



Anittel Standard Form of Agreement

August 2010



ANITTEL STANDARD FORM OF AGREEMENT (“SFOA” or “AGREEMENT”)

These are the terms and conditions on which Anittel Pty Ltd (ABN 81 123 808 677) and Anittel Communications Pty Ltd (ABN 37 118 033 051) which also trades under the Anittel, 5Star Telecom, OfficeLink+, Accord, Aspirence, Axxis and OneNetworks brands (“we”, “us”, “our”) will provide the telecommunication services (the “Services”) specified in the relevant application signed by you (the “Application”) to you, the customer described in the Application (“you”, “your”). The agreement between you and us incorporates these terms and conditions and the Application. This SFOA has been filed with the Australian Communications and Media Authority (“ACMA”) and is a standard form of agreement for the purposes of Part 23 of the Telecommunications Act 1997 (Cth).

PART A – OUR AGREEMENT WITH YOU

THIS PART A APPLIES TO ALL SERVICES SPECIFIED IN THE APPLICATION

1. Services

- 1.1. We will provide you with the Services from the date the relevant transfer is effected.
- 1.2. We may change the technical specifications, of the Services and the manner in which the Services are provided to you, including by changing the service provider, without notice to you.
- 1.3. If you complete a written Application we may accept and rely on, and you will be bound by, a facsimile or an electronic copy (from you by email) of the Application as if it were an original.
- 1.4. You warrant that the Services will be used for business purposes and the amounts payable under this SFOA are outgoings necessarily incurred by you in carrying on your business. We are not liable to you for any statements made regarding your legal rights or taxation position and you warrant that you have satisfied yourself in relation to such matters.
- 1.5. We do not warrant that the Services will be free of interruption, delays or faults. You acknowledge and agree:
 - (a) that certain Services are not suitable for (and are not supplied for the purpose of) supporting any application which needs continuous fault free service; and
 - (b) that you are responsible for making your own assessment of whether you need continuous fault free Services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.
- 1.6. We will provide the required Services and coverage subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Services are connected. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with Services where capacity, geography or technical capability affect the application or installation of the Services to your premises or site.
- 1.7. We are not obliged to provide Services to you if the physical infrastructure of your premises or site does not pass service qualification by any carrier, telecommunication service providers, internet service providers, or software or equipment suppliers that provide facilities and services (collectively called “Supplier”) or if it is found to be unsuitable as a result of a feasibility study.

2. Term

- 2.1. This Agreement commences on the date we accept the Application (the “Commencement Date”) and continues until terminated in accordance with this Agreement (the “Term”). The Application may also specify a minimum term (the “Minimum Term” or “Minimum Term Contract”) during which you may not terminate this Agreement or cancel, disconnect, transfer or switch the Services without incurring early termination payments
- 2.2. You acknowledge that we provide relevant rates to you, perform certain services and acquire various services from third parties in order to provide the Services to you or on your behalf on the basis that you continue to use us to provide the Services throughout the Term.
- 2.3. You must not replace us as your agent or appoint another agent for the purposes of preselection of voice Services during the Minimum Term or Term as the case may be without our consent.
- 2.4. We may terminate this Agreement by written notice to you if you have not installed or enabled installation of the Services to take place within 30 days of any proposed installation date nominated in the Application. In that event you will pay on demand our storage, handling, rescheduling and other administration costs as determined by us.
- 2.5. Where no Minimum Term is specified in the Application, and after the expiry of any Minimum Term which is specified, this is a continuing contract in respect of a Service. You and we (but without limiting clause 25) may terminate this Agreement in respect of that Service by giving the other 30 days’ written

notice. You remain liable for any charges you incur up to the effective date of termination. No refund of any fees, including any monthly access fees, will be granted, and no credits to your account will be redeemable or convertible to cash or any other form of credit.

3. Variations

- 3.1. We may amend or vary any term and condition in this SFOA or relevant tariffs, rates and charges (“Rates”) on 30 days notice in writing to you, provided that during a Minimum Term nominated in your Application, and subject to clause 3.2, we may only amend or vary the characteristics of the Services or our Rates if:
 - (a) we give you at least 21 days notice in writing prior to the date of the amendment or variation; and
 - (b) offer you the right to terminate this Agreement within 42 days of the date of the notice without incurring charges other than usage or network access charges to the date of termination and outstanding amounts for installation or for equipment compatible with other suppliers’ services.
- 3.2. Notwithstanding the proviso to clause 3.1, we can amend or vary this SFOA or the Rates during the Minimum Term with immediate effect:
 - (a) in relation to the prices of international services or international roaming charges (before you travel overseas you should contact us for indicative pricing);
 - (b) to introduce or vary a fee or charge to pass on a tax imposed by law;
 - (c) to vary or impose a fee or charge for an ancillary service, provided we offer you use of a reasonable alternative at no additional charge or we give you a right to terminate this Agreement without additional charge, other than usage and network access charges;
 - (d) to increase the price of a content or premium service (where we are passing on an increase in the cost charged to us by our Supplier), provided within a reasonable period of the proposed price increase we give reasonable notice of the increase in price if you have used the content or premium service within the previous 6 months, and allow you to elect to not use the service without attracting any additional charges;
 - (e) if the amendment or variation is a result of our Supplier varying its agreement with us so that we need to amend or vary this Agreement, provided we give you prior written notice explaining the variation and its effect, and offer you the right to terminate this Agreement within 42 days of the date of the notice without incurring charges other than usage or network access charges to the date of termination and outstanding amounts for installation or for equipment compatible with other suppliers’ services;or
 - (f) if the amendment or variation is likely to benefit you or have a neutral or minor detrimental impact on you.

