

## Customer Terms

### Part A – Introduction

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#### 1. About this document

This is Southern Cross Telco's Standard Form of Agreement under section 479 of the Telecommunications Act 1997, called our 'Customer Terms'.

#### 2. Southern Cross Telco

A reference to 'Southern Cross Telco' or 'we' means Southern Cross Telco Pty Ltd (ACN 066 034 400) of Level 10, 60 City Road, Southbank, Victoria, 3006, the company that supplies a telecommunications Product to you.

### Part B – Customer Contracts

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#### 3. Your Customer Contract

We supply Service under a 'Customer Contract' or 'Contract' that includes:

- (a) the General Terms in Part C, and.
- (b) any Service Terms for that Service.

#### 4. Plans

- (a) Many Services are available under different Plans, each with its own features, entitlements, term of contract, Charges and special conditions.
- (b) Your Customer Contract includes the terms of any Plan you select.

#### 5. Peak & Off-peak

- (a) A Plan may specify certain days and / or times as 'Peak' or 'Off-peak'.
- (b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. The Plan will indicate how that applies in each case.
- (c) We may bill you, and Your Contract operates, accordingly.

## 6. Periodic entitlements

- (a) A Plan may include the right to use a certain amount of a Service during a certain period.

e.g. An Internet Plan might let you download a gigabyte of data each month at no extra cost.

e.g. A local call Plan might let you make 20 local calls a month at no extra cost.

We call these 'periodic entitlements'.

- (b) Unused periodic entitlements do not carry forward and are not redeemable for cash or other credit.
- (c) If you exceed the periodic entitlement, further Charges may apply or a Service may be limited in some way. Your Plan will give details.

## 7. Prepaid Plans

For a prepaid Plan:

- (a) prepayments are not redeemable for cash or other credit,
- (b) the Plan may specify a 'Use-by Date' i.e. a period after which any prepaid entitlements that are not used are expired without refund. Unless a Plan specifies otherwise, a Use-By Date of one year applies to all prepaid Plans,
- (c) prepayments are not transferable between Plans – if you change Plans, there is no credit for unused entitlements (unless the Plan states otherwise),
- (d) we may fix minimum and/or maximum prepayments that you may make, and
- (e) when your prepaid entitlements are used up we may cease Service. We are not responsible for the consequences of Service ceasing.

## 8. Fair Use Policies

- (a) We may publish Fair Use Policies for a Service or Plan.
- (b) A Fair Use Policy will be directed against extreme, abusive, antisocial, illegal and / or highly unreasonable use of a Service.
- (c) You must comply with an applicable Fair Use Policy.

**9. Operational Directions**

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

**10. Partner Requirements**

- (a) Telecommunications services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- (b) Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Partner Requirements.
- (c) You must comply with applicable Partner Requirements we notify.
- (d) *TCP Customers* If a new or amended Partner Requirement is materially detrimental to you, you may have Early Termination Rights under clause 47.

**11. Fixed terms**

A Plan may specify a particular, fixed or minimum term. If so:

- (a) A Contract for the Plan is a contract for at least that term.
- (b) It terminates as at the end of that term if you or we give 30 days termination notice, unless it is renewed for a further fixed or minimum term.
- (c) If neither of us gives a termination notice, or a Contract is renewed for a further fixed or minimum term, it becomes month-to-month after that term.

**12. Month-to-month, casual or 'no contract' terms**

If a Plan or Contract is described as 'month-to-month', 'casual' or 'no contract' or similar, you or we may terminate it on 30 days written termination notice.

**13. Bundled Equipment**

- (a) Under some of our Plans, you will be supplied with Equipment (e.g. a mobile handset or modem) without paying its full purchase price on delivery ('Bundled Equipment').
- (b) Bundled Equipment may be:
  - (i) free – in which case we absorb its full cost;
  - (ii) amortised – in which case you pay \$0 up front and we recoup the cost from you as part of Charges over a minimum term; or
  - (iii) subsidised – in which base we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.
- (c) Clause 26(c) explains when ownership of Bundled Equipment passes to you.

**14. Telecommunications Consumer Protections ('TCP') Code**

- (a) The 'TCP Code' applies to consumer and some business customers, called 'TCP Customers' in our Customer Terms. Refer to the Dictionary for the detailed definition.
- (b) A term or note in our Customer Terms headed 'TCP Customer' applies to you if you are a TCP Customer but not otherwise.

**15. Consumer Standards**

- (a) Under some Australian laws, consumers (as defined in the laws) have the benefit of certain conditions and warranties:
  - (i) that cannot be excluded; and
  - (ii) where the consumer's rights in case of breach cannot be limited by your Contract, or can only be limited to a certain extent.
- (b) We call those laws the 'Consumer Standards', and their main elements are set out in clauses 34 to 37 below.
- (c) Your Contract never operates to exclude the Consumer Standards (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

**16. Understanding and navigating our Customer Terms**

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 95.
- (b) The Index is at the end.

**Part C – General Terms**

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**17. Application for Service**

- (a) You must comply with any application form or process we require.
- (b) All information you provide in connection with an application must be true, correct, complete and not misleading.

**18. Processing an application**

- (a) We do not have to accept an application.
- (b) Before we confirm that we can and will provide Service, if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.
- (c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 57.

**19. Relevant dates**

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

**20. Providing Service**

- (a) We will commence Service in accordance with applicable laws and as soon as reasonably practicable after the Contract Date.
- (b) We may provide Service using Southern Cross Telco Facilities and / or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities the 'Network'.

**21. Use of Service by others**

- (a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.
- (b) A person who makes use of a Service with your consent or from your premises or using your equipment or log-in password is your 'End User'.
- (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
- (d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.

**22. Using a Service**

- (a) When using a Service, you must comply with:
  - (i) your Customer Contract; and
  - (ii) any applicable laws, regulations, mandatory standards and industry codes and with the requirements or directions of any Regulator ('Laws').
- (b) You must not use a Service:
  - (i) in breach of any Law;
  - (ii) to breach the rights of any person;
  - (iii) to copy, download, supply to anyone else or communicate to the public copyright material without permission;
  - (iv) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute;
  - (v) to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;
  - (vi) to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act 2003 (Cth);

- (vii) in a way that is misleading or deceptive;
- (viii) in a way that results, or could result, in damage to property or injury to any person; or
- (ix) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.

### **23. Telephone numbers**

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) We must comply with Telecommunications Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.
- (c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.
- (d) You must not knowingly and deliberately:
  - (i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it, or
  - (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Contract ends.

### **24. IP addresses, email addresses and domain names**

- (a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.
- (b) These Internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- (c) We are not responsible for anything done, or required to be done, by these authorities.

- (d) You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your Contract ends.

## **25. Dynamic IP addresses**

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

## **26. Supplied Equipment**

- (a) This clause applies if we supply Equipment to you.
- (b) You assume risk in Equipment upon delivery.
- (c) We or our Partners or other third parties retain title to Equipment:
  - (i) for Equipment rented or loaned to you – at all times;
  - (ii) for Bundled Equipment, until completion of the minimum term; and
  - (iii) for any other Equipment – until full payment has been made (as may be applicable under the terms of your Plan).
- (d) While we or our Partners retain title to Equipment, you hold it in a fiduciary capacity as bailee for us.
- (e) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- (f) If you use in connection with a Service any Equipment we have not approved or provided:
  - (i) it must comply with all applicable technical and interconnection standards and requirements, including those set by its supplier or the manufacturer;

- (ii) you are responsible for ascertaining what those technical and interconnection standards and requirements are, since we will not be familiar with the Equipment; and
- (iii) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
  - our negligence, or
  - our breach of the Consumer Standards.

## **27. Substituted Equipment**

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

## **28. Delivery of Equipment**

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

## **29. Installation and connection of Equipment**

- (a) This clause only applies if we expressly agree to install or connect Equipment.
- (b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications issued by us) at your own expense, including providing:
  - (i) appropriate electricity supply;

- (ii) appropriate electrical and mechanical fittings;
  - (iii) appropriate environmental conditions;
  - (iv) a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
  - (v) all relevant facilities for the location of the Equipment;
  - (vi) access to all relevant personnel including your technical personnel;
  - (vii) where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- (d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- (e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis), in connection with such entry and installation, except to any extent that we cause or contribute to it by:
- (i) our negligence, or
  - (ii) our breach of the Consumer Standards.
- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

### **30. Installation Charges**

- (a) We will charge you installation Charges as stated (or indicated by) in your Contract.

- (b) If we find that installation will be more costly because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to revised Charges.

### **31. Additional Equipment services**

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

### **32. Lost, stolen and damaged Equipment**

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

### **33. Return of Equipment**

On the termination of your Contract for any reason, you must immediately return all our Equipment. If you fail to return the Equipment, you may be liable in accordance with clause 42.

### **34. Statutory Guarantees – consumer goods**

If we supply you with goods of a kind ordinarily acquired for personal, domestic or household use or consumption, you may have guarantees set out in Subdivision A, Division 1 of Part 3-2 of the Australian Consumer Law, which (in outline – you should refer to that Act for the precise wording) provide for:

- (a) if we sell you the goods – a condition that we have the right to do so (Guarantee as to title);
- (b) a guarantee that you will enjoy undisturbed possession of the goods, except where we or a third party with an interest in them you were pre-informed of are entitled to disturb it (Guarantee as to undisturbed possession);
- (c) if you are to own the goods at a later date – that they will remain free of third party interests you were not pre-informed of, excluding any floating charge over our assets (Guarantee as to undisclosed securities etc.);

- (d) a condition that the goods will be of acceptable quality, measured with reference to a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods) and excluding any defects we drew to your attention or which you should have seen when you examined them, before you contracted to acquire them (Guarantee as to acceptable quality);
- (e) a condition that the goods will be reasonably fit for any purpose you told us you wanted them for, except if you did not rely (or unreasonably relied) on our skill or judgment in that regard (Guarantee as to fitness for any disclosed purpose);
- (f) a condition that the goods, if supplied by description, will correspond to that description (Guarantee relating to the supply of goods by description); and
- (g) a condition that the goods, if supplied by reference to a sample or demonstration model, will correspond with the sample or demonstration model in quality state and condition (Guarantee relating to the supply of goods by sample or demonstration model) –

and nothing in your Contract limits those guarantees or your remedies for any breach of them.

### **35. Statutory Guarantees – consumer services**

If we supply you with services of a kind ordinarily acquired for personal, domestic or household use or consumption, you may have the benefit of guarantees set out in Subdivision A, Division 1 of Part 3-2 of the Australian Consumer Law, which (in outline – you should refer to that Act for the precise wording) provide for:

- (a) a guarantee that the services will be rendered with due care and skill (Guarantee as to due care and skill);
- (b) a guarantee that the services will be reasonably fit for any purpose told us you wanted them for, except if you did not rely (or unreasonably relied) on our skill or judgment in that regard (Guarantee as to fitness for a particular purpose); and
- (c) a guarantee that the services will be supplied within the time fixed by the Contract or the time determined by us, or failing that, within a reasonable time (Guarantee as to reasonable time for supply) –

and nothing in your Contract limits those warranties or your remedies for any breach of them.

**36. Statutory Guarantees – goods under \$40,000**

If we supply you with goods that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption, you may have the benefit of the guarantees set out in clause 34 but our liability for breach of those guarantees (other than a guarantee set out in clauses 34() to (c)) is limited to:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired,

unless you can demonstrate that it is not fair or reasonable for us to rely on this clause 36.

**37. Statutory Guarantees – services under \$40,000**

If we supply you with services that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption, you may have the benefit of the guarantees set out in clause 35 but our liability for breach of those guarantees is limited to:

- (a) supplying the services again; or
- (b) payment of the cost of having the services supplied again,

unless you can demonstrate that it is not fair or reasonable for us to rely on this clause 37.

**38. Personal injury or death**

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

**39. Service Level Agreements**

If a Service or a Plan includes a Service Level Agreement ('SLA'):

- (a) we are liable for any remedy or rebate allowed to you under the SLA; and

- (b) subject to clauses 34 to 38, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

#### **40. Exclusion of implied terms and limitation of liability**

Unless clauses 34 to 39 apply to you:

- (a) Any representation, warranty, condition or undertaking that would be implied in your Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law.
- (b) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- (c) We are never liable to you for:
  - (i) economic loss;
  - (ii) business interruption;
  - (iii) loss of revenue, profits, actual or potential business opportunities or contracts;
  - (iv) anticipated savings;
  - (v) loss of profits;
  - (vi) loss of data;
  - (vii) indirect or consequential loss;
  - (viii) an act or omission by a party for whom we are not responsible in law;
  - (ix) a fault in or failure of a Facility we do not control or operate;
  - (x) any Loss arising from circumstances beyond our reasonable control; or
  - (xi) our failure to continue to provide the Services to you for any reason whatsoever.
- (d) Otherwise, our maximum aggregate liability to you under, in connection with or arising out of your Contract or our Service to you (whether pleaded in contract, tort, breach of statutory duty or on any other basis, whether arising from acts or omissions, and whether in relation to damage or loss the risk of which we were or should have been aware)

is limited to the aggregate Charges you actually paid to us in respect of the first three months of your Contract.

**41. Liability of our Partners**

You release our Partners from any liability to you, whether in contract, tort (including negligence) or otherwise, in relation to any Service or any delay in providing or any failure to provide a Service to you.

**42. Your liability to us – General**

- (a) You must pay us all Charges and other amounts due under your Contract.
- (b) You must pay us the fair value of any Equipment that you fail to return to us when required.
- (c) You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- (d) You must indemnify us for any loss or damage we suffer as a result of or in connection with:
  - (i) your breach of your Contract;
  - (ii) your use of a Service or Equipment; or
  - (iii) a claim against us by an End User in relation to a Service we supply to you.
- (e) You indemnify us for any loss or damage we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment.
- (f) Your obligations under this clause survive termination of your Contract.

**43. Your liability to us – legal requests, etc**

- (a) This clause applies where we reasonably incur expense as a result of or in connection with:
  - (i) a police request for information or evidence in relation to you or your use of a Service; or
  - (ii) a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or

- (iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- (b) You must reimburse our expenses on request.

#### **44. Your liability to us – (alleged) illegal use, etc**

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

#### **45. Maintenance and faults**

- (a) Maintenance

From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.
- (b) Reporting faults
  - (i) You may report faults in relation to a Service or the Network by contacting our call centre during its operating hours.
  - (ii) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment which is not part of the Network.
  - (iii) You must not report a fault directly to one of our Partners unless we ask you to do so.
  - (iv) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.
- (c) Repairing faults
  - (i) We will use reasonable efforts to repair faults in Southern Cross Telco Facilities within a reasonable period.
  - (ii) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.

- (iii) You are responsible for maintaining and repairing your own Equipment (except where we supplied it and you have warranty rights in relation to a fault).
- (d) Disclosure in respect of repairs
 

If we accept a warranty claim from you and arrange for the repair of your Equipment, you acknowledge and agree that:

  - (i) if your Equipment is capable of retaining user generated data (for example, stored messages, emails, contact lists, phone numbers, software and applications etc), the repair of the Equipment may result in the loss or data; and
  - (ii) Equipment presented for repair may be replaced by refurbished Equipment of the same type rather than the defective Equipment being replaced.
- (e) Cost of repairs
 

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

#### **46. General power to vary your Contract**

We may vary your Contract from time to time but:

- (a) Variations do not have retrospective effect.
- (b) If a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:
  - (i) the nature of the variation; and
  - (ii) the means by which notice is to be provided; and
  - (iii) the length of time remaining before the variation is to occur; and
  - (iv) any other matter that is reasonably relevant.
- (c) *TCP Customers* We may both give you notice and offer you Early Termination Rights as explained in clause 47.

#### **47. TCP Customers and Contract variations**

This clause only applies to TCP Customers.

- (a) Reminder about TCP Customers
 

'TCP Customers' means consumer and some business customers. Refer to the Dictionary for the detailed definition.

## (b) Beneficial or minor detrimental impact

If a Contract variation will have a beneficial, or only a minor detrimental, impact on you:

- (i) We do not have to give you notice.
- (ii) We do not have to give you Early Termination Rights.

