
Part A – Introduction

1. About this document

- (a) These are EscapeNet’s Customer Terms.
- (b) When we supply you with Telecommunications Products, our Customer Terms apply by agreement between us or, failing agreement, under section 479 of the Telecommunications Act.
- (c) When we supply you with non-Telecommunications Products, our Customer Terms apply as our standard terms of business.

2. About us

‘EscapeNet’, ‘Escape’, ‘Escape Internet’, ‘we’, ‘our’ or ‘us’ means EscapeNet Pty Ltd ACN 085 047 641 as trustee for EscapeNet Trust.

- (a) Our website is at www.esc.net.au.
- (b) Our postal address is at 465 South Road, