incurred.
- (c) Our Complaint Handling Process sets out our process for handling billing disputes and other complaints. You can obtain a copy from our website or by contacting our customer service team.

### **8.4 Financial Security**

- (a) As a condition of our acceptance of your order, or if we have reason to be concerned about your ability to pay at any time and based on the outcome of a credit assessment conducted in relation to you, we may ask you to provide a security in the form of a cash deposit to be held by us, or a bank guarantee in a form acceptable to us, or to increase any security previously provided.
- (b) If you fail to provide adequate security within 5 working days of our request, we may, without liability, suspend the Service to you in accordance with the SFOA until we receive adequate security.
- (c) We may access the security at any time to pay outstanding Charges you owe us but only after giving you at least 5 working days' notice that we intend to access the security if you fail to pay the Charges within that period.
- (d) We will refund you the security deposit less any amounts owing, without interest, within 10 working days of the sooner of you satisfactorily completing the terms of the security arrangements, or cancellation of the Service.

## **9 SUSPENSION AND CANCELLATION**

### **9.1 Your Rights to Cancel the Service**

- (a) To cancel the Service you must give us written notice as set out in clause 15(e) (unless the law specifies otherwise) with the notice periods set out in this clause 9.1. Failure to pay Charges does not automatically cancel the Service and recurring Charges will continue to be incurred until the Service is cancelled by you or us.
- (b) You may cancel the Service if the law gives you a right to cancel which cannot be excluded by contract. You and we must comply with the obligations relating to return of equipment, refunds and payments set out in clause 9.3 unless the law requires otherwise.
- (c) You may cancel the Service at any time before we give you notice of Service connection and in this case you may incur the Charges set out in clause 9.3(b).

- (d) You may cancel the Service at any time after we give you notice of Service connection by giving us 30 days' notice before the end of a billing period. In this case you may incur the Charges set out in clause 9.3(c), which for a Service with a Fixed Contract Period include the Break Fee.
- (e) You may cancel the Service if we commit a material breach of the SFOA and fail to correct the breach within 30 days of receiving notice from you to do so. In this case you may incur the Charges set out in clauses 9.3(b) or 9.3(c) (depending on the timing), but you will not be charged a Break Fee.
- (f) You may cancel the Service if permitted under any other clause of the SFOA.

## 9.2 Our Rights to Restrict, Suspend or Cancel the Service

- (a) **(Notice)** To cancel the Service we must give you notice as set out in clause 15(e) if required but there are also circumstances where we can cancel immediately without giving you notice beforehand, as set out in this clause 9.2.
- (b) **(General)** We may cancel the Service:
  - (i) if we determine that for technical or other reasons we will be unable to provision or connect the Service to you within a reasonable time after accepting your order, immediately by giving you notice;
  - (ii) where the Service has no Fixed Contract Period, or the Fixed Contract Period has expired, at any time by giving you 30 days' notice;
  - (iii) where the Service has a Fixed Contract Period, by giving you notice 30 days before expiry of the Fixed Contract Period; or
  - (iv) if you consent to cancellation of the Service.
- (c) **(Cancellation or suspension for credit management reasons)** We may cancel or suspend the Service immediately and without notice beforehand if you fail to pay any amount by the due date for payment and:
  - (i) we assess that you or your account status present an unacceptably high credit risk to us;
  - (ii) we reasonably suspect fraud or attempted fraud; or
  - (iii) you fail to pay the amount owing within 5 working days of us giving you notice that the amount is overdue and that the Service may be disconnected, suspended or restricted.
- (d) **(Restriction for credit management reasons)** We may restrict the Service immediately and without notice beforehand if:
  - (i) we have agreed to restrict the Service at a certain point and you have reached that restriction point. (A restriction point is the point (if any) you have nominated at which access to a service or an aspect of a service is limited.); or
  - (ii) you have a prepaid service and your account balance falls below the required minimum balance.
- (e) **(Cancellation or suspension for other customer cause)** We may cancel or suspend the Service immediately by giving you notice if you:
  - (i) commit a material breach of the SFOA which is capable of being corrected and you fail to correct the breach within 30 days of receiving notice from us to do so;

- (ii) commit a material breach of the SFOA which is not capable of being corrected;
  - (iii) withdraw your consent (if any) to waive your rights and protections under the Customer Service Guarantee Standard;
  - (iv) fail to provide us with access, authority or information reasonably notified as required by us to enable us to provide the Service or as set out in clause 11;
  - (v) or anyone using the Service, in our reasonable opinion, have been, or is, involved in fraud or other illegal conduct in connection with the Service;
  - (vi) or anyone using the Service fail to use the Service as permitted under the SFOA;
  - (vii) in our reasonable opinion, are, or are operating as, or using the Service as, a Carrier or Carriage Service Provider including for the purpose of reselling or resupplying the Service;
  - (viii) in our reasonable opinion, are using the Service for a purpose other than that for which it is intended as set out in the Critical Information Summary or Service Terms, and you fail to change to a more suitable service within 30 days of receiving notice from us asking you to do so;
  - (ix) fail to provide or increase financial security, as required under the SFOA, within 5 working days of receiving notice from us to do so;
  - (x) become bankrupt, insolvent, or have a receiver, manager, administrator, provisional liquidator or liquidator appointed, enter into an arrangement with your creditors or if a partnership, the partnership is dissolved or application made to dissolve it;
  - (xi) vacate your premises;
  - (xii) if an individual, die; or
  - (xiii) (in the case of a Service with no Fixed Contract Period) do not use the Service for a period of at least 6 months, have a zero or negative account balance, and do not notify us that you wish to retain the Service, within 30 days of receiving notice from us of our intention to cancel.
- (f) **(Cancellation or suspension for other reasons)** We will try to give you notice beforehand, but we may cancel or suspend the Service immediately and without giving notice beforehand, if:
- (i) required by law, or to comply with a direction or order of a government authority or court;
  - (ii) a competition notice is or is likely to be issued by a government authority in connection with the Service;
  - (iii) there is an emergency;
  - (iv) we have reasonable grounds to believe there is a threat or risk to the security of the Service or integrity of the network, or the Service may cause death, personal injury or damage to property;
  - (v) we are unable to supply the Service because of an Event;
  - (vi) prudent or necessary to allow maintenance or repair of, or to avoid or minimise a risk to the networks and infrastructure used to supply the Service, or for other operational reasons; or

(vii) where we supply the Service using another supplier's network or services, our supplier ceases to supply its services to us.

(g) We may cancel the Service if permitted under any other clause of the SFOA.

(h) If we suspend or restrict a Service, we may later cancel the Service for the same reason.

### **9.3 Effect of restriction, suspension, cancellation and termination**

(a) During any period of restriction or suspension by us under clause 9.2 or requested by you, you remain responsible for all recurring Charges which will continue to be incurred and any usage based Charges incurred.

(b) If the Service is cancelled before we give you notice of Service connection, you must pay:

(i) (except if the Service is cancelled under clause 9.1(e) or 9.2(b)(i)) our reasonable charges and all third party costs we have incurred in connection with preparing to supply the Service; and

(ii) equipment charges in accordance with clause 9.3(d).

(c) If the Service is cancelled for any reason after we give you notice of Service connection, you must pay:

(i) all Charges incurred for the Service including any usage based Charges whether incurred before or after the date of cancellation;

(ii) if the Service is cancelled within a Fixed Contract Period (except under clause 9.1(e), 9.2(f), 14(c) or (d)), the applicable Break Fee; and

(iii) equipment charges in accordance with clause 9.3(d).

(d) If any equipment you purchased from us has not been paid in full or was supplied free (including because it was purchased by instalment payments) or at a discount to our standard retail price as part of a Service with a Fixed Contract Period or otherwise, on cancellation of the Service for any reason, you must:

(i) (except if the Service is cancelled under clause 9.1(e), 9.2(b)(i), 14(c) or (d)) pay us the unpaid balance of our standard retail price for the equipment (including the amount of any discount given); and

(ii) if the Service is cancelled under clause 9.1(e), 9.2(b)(i), 14(c) or (d), promptly:

(A) return the equipment to us in good condition, fair wear and tear excepted; or

(B) give us notice that you wish to retain the equipment and in this case you must pay us the unpaid balance of our standard retail price for the equipment (including the amount of any discount given).