## (c) Variations arising from our Partner agreements

If a variation results from an amendment to our agreement with a Partner whose service we resell to you:

- (i) We shall give you written notice of the variation.
- (ii) We shall give the notice (a) by delivering it in person or by (b) pre-paid post to your address in the our records or (c) by email, with your prior consent or (d) by including the information on or in a bill, including electronically where you have expressly consented to receiving an electronic bill and (e) for pre-paid telecommunications services, by otherwise making it available and informing you how to obtain it.
- (iii) We will also offer you the right to terminate your Contract within 42 days of the date of the notice without incurring charges other than:
  - usage or network access charges to the date your Contract ends; and
  - outstanding amounts for installation of Equipment; and
  - outstanding amounts for Equipment that is compatible with other suppliers' services.

## (d) Content and premium services

If a variation results from an increase in the price we are charged by a third party supplier of content or premium service that we resupply to you:

- (i) we will give you reasonable notice of the change if you have used the service within the previous 6 months; and
- (ii) you may elect to not use that service without attracting any additional Charges.

## (e) Other variations

In any other case:

- (i) We shall give you at least 21 days written notice of the variation.
- (ii) We shall give the notice (a) by delivering it in person or by (b) pre-paid post to your address in our records or (c) by email, with your prior consent or (d) by including the information on or in a bill, including electronically where you have expressly consented to receiving an electronic bill and (e) for pre-paid telecommunications services, by otherwise making it available and informing you how to obtain it.
- (iii) We will also offer you the right to terminate your Contract within 42 days of the date of the notice without incurring charges other than:
  - usage or network access charges to the date your Contract ends; and
  - outstanding amounts for installation of Equipment; and
  - outstanding amounts for Equipment that is compatible with other suppliers' services.

#### **48. When variations take effect**

Contract variations take effect:

- (a) at the end of any applicable notice period; or
- (b) if no notice period applies, immediately.

#### **49. Customer transfers**

- (a) Transfer to us
  - (i) If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.
  - (ii) By making an application for Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.
  - (iii) You must promptly pay your current supplier all amounts you owe it.

- (b) Transfer from us

If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.

#### **50. Charges & payment (1): kinds of Charge**

We have various kinds of Charge, including:

- (a) installation Charges e.g. for installing Equipment,
  - (b) set up Charges e.g. a one-off Charge when you start on an Internet Service,
  - (c) periodic Charges e.g. a fixed monthly Charge for an fixed line service or ADSL Service,
  - (d) usage Charges e.g. a Charge per call made on a local call Service,
  - (e) prepaid Charges e.g. a Charge for call credit on a mobile telephone service,
  - (f) call connection Charges e.g. a Charge incurred when a telephone call connects,
  - (g) miscellaneous Charges e.g. a Charge for providing a paper bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make,
  - (h) third party Charges e.g. an amount we must pay to a Partner to install a second telephone line in your premises,
  - (i) equipment Charges e.g. the price of a modem we sell to you –
- and other Charges that we state as part of a Plan, including an Early Termination Fee. Such Charges are detailed in the Schedule of Fees and Charges.

#### **51. Charges & payment (2): Prices**

- (a) Our prices are as stated in your Plan – subject to clause 53.
- (b) Our current prices at any time are referred to as our 'Price List' or 'Rate Sheet'.

#### **52. Charges & payment (3): spot priced Services**

- (a) We may designate a Service as a spot priced Service.

- (b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.
- (c) International telephone calls and international roaming are spot priced Services.

### **53. Varying Charges**

We may vary the Charges or add new Charges from time to time in accordance with clause 46.

### **54. Special Promotions**

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

### **55. Bundled Plans**

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

### **56. Credit management (1): Guarantees and security**

- (a) We can make supply of Service conditional on you giving us, and maintaining, security and / or third party guarantees to our reasonable satisfaction.

- (b) If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and / or third party guarantees to our reasonable satisfaction.
- (c) We notify you that we may use a security payment to offset any undisputed amount that you owe us.
- (d) *TCP Customers*: We will only require security if there are reasonable grounds to believe you are a credit risk.

#### **57. Credit management (2): Credit reports**

- (a) Acknowledgment and authority that credit information may be given to a credit reporting agency

You acknowledge that section 18E(8)(c) of the *Privacy Act 1988* allows us to give a credit reporting agency certain personal information about you, and you authorise us to do so. The information which may be given to a credit reporting agency is listed by Section 18E(1) of the *Privacy Act* and includes:

- (i) the fact that you have applied for credit, and the amount,
  - (ii) the fact that we are a credit provider to you,
  - (iii) payments which become overdue more than 60 days,
  - (iv) advice that payments are no longer overdue,
  - (v) in specified circumstances, that in our opinion, you have committed a serious credit infringement,
  - (vi) that the credit provided to you by us has been discharged.
- (b) Authority for us to obtain certain credit information
- If you apply to us for personal or commercial credit, you authorise us:
- (i) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us,
  - (ii) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us,
  - (iii) to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which

provides information about the commercial creditworthiness of a person in relation to personal credit provided by us,

- (iv) to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.

(c) Authority to exchange information with other credit providers

In accordance with Section 18N(1)(b) of the *Privacy Act*, you authorise us to give to and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about your credit arrangements. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.

You acknowledge that the information may be used for the following purposes:

- (i) to assess your application,
- (ii) to assist you to avoid defaulting on your credit obligations,
- (iii) to notify other credit providers of a default by you,
- (iv) to assess your creditworthiness.

**58. Credit management (4): Services you acquire for others**

If you enter a Contract where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your children):

- (a) You are responsible for all use of the Service and all Charges incurred under the Contract.
- (b) If you give anyone else sufficient information about your Service (e.g. by giving them your user name, password or other credentials), they may be able:
  - to uncap or unlimit any cap or limits that apply to it,
  - to change Plans,
  - to disconnect Service, and
  - to do anything else that you could do.