PART B – VOICE SERVICES

THIS PART B APPLIES TO ALL VOICE SERVICES SPECIFIED IN THE APPLICATION

4. Preselectable and Override Local Voice Service

- 4.1. You agree to transfer the Services to us by use of any method determined by us including but not limited to churn, preselection or override. Where we determine that preselection is the method of transfer of the Services you agree to us preselecting your preselectable basket of services to us or another service provider. You can confirm your preselection status by dialling 1300 886 784.
- 4.2. Where we determine that override is the method of transfer of the Services you agree that the service is only available through override dialling where you are responsible for programming our override code in your phone system.
- 4.3. We may provide the Services by:
 - (a) you programming your equipment to route calls to an override code;
 - (b) preselecting your preselectable basket of services to a service provider nominated by us;or
 - (c) otherwise by any other method reasonably available to us.
- 4.4. Your current service provider will continue to provide and bill you for network access and associated services, such as but not limited to line rental, directory assistance, call connect, 1300, 019, 0015, 0018 and 0014 calls, exchange based diversions, information calls, operator assisted calls, service and equipment, yellow and white pages charges. You acknowledge that we will be unable to provide the Services to you if you do not maintain network access.

PART C – BROADBAND SERVICES

THIS PART C APPLIES TO ALL BROADBAND SERVICES SPECIFIED IN THE APPLICATION

5. Digital Subscriber Line (DSL) Broadband Service

- 5.1. You will require a DSL modem to connect to the Service. If you supply your own modem, it must be approved for use in Australia and be compatible with the relevant service requested.
- 5.2. If you have a back to base alarm system or more than 3 extensions on the line to be used for the provision of the Service, a central splitter must be installed by a qualified installer.
- 5.3. The actual bandwidth rates you experience on the Service may be less than the nominated rates due to a number of factors including contention ratios, packet overhead, distance from exchange, line quality and your equipment capability.
- 5.4. Unless specified in the application the provision of DSL based services by us does not include the provision of cabling or equipment beyond the Network Boundary Point at each End-User location. In cases where additional work from the Network Boundary Point is required you agree to take responsibility for ensuring that the work is performed.
- 5.5. We are only able to provide DSL based services (excluding SHDSL and ADSL2 ULL) if you have, and continue to use a Qualified Telephone Line over which Telstra or a reseller of Telstra supplies a Standard Telephone Service. If you or your authorised representative requests a modification to the phone service that results in a disruption or disconnection of the DSL service, you agree to pay us all associated reconnection fees to re-establish the affected service.

6. Broadband Service

- 6.1. You agree and acknowledge that our broadband Service is an “internet-grade” product only, which means that successful data transport using the Service is not guaranteed.
- 6.2. You agree and acknowledge that:
 - (a) the installation and operation of a broadband Service may cause temporary disruption in the standard telephone services received by you or a monitoring service;
 - (b) the installation and operation of a monitoring service may cause temporary disruption to a broadband Service;
 - (c) the installation and operation of a broadband Service may mean that incompatible products will not be supplied to you using the qualified pair;
 - (d) any provider of a monitoring service used by you has been notified that:
 - (i) installation and operation of a broadband Service may cause temporary disruption in the standard telephone services or a monitoring service received by you;
 - (ii) installation of customer premises equipment such as central splitters and network termination devices may be required.
- 6.3. In respect of each broadband Service, you release us from any liability and indemnify us against all loss or damages incurred or suffered by us or our related bodies corporate as defined in the Corporations Act 2001 (Cth) (“Related Bodies Corporate”) in connection with any claims (including third party claims or claims by you), actions or proceedings against us or Related Bodies Corporate arising out of any of the following (to the extent that the liability is caused by the provision or cancellation of a broadband Service):
 - (a) disruption in the PSTN services or monitoring services;
 - (b) cancellation of the individual service;
 - (c) suspension of the provision of a broadband Service to particular IP addresses;
 - (d) cancellation of, or refusals to provide, all incompatible products;
 - (e) possible breaches of the Telecommunications (Customer Service Guarantee) Standard.
- 6.4. The access bandwidth of a broadband Service is determined by us. We may limit the access bandwidth of a broadband Service if we reasonably consider that you are making inappropriate or undue use of access bandwidth.
- 6.5. Without prejudice to our other rights under this Agreement, we may immediately remove, amend, alter or disclose to appropriate regulators or law enforcement agencies any data in respect of the application layer (including in respect of virtual ISP services provided by us to you) (“Customer Data”):
 - (a) if there has been a breach of our Acceptable Use Policy; or
 - (b) upon us or any of our subcontractors for the provision of the IAS Platform:

- (i) being served with any court order, judgement, decree, determination or otherwise of any government agency that the Customer Data is illegal, offensive, objectionable or in breach of a third party's rights; and
 - (ii) if directed to do so by ACMA under a "take-down-notice" in accordance with obligations under the Broadcasting Services Act 1992 (Cth).
- 6.6. Where we, or an agent of ours, are required to attend your premises or site in response to a fault report in relation to a broadband Service and the fault is found to be in equipment other than ours, we will charge a fee for the incorrect call out.

PART D – MOBILE SERVICES

THIS PART D APPLIES TO ALL MOBILE SERVICES SPECIFIED IN THE APPLICATION

7. Supply and Porting of Mobile Service

- 7.1. The mobile service number ("Mobile Service") specified in the Application will be transferred from your existing service provider to us via a churn process (if applicable) or a port from another carrier. You must provide all such assistance and information to us so we may reasonably be able to complete the transfer of the Mobile Service.
- 7.2. Porting your Mobile Service from your existing service provider to us is governed by ACIF C570 code – Mobile Number Portability ("Porting").
- 7.3. You acknowledge and agree that:
 - (a) If the Mobile Service is ported, only the Mobile Service switches to us. Existing features and value added services with the current service provider will not be transferred with the Mobile Service, which may result in the loss of these services and the need to set up these features and value added services with us.
 - (b) The current service provider may reject or delay the request for Porting if the information provided by you is incorrect or does not match the information held by them. In this case, we reserve the right to resubmit the Porting request or dispute the rejection with your current service provider.
 - (c) In accordance with the ACIF C570 code and any other bilateral arrangements, there may be a period of outage during the Porting process.
 - (d) We do not warrant that your Mobile Service will be switched to us within any specified time frame.
 - (e) If the Mobile Service cannot be ported, we will let you know and we will offer you a new number.
- 7.4. If you wish to Port the Mobile Service from us to another service provider, you will be required to arrange the Port with the new service provider. In so doing, and unless agreed to in writing, you may be liable for any termination fees, including early termination payments for the remainder of the Minimum Term.
- 7.5. We reserve the right to charge a Porting fee for Porting in or out the Mobile Service.
- 7.6. We will supply a new SIM card that will need to be used for the Mobile Service supplied by us.
- 7.7. You may have outstanding contractual obligations and costs to the current service provider which may require the payment of cancellation and/or termination fees to that service provider if you switch to us.
- 7.8. When you are bringing the existing handset/mobile device onto our Service, you may be required to contact your existing service provider to unlock the device if it is network locked.
- 7.9. The SIM card, its safe keeping and any charges incurred from the use of the SIM is your sole responsibility. SIM cards lost or stolen will continue to be charged to you until such time as you have advised us to cancel or suspend the Mobile Service.
- 7.10. The Mobile Service may be unavailable in some areas, or in some buildings and parts thereof as a result of a number of factors beyond our control.
- 7.11. We are not liable to you or any person claiming through you for any breach or failure caused by any event beyond our reasonable control, including any technical problems or limitations relating to a carrier's network, delays in connection, disconnection, suspension or delay in supply of a Mobile Service.
- 7.12. Call types included in the capped plan are standard voice calls (local, national, and mobile), voicemail deposits and retrievals, national SMS, national MMS.

- 7.13. Some services such as Optus Zoo, mobile internet usage, mobile IM – instant messaging, international calling, international roaming, international SMS & MMS, international video calling, directory assistance, premium SMS, VOIP services and usage and 19xx services are excluded from the capped plan.
- 7.14. The minimum plan spend per month is equal to the monthly capped plan plus any bolt-on internet plan added.
- 7.15. We will not be able to provide the monthly usage amounts prior to you receiving your bill for the period.

8. Bolt-on Mobile Internet Plans

- 8.1. You can request a bolt-on mobile internet plan for a fixed cost per month for a specified allowable usage limit per month.
- 8.2. If you go over the specified allowable usage limit per month, you will be charged at a rate per kilobyte thereafter.
- 8.3. You are required to ensure you have a GPRS capable device.
- 8.4. SMS alerts, ring tones, screen logos, mobile games, picture messages and MMS contents incur additional charges. Roaming charges apply for data usage whilst overseas.
- 8.5. If you have not signed onto a bolt-on mobile internet plan, data usage will be charged at a rate per kilobyte according to our rate sheet.