(e) Cancellation of the Service takes effect on expiry of any notice period required by the SFOA, unless we agree otherwise. On cancellation of the Service for any reason, we may disconnect the Service and you must:

(i) immediately cease to use the Service;

- (ii) immediately cease to use and comply with your obligations in respect of Our Equipment as set out in clause 5.3(h) and in respect of any software we licensed as set out in clause 12(e)(vi); and
  - (iii) pay all invoices for the Charges by the due dates.
- (f) Except if required otherwise by law, or if the Service is cancelled under clause 9.1(e), 9.2(b), 14(c) or (d), we are not liable to refund any monies which you have paid in advance or prepaid. If the Service is cancelled under clause 9.1(e), 9.2(b), 14(c) or (d), we will refund you the balance of any monies which you have paid in advance or prepaid, after you have met your obligations under clauses 9.3(b),(c),(d) and (e).
  - (g) Except if required otherwise by law or as otherwise stated in this clause 9.3, we are not liable to you for any loss, cost, damage or liability in connection with suspension or cancellation of the Service by us in accordance with the SFOA.
  - (h) Cancellation of one Service does not affect your obligations in connection with any other services we supply to you.
  - (i) If we agree to reconnect a Service after suspension or cancellation in accordance with the SFOA, you may incur a reconnection fee.
  - (j) If a Service is cancelled, clause 10 (Liability) and any provision of the SFOA which is clearly intended to operate after cancellation will continue as will the rights and liabilities that have accrued to you or us.

## **10 LIABILITY**

### **10.1 Our Liability to you**

#### ***What terms apply***

- (a) The only terms and conditions which apply to our supply of the Service and any other goods and services to you are the terms and conditions expressly set out in the SFOA and any rights you have at law which cannot be excluded. For example, we have obligations under the Consumer Guarantees, which may apply to the supply of goods and services to you. If you have rights and remedies under the law which cannot be excluded, nothing in the SFOA excludes those rights or remedies. We exclude any other liability we may otherwise have to you in connection with the SFOA and the Service, and we exclude all implied terms, conditions, warranties, rights, remedies.

#### ***Limiting liability for breach of Consumer Guarantee for some services***

- (b) If we have obligations to you under the Consumer Guarantees which cannot be excluded, but the law allows a supplier to limit liability for a breach of those obligations, we limit our liability to replace or repair goods, resupply the services or pay the cost of replacement, repair or resupply, only if it is fair and reasonable to do so.

#### ***Interruptions or delay to the Service.***

- (c) Subject to clauses 10.1(d), 10.1(e) and 10.1(i), if your use of the Service is interrupted, or connection of the Service is delayed, as a result of our fault or negligence, within a reasonable period of the interruption you can ask us to credit the amount of any recurring Charges billed to you for the affected Service for the period of the interruption or delay, unless we have an obligation under a service level to provide you a service credit in which case you can ask us to provide the service credit, and we limit our liability to you to that amount.

- (d) Except for any liability we have to you under the law which cannot be excluded, an interruption or delay to the Service is not caused by our fault or negligence, and we are not liable, if it is caused by an Excluded Incident.
- (e) Subject to clauses 10.1(d), 10.1(h) and 10.1(i), if the law requires, we will also pay you compensation for any reasonably foreseeable loss you suffer as a result of interruption or delay to the Service caused by our fault or negligence. A Residential Service is intended to be used for personal, domestic or household purposes. To the full extent the law permits, we do not accept liability for any loss in connection with the use of a Residential Service for business purposes because it is not reasonably foreseeable loss.

#### ***Property Damage and Personal Injury***

- (f) The limitations set out in clauses 10.1(j) and 10.1(k) do not apply to any legal liability we may have for direct loss or damage to tangible property or for personal injury or death.

#### ***Failures and delay outside our control***

- (g) Except for any liability we have to you under the law which cannot be excluded, we are not liable for any delay, interruption or failure to perform an obligation under the SFOA to the extent caused by an Event.

#### ***Consequential loss***

- (h) Except for any liability we have to you under the law which cannot be excluded, we exclude all liability to you for loss of profits, loss of revenue, loss of opportunity or goodwill, loss of actual or anticipated savings, loss or corruption of data, loss of any equipment value, any exemplary, punitive or special damage and any kind of indirect or consequential loss.

#### ***Your contribution to the loss***

- (i) We are not liable for any loss you suffer to the extent that you or any of your officers, employees, agents or contractors caused or contributed to the loss, or to the extent caused by you failing to take reasonable steps to reduce or avoid the loss.

#### ***General limit and exclusion***

- (j) Except for any liability we have to you under the law which cannot be excluded, if we do not expressly accept liability to you in connection with the SFOA or the Service under this clause 10.1, then we exclude that liability.
- (k) Except if the law requires otherwise, we limit our total cumulative liability to you in connection with the SFOA and the Service to the amount you paid us for the Service during the minimum contracted term.
- (l) The limitations and exclusions of our liability set out in this clause 10.1 are to be construed for our benefit and that of our group companies.