You should treat all information that allows control of your Service as secret.

- (c) Internet and telephone Services can be used to buy goods and services from third parties. You may be liable for debts incurred to these third parties.

#### 59. When we can bill

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

Type of Charge:	payable:
• set up Charge	immediately
• periodic Charge	14 days before the start of the period it relates to
• usage Charge	at the end of each Billing Period
• prepaid Charge	when you buy a prepaid Service
• call connection Charge	at the end of each Billing Period
• miscellaneous Charge	at the end of each Billing Period
• third party Charge	immediately
• Equipment Charge	when or before we despatch the Equipment

- (d) In any case, we may bill you for any Service we have already provided.

#### 60. How we can send you a bill

- (a) You agree that you can incur a Charge without us issuing any invoice, statement or bill.
- (b) Alternatively, we may choose not to provide an invoice, statement or bill for a Service.
- (c) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- (d) If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

**61. Extra Charges for bills and information**

- (a) We may charge you an extra Charge if:
  - (i) you request non-standard information about your bill or Charges, or
  - (ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.

*TCP Customers* We will only make such a Charge when and as permitted by the TCP Code e.g. We will not levy it without first informing you of the amount or how it will be calculated.

- (b) If you request a paper bill when that is not the standard method for a Plan, you may incur an extra Charge as detailed in the Schedule of Fees and Charges.

**62. Out-of-pocket expenses**

- (a) We may notify you that, in order to supply a Service, we need to incur some out-of pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- (b) We notify you that a Partner may charge us if you report a fault and there was no such fault, or the fault lies with equipment for which the Partner is not responsible, or if you contact the Partner directly. You must pay or reimburse all such amounts.

**63. GST**

- (a) In this clause, an expression within a pair of asterisks means the same thing as in the GST Act.
- (b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.
- (c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any *\*taxable supply\** for which that amount is paid. Otherwise:
  - (i) The *\*consideration\** payable by you represents the *\*value\** of any *\*taxable supply\** for which payment is to be made.

- (ii) If we make a *\*taxable supply\** for a *\*consideration\**, which represents its *\*value\**, then you must pay immediately the amount of any GST payable in respect of the *\*taxable supply\**.
- (d) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an *\*acquisition\** of a *\*taxable supply\** from a third party, the amount you must pay, reimburse or contribute will be the value of the *\*acquisition\** by us less any *\*input tax credit\** to which we are entitled plus, if our recovery from you is a *\*taxable supply\**, any GST payable under this clause.
- (e) We may recover any GST payable under this clause in the same manner as our Charges.

#### **64. Late billing**

- (a) We may late bill.
- (b) Our policy on late billing is that we shall only do so up to 190 days in arrears.

#### **65. When you must pay**

- (a) Where a direct debit or credit card arrangement applies, we may debit any Charge when it is billed or billable.
- (b) If any bill is overdue for payment, you must pay that bill and any other bill immediately.
- (c) In any other case, you must pay a bill within 14 days after its Bill Date unless a different timeframe is stated in your Plan or Customer Contract.

#### **66. How you can Pay**

- (a) If your Plan specifies 'direct debit only' (or similar) then:
  - (i) Direct debit payment is a precondition to supply of Service to you.
  - (ii) We may suspend Service if it is not maintained.
 

*TCP Customers* We will not suspend all Services indefinitely. If a suspension continues for 14 days, we will terminate your Contract or lift the suspension within another 30 days.
  - (iii) You must not cause to be reversed any direct debit payment to us, unless you have our prior written approval. Otherwise, you

must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

- (b) In any other case:
  - (i) Direct debit is our preferred payment method and incurs no surcharges.
  - (ii) Other available payment methods are detailed on your bill.
  - (iii) Payments made using either American Express, Diners Club, Mastercard or Visa credit cards are subject to a surcharge, as detailed in the Schedule of Fees and Charges and/or your bill.
- (c) If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

#### **67. Late payment**

If a bill is not paid on time:

- (a) you are in breach of your Contract, and
- (b) we may also charge:
  - (i) interest at 1.5% a month from the Bill Date until it is paid in full, or
  - (ii) a reasonable late fee, and
  - (iii) any collection fees and expenses that we incur.

#### **68. Early Termination Fees**

The amount of an Early Termination Fee that we are entitled to charge is:

- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) otherwise, a reasonable estimate of our lost profit as a result of an early termination.

#### **69. Billing disputes**

- (a) Our records of what you owe us are deemed to be right unless you show them to be wrong.

*TCP Customers* This does not apply to you.

- (b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.

*TCP Customers* You may defer payment of a genuinely disputed amount while your dispute is being investigated but:

- (i) we can require written evidence that your dispute is genuine,
- (ii) you must still pay all undisputed portions, and
- (iii) if we determine that some or all of the disputed portion is payable, you must pay that amount within 5 days.

*TCP Customers* We will not take credit management action in relation to a genuinely disputed amount while it is being investigated by us, the TIO or a relevant recognised agency but:

- (i) we can require written evidence that your dispute is genuine,
  - (ii) you must still pay any undisputed portion, and
  - (iii) if it is determined that some or all of the disputed portion is payable, you must pay that amount within 5 days.
- (c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

#### **70. Billing for unauthorised use of your account**

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of Consumer Standards.