9. Wireless Internet Data – USB Stick

- 9.1. Data plans include an allowance of data usage per month. Once you have reached and exceeded the data usage allowance in the month, an excess charge rate per megabyte will be applied. Note one gigabyte of usage is equal to 1024 megabytes.
- 9.2. International data roaming usage is specifically excluded from the usage allowance on the data plans.
- 9.3. We are not responsible for any internet content obtained from this Service. In addition, you must not misuse the Service and any misuse may be reported to the police.
- 9.4. If you choose a 12 month or 24 month plan, and your Service is disconnected for any reason or you switch carriers within the plan period, you will be required to pay on demand the monthly plan charge multiplied by the number of remaining months in the Term plus any cost for the hardware that was provided as part of the Application. You agree that this charge is a genuine pre-estimate of the actual loss which would be suffered by us.

10. International Roaming

- 10.1. International roaming (“Roaming”) refers to the use of your mobile phone while you are overseas. This includes, amongst other things, voice calls, internet usage, SMS and MMS.
- 10.2. Roaming may need to be activated before you can start using it overseas.
- 10.3. You are responsible for finding out the call rate you will be charged in each country you are visiting for Roaming on your mobile.
- 10.4. You may be charged for calls made from and received on your mobile at the Roaming rate while you are overseas.
- 10.5. Call records for Roaming charges may be delayed for up to 6 months due to the relaying of call records from the international carriers.

11. Premium Calls

- 11.1. Premium calls refer to calls made to 19xx numbers and other high rate per minute charges including psychic services, call to a content or live advice service, adult services, competitions and school test results.
- 11.2. Access to premium calls and thus its barring are your responsibility and you must notify us should you wish barring to take place.
- 11.3. To avoid unexpected charges on your phone bill, you should be aware of the premium rates being charged, how the premium rates are applied (e.g. fixed or timed) and who has access to your phone.

12. SMS Messaging

- 12.1. Users’ Responsibilities: Account holders and/or users must keep their personal registration information (name, billing details and contact data) accurate, complete and up to date. We reserve the right to verify this information from time to time and to terminate without notice any accounts found in non-compliance with this requirement.
- 12.2. Use of our messaging is the account holder's responsibility and totally at the account holder's own risk.

- 12.3. We (including our employees, directors, officers and contractors) will not be liable for any loss or damage caused to the account holder, user or anyone else as a result of using our service. This includes but is not limited to loss or damage caused by loss or delay of message content or any loss caused by our negligence, our employees, directors, officers or contractors.
- 12.4. Account holders and users will be totally responsible for costs incurred from the use of their account, including costs incurred by others entrusted with the account holder's username and password. Account holders and users must accept responsibility for all aspects of their account with us, including the actions of all persons in possession of the account holder's username and password.
- 12.5. The account holder and/or user indemnifies us and our employees, directors, officers and contractors from all costs, liabilities, suits, actions or claims arising from or in any other way connected with the account holder's or user's use of their account with us, or any other person using the account holder's username and password.
- 12.6. The account holder and/or user agree not to transmit any material which violates State or Federal law, instructions, regulations or guidelines issued by regulatory authorities, relevant licenses and other codes of practice or transmit any material which is in contravention of any privacy or copyright rules or any other proprietary interests.
- 12.7. The account holder and/or user agree not to harass, stalk, abuse or threaten any other person through the use of our messaging.
- 12.8. The account holder and/or user agree to be aware of and abide by State and National regulation and law regarding the use of SMS as an advertising and communication medium. The account holder and/or user, as a message originator, agree to comply with:
 - (a) the Spam Act 2003 (see the Practical Guide for Business); and
 - (b) the ACIF C580 code – Short Message Service (SMS) Issues.
- 12.9. The account holder and/or user agree not to interfere with the operation of our messaging system.
- 12.10. We maintain the right to inspect message content and take appropriate action on receiving complaints relating to message content via our Service. We take abuse of people's privacy rights seriously. We contact all account holders by e-mail or phone for any matter relating to unsolicited, abusive, deceptive or misleading messaging that has been conducted through our service. Appropriate action may constitute the suspension or cancellation of an account pending investigation into any alleged abuse or misuse of our service for inappropriate or illegal use.
- 12.11. The account holder and/or user agree that all the contents of our messaging service, including web-sites, pages, logos, hardware and promotional materials are protected by copyrights and trademarks and remain our property and may not be copied for any reason.
- 12.12. Refund policy of accounts with SMS credits: We will not refund except in the following circumstances:
 - (a) on substantiation of the death or permanent incapacitation of the registered account holder or user; or
 - (b) if the size of a credit purchase is too large and, following cleared funds in our account, you request a reduction in the number of purchased credits before using these credits and within 3 days of the purchase of these credits.

PART E – INTERNET PROTOCOL (IP) COMMUNICATION SERVICES

THIS PART E APPLIES TO ALL IP SERVICES SPECIFIED IN THE APPLICATION

13. Limits of the Service

- 13.1. The Services will be provided to you in accordance with the terms and conditions in the relevant Service Module schedule attached to the Application or available by calling 1300 886 784
- 13.2. For some of the Services we will provide Service levels in accordance with a Service Level Agreement ("SLA") attached to the Application or available by calling 1300 886 784. The SLA sets out the consequences of our failing to achieve the relevant Service level and the full limit of our liability to you for such failure.
- 13.3. We will use reasonable care and skill in providing the Service in accordance with this Agreement. However, given the nature of telecommunication systems, we cannot guarantee that the Service will be continuous, accessible at all times or fault free. The speed and quality of the connection of the Service will vary from location to location and from time to time and may be affected by internet congestion, radio or other interference.