## **10.2 Your liability to us**

#### ***Your general liability***

- (a) You are liable to us for any breach of the SFOA or negligence by you according to general legal principles.

#### ***Use, Customer Equipment, information and authorisation***

- (b) You must pay us the amount of any loss, cost (including legal costs), damage, expense or liability we suffer or incur in connection with:
- (i) any claim by the Network Operator against us as a result you bringing a claim against the Network Operator or NBN Co, any related body corporate of NBN Co, or their respective personnel, in relation to the Service;
  - (ii) use of the Service, or equipment used in connection with the Service, arising from negligence, fraud or breach of the SFOA by you, your employees, agents or contractors or anyone authorised by you or any of them; or
  - (iii) any third party claim arising from inaccurate or incomplete information or improper authorisation provided to us or our contractors by you, your employees, agents or contractors in connection with the Service.

***Failures and delay outside your control***

- (c) You are not liable for any delay or failure to perform any obligation under the SFOA due to circumstances outside your reasonable control.

***Our contribution to the loss***

- (d) You are not liable for any loss we suffer to the extent that we or any of our officers, employees, agents or contractors caused or contributed to the loss, or to the extent caused by Our Equipment, the networks and infrastructure we or our suppliers use to supply the Service, or by us failing to take reasonable steps to reduce or avoid the loss.

***Consequential loss***

- (e) Except as set out in clause 10.2(b), you are not liable to us for loss of profits, loss of revenue, loss of opportunity or goodwill, loss of actual or anticipated savings, loss or corruption of data, loss of any equipment value, any exemplary, punitive or special damage and any other indirect or consequential loss.

***Other***

- (f) If the customer for a Service is more than one person, each of you is jointly and individually responsible for the Charges and other obligations relating to the Service.

## **11 PRIVACY**

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

## **12 SOFTWARE LICENCE**

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

### **13 TELEPHONE NUMBERS AND IP ADDRESSES**

- (a) You acknowledge and agree that any telephone number used in connection with the Service is allocated and regulated by law and your right to use it may cease on cancellation of the Service (unless you transfer the telephone number to another service provider) or if the number is required by the numbering regulations to be changed. If on cancellation of the Service, you do not transfer the telephone number to another service provider, it may be issued to another customer as set out in the numbering regulations. We will not be liable for any loss, cost, expense, damage or liability you suffer in connection with loss of the right to use a telephone number or change of a telephone number, in accordance with the numbering regulations.
- (b) You acknowledge and agree that the Network Operator can quarantine mobile numbers for up to 12 months after your account has been deactivated. You consent to mobile numbers being recovered from you in accordance with the terms of our agreement with the Network Operator and their technical specifications.

- (c) If we allocate an IP address to you for the Service, you must use it only connection with the Service. You do not own the IP address and your right to use it ceases on cancellation or suspension of the Service for any reason.

## 14 CHANGES TO THE SFOA

- (a) We may make a change to the SFOA at any time and without giving you notice if:
  - (i) you agree to the change; or
  - (ii) the change benefits or has a neutral impact on you; or
  - (iii) the change is necessary for security or technical reasons or required by law or required by our agreement with any of our suppliers and, in this case, we will give you notice within a reasonable period but may not be able to give you notice beforehand.
- (b) We may vary any Charge and introduce any new Charge at any time and without giving you notice (unless stated otherwise):
  - (i) for international rates, international roaming rates or any other Charge described as variable or subject to change or similar, and for incidental charges such as credit card fees;
  - (ii) for content or premium services (where the supplier who supplies the content service or premium service to us to allow supply of the Service increases the price they charge us for the content service or premium service) provided that we give you notice beforehand and we allow you to elect to not use (nor incur further charges for) the content or premium service from the date of such election;
  - (iii) to reflect an increase in our costs of supplying the Service resulting from a regulatory decision and in this case we will give you notice within a reasonable period but may not be able to give you notice beforehand; and
  - (iv) to reflect a change in a law (including a tax law) and in this case we will give you notice within a reasonable period but may not be able to give you notice beforehand.
- (c) Apart from the kinds of changes set out in clauses 14(a) and 14(b), we may make a change to the SFOA which we reasonably expect to adversely affect you by giving you reasonable notice of the change.
- (d) If your Service has a Fixed Contract Period and we give you notice of a change under clause 14(c) and you can demonstrate that the change is likely to have more than a minor detrimental impact on you during the Fixed Contract Period, you may cancel the Service by giving us notice 15 days before the change of SFOA takes effect. You will not incur any Break Fee but you must pay other Charges as set out in clause 9.3(c).
- (e) You may not change the SFOA. An upgrade, downgrade, relocation or other change to the Service (if we agree) may result in revised Charges, incur additional Charges (including Break Fee), impact provisioning times and quality of service and cause interruption to the Service.