#### **71. Billing agents**

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

#### **72. Calls to Mobiles**

- (a) Our prices for calls to mobile phones are always quoted on the basis that the mobile telephone you are calling has its home network in Australia and is located in Australia when you call.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

**73. Payment for third party services**

- (a) Using a Service may depend on you having goods or services supplied by third parties. For instance:
  - (i) In order to use a dial up internet Service, you must have a telephone line, and your modem will make calls using it.
  - (ii) In order to use a local call Service, you must have a suitable handset.
- (b) You are solely responsible for the costs of all third party goods and services you acquire.

**74. Part Service**

In the event where your Service does not contain a full Service, eg, service and equipment/line rental and pre-select calls, you may be charged a fee per account, as set out in the Schedule of Fees and Charges.

**75. Your cooperation**

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

**76. Complaints**

- (a) If you have any complaints in connection with the Service (including complaints about your invoice), you should contact us first to resolve the complaint via the contact details available on our website or your bill.
- (b) We will handle your complaint in accordance with our complaints procedure. Information on our complaints procedure may be obtained by contacting us.
- (c) You are also entitled to make a complaint to the Telecommunications Industry Ombudsman and possibly to the Consumer Affairs office

(however described) in your state. We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.

- (d) We may bill you a reasonable complaint handling Charge.

*TCP Customers* We will not impose a complaint handling Charge unless (a) we can justify that the investigative / handling process for a complaint is sufficiently onerous on us (b) we have referred to you and discussed it with you (c) we have informed you of the Charge in writing (d) we have provided You with the option to (i) pursue the complaint and pay the Charge (ii) discontinue the complaint or (iii) take the matter to the TIO.

#### **77. Termination & suspension by us (1): Early termination**

We may terminate a Contract, or suspend or limit Service if, in relation to that or any other Contract or Service:

- (a) you fail to pay us any money that is due,
- (b) you threaten not to pay us money that you owe us, or will owe us in the future,
- (c) you cause to be reversed any direct debit or credit card payment to us (except with our prior written agreement),
- (d) you are in material breach of your Contract,
- (e) you become insolvent,
- (f) we reasonably believe that you have vacated your Premises without notice to us,
- (g) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm,
- (h) it becomes technically infeasible for us to continue Service,
- (i) you use a Service in a way that places unreasonable demands on our Network,
- (j) we are unable to obtain access to your Premises as required to provide, maintain or repair the Service,
- (k) there is an emergency that warrants it,
- (l) you have told us that you no longer require the Service,
- (m) if we reasonably suspect fraud or attempted fraud involving the Service,

- (n) we become entitled to suspend the Service, and the suspension continues for more than a month,
- (o) you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that), or
- (p) in any other circumstances stated elsewhere in our Customer Terms.

We may charge a reconnection Charge following action under this clause unless it resulted from our mistake.

*TCP Customers* We will only terminate Service under this clause if (a) there is a material breach (b) there is evidence to suggest fraud or other illegal conduct in relation to the Service (c) an Acceptable Use Policy provides for it or (d) where termination is based on breach of another Contract: (i) the Contracts are not separate and independent or (ii) there are reasonable grounds for believing you are a credit risk.

*TCP Customers* We will only suspend or limit Service under this clause if (a) there is a material breach of your Contract (b) there are reasonable grounds to suspect fraud or other illegal conduct in relation to the Service (c) an Acceptable Use Policy provides for it (d) there are reasonable grounds for believing you represent a credit risk in relation to the Service and we take reasonable steps to give you notice of the suspension or rationing or (e) where suspension or rationing is based on breach of another Contract: (i) the Contracts are not separate and independent or (ii) there are reasonable grounds for believing you are a credit risk.

*TCP Customers* We will not suspend all Services under a Contract indefinitely. If a suspension continues for 14 days, we will terminate your Contract or lift the suspension within another 30 days.

#### **78. Termination & suspension by us (2): Other events**

- (a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or become bankrupt, insolvent or subject to a winding-up order or similar insolvency event, if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract.
- (b) We may suspend or restrict the supply Service if there are reasonable grounds for believing:

- (i) a serious threat or risk exists to the security or integrity of the Network, or
  - (ii) the provision of the Service may cause death, personal injury or damage to property.
- (c) We may suspend or restrict Service in cases of emergency, including for the provision of support to emergency and other essential services.
- (d) We may terminate a Contract or suspend or limit or vary performance of our obligations under it to comply with:
  - (i) legislative or regulatory requirements, or
  - (ii) the order of a court or lawful direction of a competent authority – to the extent the legislative or regulatory requirements or order or direction unavoidably requires us to do so.
- (e) We may suspend, intercept or terminate a service in order to comply with a warrant or other court order, or as otherwise required or authorised by law.

*TCP Customers* We will not suspend all Services under a Contract indefinitely. If a suspension continues for 14 days, We will terminate your Contract or lift the suspension within another 30 days.

#### **79. Early termination by you**

- (a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.
- (b) Our Plans are priced on the basis that you will complete your Contract.
- (c) Where you are entitled to terminate your Contract early, we may bill you for:
  - (i) any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers, and
  - (ii) usage or network access charges incurred up to the date on which the Contract ends.
- (d) If we agree that you may terminate it early in any other circumstances, we may bill you:
  - (i) an Early Termination Fee,

- (ii) any applicable amounts under clause (e),
  - (iii) a reasonable administration Charge,
  - (iv) usage or network access charges incurred up to the date on which the Contract ends, and
  - (v) any other Charge (including an early termination Charge) that is specified in the applicable Plan or the Price List.
- (e) Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and we agree that you may do so), we may bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

#### **80. Termination by you**

- (a) You may terminate your Contract:
- (i) (except during a fixed or minimum term) at any time, on 30 days written notice; or
  - (ii) by giving us written notice if we breach a term of your Contract and:
    - the breach is material and we cannot remedy it; or
    - the breach can be remedied, but we do not remedy it within 30 days of receipt of a written notice from you requiring it to be remedied; or
  - (iii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 14 days.
- (b) You may also terminate your Contract:
- (i) in any other circumstances where your Contract provides for it; or
  - (ii) (in a case where you have a non-excludable legal right to do so) by transferring the Service from us to another supplier. We will cancel the Service and terminate your Contract immediately once the other supplier has informed us that you have elected to transfer the Service from us to that other supplier.