- 13.4. Where you provide your own equipment, you are responsible for any loss caused by an unauthorised interception of the Service.
- 13.5. We are not responsible for any loss or damage caused by equipment provided by someone other than us.
- 13.6. We may not be able to provide detailed information about your usage of the Service.
- 13.7. Unless we expressly authorise you in writing to do so, you must not use or allow any other person to use our equipment and the Service as critical components in life support devices or systems. "Critical components" means any parts or components of a life support device or system and it is likely that a failure in such parts or components would cause failure in the relevant life support device or system or affect its safety or effectiveness. "Life support device or system" means any device or system that is intended to be used to support or sustain life of a person and it is likely that a failure in such device or system would cause significant injury to that person.
- 13.8. While our equipment and the Service do support 000 calls or other emergency services, we strongly recommend you to install a backup analogue communication service.

PART F – GENERAL PROVISIONS

THIS PART F APPLIES TO ALL SERVICES SPECIFIED IN THE APPLICATION

14. Acceptable Use Policy (AUP)

- 14.1. You must comply with our Acceptable Use Policy set out on our website at www.anittel.com.au or available from us on request by calling 1300 886 784.
- 14.2. We may monitor use of the Services to see whether you are complying with our AUP or to investigate a breach (or suspected breach) of that policy. However, we are not under any obligation to enforce our AUP or any other policy that applies to anyone using Services that we provide to you.

15. Network Security

- 15.1. You agree to accept responsibility and liability for the security of and/or access to your networks and related systems. You will take reasonable and appropriate precautions to prevent any violations of your network and/or related systems security.
- 15.2. We do not take responsibility or are liable in any way for any violations of your network and/or related systems security, however caused.
- 15.3. While we are responsible for the provision of Services, you are responsible for ensuring that adequate security in the form of virus protection and firewalls exist to protect your electronic data and computer operating system against any unauthorised or unwarranted intrusion.
- 15.4. We will not be responsible for any equipment tampering or service fraud.

16. Current Service Provider

- 16.1. If in providing the Services to you we need to change our arrangements with your current supplier, we will do so in accordance with this clause.
- 16.2. Your current service provider will continue to provide services to you until the transfer to us has been completed. You remain liable to your current service provider for all charges you incur prior to that date including termination charges if applicable. Entering this Agreement with us may have consequences for your agreement with your current service provider including the loss of discounts and other benefits. You are responsible for determining the consequences that may arise.
- 16.3. In an effort to assist you in the transfer to us, by signing this Agreement:
 - (a) you authorise us to sign on your behalf and in your name forms of authority to your current supplier to transfer the services you have agreed to transfer in the Application;
 - (b) if we request, you will give written instructions to your current supplier to transfer the services' accounts from your name to ours; and
 - (c) if we have paid or credited any amount to your current supplier then you will reimburse us for that amount.
- 16.4. We do not accept any liability for any amounts payable to your current or previous supplier of services and you agree to indemnify us against any claim by such a supplier on us.
- 16.5. You agree to notify us of any restrictions or services on the services transferred to us such as call barring. You agree that some of these restrictions or services may not be available after transfer and you have satisfied yourself that the transfer will continue with or without these restrictions or services.

17. Service Numbers

- 17.1. You acknowledge that:

- (a) the Government owns service numbers such as telephone numbers and mobile numbers (“Service Numbers”);
- (b) the Telecommunications Numbering Plan (“Numbering Plan”) sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan;
- (c) you do not own or have any legal interest or goodwill in any Service Number or PIN issued to you.

18. Transfer of Your Services From Us to Another Supplier

- 18.1. If you (or a supplier acting with your authority) ask us to transfer any of the Services to another supplier/carrier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those Services to another supplier/carrier. You will immediately pay us that amount on receipt of our invoice.
- 18.2. We cannot guarantee that any Service Number(s) will be transferred to another supplier/carrier in the event that you ask us to transfer the Services. We recommend you ascertain from us in advance whether the Service Number is portable. We will not accept any liability whatsoever to you or to any other person if any Service Number(s) is/are not ported to another supplier/carrier, and you indemnify us and hold us harmless against a claim made by any person arising from or in connection with non porting of any Service Number(s).
- 18.3. The provision of Services ceases on the date on which we transfer your Services to another supplier.
- 18.4. We will endeavour to invoice you for Services which you transfer to another supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.
- 18.5. We will not accept liability for any amounts owing by you to a supplier or other person. You indemnify us against any claim made by a supplier or other person against us in relation to any such amounts.