## 15 GENERAL

- (a) **(Complaints)** We aim to resolve complaints efficiently, fairly and courteously. For information on how to lodge complaints and how they are handled, refer to our Complaint Handling Process available from our website or by contacting our customer service team.

- (b) **(Priority Assistance Service)** We do not provide a priority assistance service for life threatening medical conditions, and we have no legal obligation to do so.
- (c) **(Authorised representative)** You can appoint an authorised representative to deal with us on your behalf as your authorised agent, by nominating that person in your order, or notifying us as we reasonably request. If you appoint an authorised representative, that person has the power to act on your behalf as if they were you, or if appointed with more limited rights, to the level of access you have allowed them. If you are a business or non-profit organisation and you do not nominate anyone, we can rely on the authority of any of your employees who tell us they have authority and you will be bound by any order, consent or direction made or given by them.
- (d) **(Advocate)** You can nominate an advocate to deal with us on your behalf, but unlike an authorised representative, your advocate has no power to act on your behalf and has no access to your account information, unless your advocate is also your authorised representative, or you are present and agree to that access or action.
- (e) **(Notices)** If the SFOA requires you or us to give notice, it must be given in writing unless otherwise specified in the SFOA. We may give you notice by mail, facsimile, by message on or sent with the bill or by email to your last known address. You can give us notice by mail, facsimile or email to our customer service team. A notice will be deemed to be received as follows: if given by normal mail on the 3<sup>rd</sup> day after posting, if given by express post on the next day after posting, if given by facsimile or email immediately when sent if during normal working hours, or if outside those hours, at 9am on the next working day.
- (f) **(Copyright & Other Intellectual Property Rights)** We do not assign or grant a licence of any copyright or other intellectual property rights to you under the SFOA. You must not use any of our trade names, trademarks, service marks, domain names or logos without our prior written consent.
- (g) **(Relationship)** We are an independent contractor to you. You are not authorised to act on our behalf or to bind us to any obligation.
- (h) **(Commissions)** You acknowledge and agree that we may at our absolute discretion pay commission to any person in connection with a Service or the SFOA.
- (i) **(Subcontractors)** We may engage other suppliers and subcontractors to perform any of our obligations to supply the Service or under the SFOA, but we will remain responsible for their performance. We may also arrange for any of our obligations under the SFOA to be performed by any of our group companies.
- (j) **(Void terms)** If any term of the SFOA is considered void or voidable or unenforceable because of law, the rest of the SFOA will not be affected.
- (k) **(Waiver)** If you or we do not exercise any right under the SFOA, it will not be considered to waive that right or any other rights under the SFOA. If you or we waive a right under the SFOA, that waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (l) **(Assignment)** You can only assign or transfer the Service or your rights or obligations under the SFOA with our prior written consent, which we must not unreasonably withhold. We can assign or transfer the Service, or our rights under the SFOA and under our supply to you of the Service, to any related company, or to a purchaser of all or part of our business.
- (m) **(Governing law)** The SFOA is governed by the laws of the Australian state or territory in which you reside and the courts of that state or territory will have non-exclusive jurisdiction.

## 16 DICTIONARY AND INTERPRETATION

(a) In this document, words have the meanings given them in this clause 16.

**Acceptable Use Policy** means our document headed 'Acceptable Use Policy' available on our website.

**Break Fee** means the fee payable by you in respect of a Service with a Fixed Contract Period if you change a plan or if the Service is cancelled and unless stated otherwise in the Critical Information Summary, is calculated by multiplying the minimum monthly charge by the number of months remaining in the Fixed Contract Period as at the date of Service cancellation (months remaining x minimum monthly charge). This fee may also be called an early termination fee.