**81. Post-termination**

If a Contract ends:

- (a) Our obligations to you under that Contract are at an end.
- (b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract.
- (c) All bills are payable immediately.

*TCP Customers* We shall notify you of a due date for amounts that constitute Early Termination Fees or previously unbilled Charges. It will allow a reasonable period.

- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or direct debit them from your credit card or bank account if you normally pay by direct debit.
- (e) You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)
- (f) Any cause of action that either of us had against the other predating the termination is not affected,
- (g) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,
- (h) No other Contract is affected unless we also terminate it.

*TCP Customers* We will only terminate a Contract solely on the basis of a breach of another Contract if the Contracts are not separate and independent.

Otherwise, that Contract is at an end for all purposes.

**82. Suspension of Service**

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency or your death), if:

- (a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Customer Contract (which is not the subject of a bona fide dispute should we include - which has been communicated to us, it wouldn't be

bona fide if they didn't communicate it to us) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;

- (c) you breach a material term of your Customer Contract, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair Use Policy, and that breach cannot be remedied;
- (d) you breach a material term of your Customer Contract, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are the subject of an Insolvency Event;
- (f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
- (g) we reasonably believe that you may be a credit risk in relation to the Service;
- (h) you are a natural person (and not a company) and you die;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Service or integrity of the Network;
- (k) the Service may cause death, personal injury or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Customer Contract.

### **83. Charges during a period of suspension**

If we suspend Service:

- (a) because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension;
- (b) otherwise – you are entitled to a *pro rata* reduction in Charges in respect of the period of suspension.

**84. Errors in our documents**

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

**85. Carrier or Carriage Service Provider**

- (a) You represent that you are not a carrier or a Carriage Service Provider.
- (b) If you do become a Carrier or a Carriage Service Provider, then we or our Partners may immediately cancel the Service and terminate your Contract by notice to you.

**86. Provision of Services by our Partners**

- (a) If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.
- (b) If our rights and obligations under your Contract are assigned or novated to our Partner in order to supply the Service directly to you, you acknowledge that the rate plan and Charges applicable to the provision of the Service may be altered to the nearest applicable Partner rate plan.

**87. Assignment**

- (a) We may assign or novate all or part of our rights and obligations under your Contract to any of our Partners without your consent.
- (b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

**88. Notices**

We may give any written notice to you in connection with, or as required by our Customer Terms, by sending the notice to you via email, post or fax (as

indicated on your Service application) or by otherwise sending an SMS to your mobile device.

**89. Governing law**

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

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

**90. No waiver**

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

**91. Commission**

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

**92. Information about your rights**

Information and advice about your rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission, or the relevant Department of Fair Trading or Department of Consumer Affairs in your State or Territory.

**93. Complaints and assistance services**

Our contact details are available on our website.

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

- (a) Customer Service – refer to our website or your bill
- (b) National Relay Service – 133 677
- (c) Translating and Interpreting Service – 131 450

**94. Interpreting your Contract**

- (a) If an expression is defined in the Dictionary in clause 95, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint red', then 'coloured' means 'painted red'.)
- (c) Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) Where one thing is said to include one or more other things, it is not limited to those other things.
- (h) There is no significance in the use of gender-specific language.
- (i) A 'person' includes any entity which can sue and be sued.
- (j) A 'person' includes any legal successor to or representative of that person.
- (k) A reference to a law includes any amendment or replacement of that law.
- (l) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (m) Anything we can do, we may do through an appropriately authorised representative.
- (n) Any matter in our discretion is in our absolute and unfettered discretion.  
*TCP Customers* We will not unilaterally determine or enforce a right or obligation under your Contract without stating, in reasonable detail, the act, omission, condition, event or legislation which affords us the right to do so.
- (o) A reference to a document includes the document as modified from time to time and any document replacing it.

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

## 95. Dictionary

The expression:	means:
Account Page	a web page or facility we may provide that permits you to view and / or manage details of your account
Acceptable Use Policy	an acceptable use policy made under our Customer Terms
Application Date	as in clause 19(a)
Bundled Equipment	as in clause 13
Business Day	Monday to Friday excluding statutory holidays
Carriage Service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	as in the Telecommunications Act
Charge	a charge applicable under your Customer Contract
Southern Cross Telco	As in clause 2
Southern Cross Telco Facilities	Facilities that we manage and maintain
Consumer Product	(a) a Carriage Service; (b) any other telecommunications related goods or

	services we supplied under a contract for supply of a Carriage Service; and (c) a content service (other than a subscription broadcasting service or a television subscription narrowcasting service within the meaning of the Broadcasting Services Act 1992) that we provide in connection with the supply of the Carriage Service.
Consumer Standards	has the meaning given in clause 15
Customer Contract	has the meaning given in clause 3
Contract Date	as in clause 19(b)
Customer Terms	as in clause 1
Delivery Date	as in clause 28
Early Termination Fee	as in clause 68
Early Termination Rights	the right to terminate your Customer Contract early, in the circumstances described in clause 47
End User	as in clause 21(b)
Equipment	a handset, modem, router or other hardware
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
Fair Use Policy	as in clause 8
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (Cth)
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts

	when they are due, you are wound up or become bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Suppliers, any disruption to our or our Suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster
Law	as in clause 22
Network	as in clause 20
Numbering Plan	the Telecommunications Numbering Plan
Operational Directions	as in clause 9
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content that we resupply to you
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	as in clause 10
Periodic entitlements	as in clause 6
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
Price List	as in clause 51
Privacy Act	Privacy Act 1988 (Cth)
Product	goods and / or services
Regulator	includes the Australian Communications