19. Charges, Billing and Payment

- 19.1. You must pay the charges for the provision of Services in accordance with our Rates applicable at the time the Services are used.
- 19.2. We will usually issue bills for Services monthly. We will bill you in advance for periodic charges, equipment rental, connection and service fees (where applicable) and in arrears for usage charges. We may vary billing frequency at any time without prior notice to you. You must pay all bills by the due date. You are liable for the charges in connection with the Services, whether or not use of the Services was authorised by you.
- 19.3. You acknowledge that in some circumstances our ability to provide complete and timely billing is affected by third parties outside our control. However, we will endeavour to bill you for your use of the Services within twelve months of use of the Services.
- 19.4. We may elect to deliver your bills electronically. You acknowledge that the electronic display of your bills constitutes notification of the charges contained in those bills and the due date payable and that we may not issue a paper copy of those bills. An administration charge applies if you request a paper copy of an electronic bill.
- 19.5. You may elect (where available) to have your bills paid by way of a direct debit from an account held by you at an approved financial institution or direct debit from a valid credit card nominated by you. If a direct debit is dishonoured, we may impose an administration fee.
- 19.6. You agree that our records are sufficient evidence of your use of the Services and the charges payable by you to us unless reasonable evidence is provided which demonstrates these records are incorrect.
- 19.7. We may charge interest on any amounts not paid by you when due, calculated at a rate equivalent to 2% above the rate charged from time to time on the Westpac Corporate Overdraft Reference Rate. Interest is calculated and accrues daily. We may also charge a late payment administration fee on all outstanding bills.
- 19.8. You agree to pay us for any charge which a third party renders to us as a result of:
 - (a) you approaching that third party on your own behalf or otherwise than through us; or
 - (b) you connecting, initiating or cancelling a service.
- 19.9. The prices for the Services are quoted exclusive of GST (unless stated otherwise) and other State and Commonwealth taxes including stamp duty, transaction duty and other similar taxes. Where required by law we will set out these charges separately. Such amounts will be included in your bill, and you

must pay them by the due date. You must indemnify us for any penalties or interest payable by us as a result of your failure to pay any amount by the due date.

- 19.10. We may impose a credit limit on your account and/or require payment of a security deposit or interim payment, at our sole discretion and at any time. We may at any time apply your security deposit to meet any cost, loss or liability incurred as a result of failure by you to comply with this Agreement or to pay any amount payable by you to us.
- 19.11. If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we may recover these amounts from you in addition to the overdue amounts.
- 19.12. You must pay all charges without any set off, counter claim or deduction. We may set off any amount payable to you against any amount payable by you to us.
- 19.13. If you change your address, phone number or other billing contact details, you must notify us within 7 days.

20. Disputed Amounts

- 20.1. In the event that a bill is disputed by you, you agree to pay to us the total amount as indicated on the disputed bill without deduction or set-off and we agree to refund any monies found to be charged incorrectly after reasonable and proper investigation.
- 20.2. If a billing dispute is not raised within 90 days of the bill issue date, charges will be deemed correct and payable by you and any credit of these charges, if required, will not exceed a 180 day period prior to the date the dispute was raised.

21. Credit and Privacy

- 21.1. Information sought in the Application will be used by us to assist in assessing your creditworthiness, and to provide, administer and maintain the Services and your account. If you choose not to supply the requested information, then we may not be able to assess your application or provide the Services to you.
- 21.2. You agree, and, if you are a partnership each partner agrees, to authorise us to obtain a commercial or consumer credit report and to obtain personal or business information about you from your current service provider in order to transfer your service.
- 21.3. You acknowledge that we may use your personal or business information for the following purposes:
 - (a) considering or applying our credit policy to your application for consumer or commercial credit and whether to continue to provide the Services to you;
 - (b) ongoing credit management of your account, including collection of overdue payments;
 - (c) ongoing maintenance of credit records about you;
 - (d) notifying you of information in connection with the Services; and
 - (e) development, research and direct and indirect promotion of our products and services.
- 21.4. You acknowledge that we may disclose your personal or business information for the following purposes:
 - (a) to a credit reporting agency to assess your Application for Services, or to notify of a default by you and to allow a credit reporting agency to create or maintain a credit information file about you;
 - (b) to credit providers to obtain information about the status of your account;
 - (c) to collection agents to recover overdue amounts;
 - (d) to carriers or service providers if required to enable them to provide the Services to you, or in the event we are no longer able to provide the Services to you;
 - (e) to assignees of all or part of our business assets, including trade receivables;
 - (f) to government or regulatory bodies and other organisations as authorised or required by law; and
 - (g) to Related Bodies Corporate, employees, agents (such as outsourcing agencies) and contractors engaged by us.
- 21.5. The type of information referred to in clause 21.1 and 21.2 includes identifying details (such as name, address, drivers' licence), information in your Application, whether, in our opinion, you have committed a serious credit infringement, and information relating to the conduct of your account and your use of the Services.
- 21.6. You agree that we or our agents may utilise any information collected and recorded by us in relation to your account to assist us in the process of debt recovery.

- 21.7. If you are a customer who is an individual, or the individual named as the contact person in the Application, you may seek access to and request the correction of any credit information or personal or business information held by us by notifying us in writing of the request.
- 21.8. You agree that we and our Related Bodies Corporate may use any information, including your electronic contact details such as email, collected and recorded by us in relation to your account to send commercial electronic messages as defined under the Spam Act 2003 (Cth).