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

**Charges** means those monies payable by you to us under the SFOA as varied in accordance with the SFOA. Charges include those set out in your order, the relevant Critical Information Summary, the Standard Fee Table, the Special Offer (if any), and any amounts payable for rental of Our Equipment and for provision of any additional services by us.

**Complaint Handling Process** means our complaint handling process available on our website.

**Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)).

**Critical Information Summary** means each of our documents headed 'Critical Information Summary' which sets out a description of the Service, and the charges and information related to the plan ordered for the Service. If a Critical Information Summary is not applicable to your engagement with us, this definition shall refer to the "Plan Summary", which refers to any Principal's document of that name.

**Customer Equipment** means equipment used in connection with the Service and necessary for us to supply the Service to you, other than Our Equipment and the networks and infrastructure we and our suppliers use to supply the Service to you. Customer Equipment includes cabling, telephone access lines, modems, telephone and computer equipment, software, infrastructure and services of your own, or provided to you by a third party, including all equipment you purchase from us.

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

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

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

- (i) an Event;
- (ii) any fraud, negligence or breach of the SFOA by you or any of your officers, employees, agents or contractors;

- (iii) Customer Equipment;
- (iv) Our Equipment loaned to you;
- (v) provisioning, upgrade or reconfiguring of systems or equipment requested by you;
- (vi) cancellation, suspension or restriction of the Service in accordance with the SFOA; or
- (vii) scheduled maintenance, upgrade or repair of the networks and infrastructure we and our suppliers use to supply the Service to you or Our Equipment.

**Financial Hardship Policy** means our financial hardship policy available on our website.

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

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

**M2M Use** means machine-to-machine use where a device initiates a communication without human interaction and other uses which could be considered similar or equivalent or described as such in the OPM Manual from time to time. (For example, a vending machine sending wireless packet data to another machine, or a burglar alarm sending an SMS.) It does not include data communications from a mobile handset that is ancillary to personal use of the handset such as checking emails).

**NBN** means the national broadband network.

**NBN Co** means NBN Co Limited.

**Network Boundary** means the physical point where responsibility for the Service transfers from us to you as set out below unless stated otherwise in the Critical Information Summary or Service Terms:

- (i) for a fixed phone (not VOIP) or data service (including ADSL, NBN, ethernet, broadband, internet) where there is no main distribution frame (MDF) (typically a single dwelling residence), the first telephone socket we nominate inside the premises (typically the socket closest to the lead-in cable);
- (ii) for a fixed phone (not VOIP) or data service (including ADSL, NBN, Ethernet, broadband, internet) where there is a main distribution frame (MDF) (typically a business premises or a multi-storey building), the A side of the MDF where A side means the side facing externally towards the network;
- (iii) for a fixed data service where there is a Network Termination Unit (NTU), the port of the NTU which is used to supply the Service (NBN service); and
- (iv) for a VOIP phone service (where internet protocol is used to carry voice calls over a data service), the external carrier interconnect port on our core router at the edge of the network we or our suppliers use to supply the Service to you.

**Network Operator** means the company and network we use to provide service to you. MyNetFone uses part of the 4G and 3G mobile network and capabilities of Telstra Corporation Limited (ABN 33 051 775 556) to provide our mobile services.

**Operations, Products and Marketing Manual (OPM Manual)** means the manual of that name made available to Agent by Principal as varied by Principal from time to time. .

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

**Residential Service** means a service described as 'residential' or as intended for personal, domestic or household use or similar in a Critical Information Summary or the Service Terms.

**Service** means the service requested in your order and any related equipment, software, firmware and other goods and services we supply you in connection with the Service.

**Service Terms** means our documents headed 'Service Terms' (if any) available on our website, which set out additional terms and conditions related to the Service.

**SFOA** means the terms and conditions on which we supply the Service to you and is made up of these General Terms, the Service Terms, the Critical Information Summaries, the Acceptable Use Policy and your order.

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

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

**Start Date** means the earlier of the date when you first use the Service and the date on which the Service is first available for use as notified by us unless stated otherwise in the Critical Information Summary or Service Terms.

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

**you, your** means the customer whose name appears on the order.

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

- (i) headings are used for convenience only and do not affect the interpretation of the terms;
- (ii) the singular includes the plural and vice versa;
- (i) a reference to a person includes a reference to a person, corporation, firm or other legal entity;
- (iii) "including" and similar expressions are not words of limitation;
- (iv) a reference to a clause is a reference to a clause in the General Terms; and
- (v) a reference to all or any part of a statute, regulation or code (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time