Service	and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, Communications Alliance Limited and any other relevant government or statutory body or authority a service (and includes Equipment) which we provide to you, including but not limited to (a) a Standard Telephone Service; or (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001
Service Level Agreement	a written service quality assurance titled as such
Service Start Date	as in clause 19(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	as in clause 28
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act 2003
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Telephone Service	as in section 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999
TCP Code	Industry Code C628:2007 Telecommunications Consumer Protections Code

TCP Customer	(a) a person who acquires a Consumer Product for the primary purpose of personal or domestic use; or (b) a business or non-profit organisation which at the time it enters into a contract with us: (i) does not have a genuine and reasonable opportunity to negotiate the terms of the contract; and (ii) has or will have an annual spend with us which is, or is estimated on reasonable grounds by us to be, no greater than \$20,000 – other than a person acquiring a Consumer Product for resale
Telecommunications Act	Telecommunications Act 1997 (Cth)
Use-by Date	has the meaning give in clause 7(b)

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Part A – Introduction .....	1
1. About this document .....	1
2. Southern Cross Telco .....	1
Part B – Customer Contracts .....	1
3. Your Customer Contract .....	1
4. Plans .....	1
5. Peak & Off-peak .....	1
6. Periodic entitlements .....	2
7. Prepaid Plans .....	2
8. Fair Use Policies.....	2
9. Operational Directions .....	3
10. Partner Requirements.....	3
11. Fixed terms.....	3
12. Month-to-month, casual or ‘no contract’ terms .....	3
13. Bundled Equipment .....	4
14. Telecommunications Consumer Protections (‘TCP’) Code.....	4
15. Consumer Standards.....	4
16. Understanding and navigating our Customer Terms .....	5
Part C – General Terms .....	5
17. Application for Service .....	5
18. Processing an application .....	5
19. Relevant dates.....	5
20. Providing Service.....	5
21. Use of Service by others.....	6
22. Using a Service.....	6
23. Telephone numbers.....	7
24. IP addresses, email addresses and domain names .....	7
25. Dynamic IP addresses.....	8
26. Supplied Equipment.....	8

27.	Substituted Equipment.....	9
28.	Delivery of Equipment.....	9
29.	Installation and connection of Equipment.....	9
30.	Installation Charges.....	10
31.	Additional Equipment services.....	11
32.	Lost, stolen and damaged Equipment.....	11
33.	Return of Equipment.....	11
34.	Implied Guarantees – consumer goods.....	11
35.	Implied Guarantees – consumer services.....	12
36.	Implied Guarantees – goods under \$40,000.....	13
37.	Implied Guarantees – services under \$40,000.....	13
38.	Personal injury or death.....	13
39.	Service Level Agreements.....	13
40.	Exclusion of implied terms and limitation of liability.....	14
41.	Liability of our Partners.....	15
42.	Your liability to us – General.....	15
43.	Your liability to us – legal requests, etc.....	15
44.	Your liability to us – (alleged) illegal use, etc.....	16
45.	Maintenance and faults.....	16
46.	General power to vary your Contract.....	17
47.	TCP Customers and Contract variations.....	17
48.	When variations take effect.....	19
49.	Customer transfers.....	19
50.	Charges & payment (1): kinds of Charge.....	20
51.	Charges & payment (2): Prices.....	20
52.	Charges & payment (3): spot priced Services.....	20
53.	Varying Charges.....	21
54.	Special Promotions.....	21
55.	Bundled Plans.....	21
56.	Credit management (1): Guarantees and security.....	21
57.	Credit management (2): Credit reports.....	22

58.	Credit management (4): Services you acquire for others .....	23
59.	When we can bill.....	24
60.	How we can send you a bill .....	24
61.	Extra Charges for bills and information .....	25
62.	Out-of-pocket expenses.....	25
63.	GST .....	25
64.	Late billing .....	26
65.	When you must pay .....	26
66.	How you can Pay.....	26
67.	Late payment.....	27
68.	Early Termination Fees.....	27
69.	Billing disputes.....	27
70.	Billing for unauthorised use of your account.....	28
71.	Billing agents .....	28
72.	Calls to Mobiles .....	28
73.	Payment for third party services.....	29
74.	Part Service .....	29
75.	Your cooperation .....	29
76.	Complaints.....	29
77.	Termination & suspension by us (1): Early termination .....	30
78.	Termination & suspension by us (2): Other events.....	31
79.	Early termination by you .....	32
80.	Termination by you .....	33
81.	Post-termination.....	34
82.	Suspension of Service .....	34
83.	Charges during a period of suspension.....	35
84.	Errors in our documents.....	36
85.	Carrier or Carriage Service Provider .....	36
86.	Provision of Services by our Partners .....	36
87.	Assignment.....	36
88.	Notices .....	36

89.	Governing law.....	37
90.	No waiver.....	37
91.	Commission.....	37
92.	Information about your rights .....	37
93.	Complaints and assistance services .....	37
94.	Interpreting your Contract .....	38
95.	Dictionary.....	39
	Index .....	44