22. Equipment and Software

- 22.1. Where we provide use of, access to or supply any of our equipment or software in relation to the provision of the Services:
 - (a) you must only use the software (including storing, loading, installing, executing or displaying it on a computer) with the Service;
 - (b) you must only use the equipment or software in accordance with our reasonable directions from time to time;
 - (c) you must not copy (other than making one copy for archival or backup purposes), translate, adapt, modify, alter, de-compile, disassemble, or reverse-engineer the software;
 - (d) you must not alter or remove any copyright or other intellectual notifications applied to the software;
 - (e) title to the equipment and software remains with us;
 - (f) you will not attempt to rent, sell, remove or otherwise interfere with, create an interest in or dispose of the equipment or software;
 - (g) you will provide us with reasonable access to the equipment and software and provide basic amenities in relation to the equipment such as electricity;
 - (h) we may change, amend, upgrade or remove any equipment or software at any time; and
 - (i) on termination of this Agreement you authorise us to enter your premises or site to remove all equipment and software.
- 22.2. Where we sell equipment to you in relation to the provision of the Services, any warranties will be void in the case of any misuse, neglect, mishandling, accident, improper maintenance, failure to comply with directions, exposure to hazards, failure to provide a suitable environment, or any natural disaster.

23. Limitation of our Liability

- 23.1. To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied by legislation, the common law, equity, trade, custom or usage relating to the provision by us of the Services in connection with this SFOA are expressly excluded.
- 23.2. To the maximum extent permitted by law, we, and our Related Bodies Corporate, will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, or any equipment under this SFOA or otherwise in connection with the relationship established by this SFOA, including any loss or damage caused by our negligence or any fundamental breach of this SFOA.
- 23.3. Subject to clause 23.4 our liability, and that of our Related Bodies Corporate, for any direct, indirect or consequential loss or damage arising out of or otherwise in connection with this SFOA, including for any breach of any term, condition, warranty or under any remedy implied by law (which cannot be excluded), will be limited at our option to any one or more of the following:
 - (a) if the supply relates to goods, the repair or replacement of the goods or the payment of the cost of having the goods repaired or replaced; and
 - (b) if the supply relates to services, the resupply of those or equivalent services or the payment of the cost of having those services resupplied.
- 23.4. Clause 23.3 only applies where those goods or services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption and section 68A(2) of the Trade Practices Act 1974 (Cth) does not apply.
- 23.5. To the maximum extent permitted by law, we, and our Related Bodies Corporate, have no liability to you or to any other person for:
 - (a) acts or defaults of any Supplier or other person;

- (b) faults or defects in any facility or equipment we supply to you or the Services, to the extent that they are caused by or contributed to by your, or a third party's, conduct or misuse; or
- (c) faults or defects that arise in services not provided under this SFOA (even if they are connected, with our consent, to Services which we have arranged under this SFOA), which are due to incompatibility with the Services or any other equipment that we or our Suppliers provide to you.

23.6. To the maximum extent permitted by law, our Suppliers have no liability to you in connection with this SFOA.

24. **Your Indemnity**

24.1. You indemnify us and will keep us, and our Related Bodies Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:

- (a) your breach of this SFOA;
- (b) any claim or demand against us (including for negligence) by any person other than you, which arises from or is connected with our supply of the Services or any equipment;
- (c) any claim or demand (including for negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services or any equipment;
- (d) any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property, or to the property of our other customers;
- (e) the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
- (f) any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving the use of the Services or any equipment by you.

25. **Termination/Suspension/Disconnection by us**

25.1. We may terminate this SFOA or suspend, limit or disconnect any Service (at our discretion) immediately:

- (a) if you do not pay your bill by the due date;
- (b) if you breach any other term or condition of this SFOA and fail to remedy that breach within 7 days after we give you notice to remedy;
- (c) if we are unable, for any reason including any act or omission of any provider, to supply or provide a Service;
- (d) we reasonably determine that such action is desirable or necessary for the purpose of network maintenance or restoration of any part of our or our Supplier's network;
- (e) if during the Minimum Term you repudiate or terminate this Agreement or cancel, disconnect, transfer or switch any Service;
- (f) if we form a view, based on information supplied by you or any credit agency or credit provider, that you may not be willing or able to meet obligations in relation to payment for Services;
- (g) if you become or in our reasonable opinion are likely to become insolvent;
- (h) in the case of a partnership, on dissolution or filing of an application for dissolution;
- (i) a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors where we believe it would be unlikely to receive amounts due and payable by you;
- (j) if any information provided by you is in our opinion materially incorrect;
- (k) if you exceed a credit limit imposed by us;
- (l) in the event of your death; or
- (m) if, during a Minimum Term for Voice Services (Part B), you fail in any two consecutive months to spend on monthly call charges with us an amount equivalent to 70 percent (70%) of the average monthly amount paid to us for the Voice Services based on the last two full months prior to the failure.

25.2. If we suspend, limit or disconnect any Service for unpaid charges or any other reason (except under clause 25.1(c) and 25.1(d)), you must pay access fees for the Service while it is suspended and any subsequent reconnection may incur a reconnection fee.

26. **Effect of Termination/Suspension/Disconnection by us**

26.1. For Voice Services (Part B), if we terminate this Agreement under clause 25.1 (except 25.1(c) and 25.1(d)), an amount equal to the number of months between the date of termination and the end of the Term multiplied by fifty percent (50%) of the average monthly amount paid to us for the Services

(based on the last two full months prior to the termination and including without limitation all call charges and line rental) will be due and payable by you within 10 days of demand.

- 26.2. For DSL Broadband Services (Part C), if we terminate this Agreement under clause 25.1 (except 25.1(c) and 25.1(d)) prior to the end of the Minimum Term, you will be required to pay the monthly access fees multiplied by the number of remaining months in the Minimum Term, which will be due and payable by you within 10 days of demand.
- 26.3. For Mobile Services (Part D), including wireless internet, if we terminate this Agreement under clause 25.1 (except 25.1(c) and 25.1(d)) prior to the end of the Minimum Term, or your Service is disconnected for any reason or you transfer or switch carriers within the Minimum Term, you will be required to pay the monthly plan charge multiplied by the number of remaining months in the Minimum Term plus any cost for the hardware that was provided as part of the plan, which will be due and payable by you within 10 days of demand.
- 26.4. For Internet Protocol (IP) Communication Services (Part E), if we terminate this Agreement under clause 25.1 (except 25.1(c) and 25.1(d)) prior to the end of the Minimum Term, you will be required to pay the monthly access fees multiplied by the number of remaining months in the Minimum Term, which will be due and payable by you within 10 days of demand.
- 26.5. Clauses 26.1, 26.2, 26.3 and 26.4 do not in any way limit or reduce our rights under the remainder of this Agreement. You acknowledge that any amount payable under this clause 26 is a genuine pre-estimate of the loss we are likely to suffer for breach of this Agreement by you.
- 26.6. You remain liable for all charges payable by you under this SFOA up to the time of termination, suspension or disconnection which amounts will become immediately due and payable by you.
- 26.7. We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.

27. Termination by you

- 27.1. You may terminate this Agreement if we breach a material term or condition and fail to remedy that breach within 10 days of you giving us notice in writing to remedy.

28. Assignment

- 28.1. We may obtain an alternative provider to provide Services to you, and may assign our rights, benefits and obligations under this Agreement to any party. You agree to the assignment of our rights, benefits and obligations under this Agreement to any party. You may not assign any rights, benefits or obligations under this Agreement without our prior written consent.

29. Use of Services

- 29.1. Services are made available to you on condition that you do not resupply or resell or otherwise make Services available to any person other than you or persons authorised by you, and that you do not use the Service in any way or for any purpose prohibited by law.

30. Confidentiality

- 30.1. You must keep confidential all passwords you have nominated to be connected with the Services. You agree that we may disclose any information in connection with your accounts to anyone who correctly quotes your password.
- 30.2. You must keep confidential the manner in which we arrange Services under this Agreement including our charges and discounts, and other information which would reasonably be expected to be confidential.
- 30.3. We retain all intellectual property rights in the confidential information.
- 30.4. You must not use information which you acquire from us for any purpose unless authorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

31. Force Majeure

- 31.1. We are not liable for any delay in installing or correcting any fault in any Service; failure or incorrect operation of any Service; or any other default in performance if caused by any event beyond our reasonable control, including but not limited to the acts, omissions, failure or delays of access service providers or your previous carriage service provider, war, weather, acts of God, industrial action, riots, government or regulatory acts.

32. Miscellaneous

- 32.1. These terms and conditions are governed by the laws of New South Wales. You submit to the non-exclusive jurisdiction of courts of New South Wales.

- 32.2. Except as otherwise noted in these terms and conditions, these terms and conditions are the entire agreement between you and us in relation to the Services.
- 32.3. Any invalid, unenforceable, or illegal terms will not affect enforceability of any other of these terms and conditions.
- 32.4. Any notice, demand, consent or other communication required to be given by either party must be delivered personally, or sent by email, prepaid mail, by facsimile or on the bill to the address of the other as last notified.
- 32.5. We believe that any correspondence or emails from us or our related parties are a valuable part of our Service to you. The correspondence and emails do not constitute spam as we have a continuing business relationship with you. However, if you do not want to receive such commercial communication from us please contact us to unsubscribe, otherwise we will continue sending you relevant information until you request us to remove your email address (this does not affect other electronic communications specifically regarding the provision of the service of your account).
- 32.6. You may complain in writing or orally by calling our customer service number on 1300 886 784. If we are not able to resolve your complaint to your satisfaction you may refer it to the Telecommunications Industry Ombudsman (TIO) or ACMA.
- 32.7. To report faults you should call us on 1300 886 784.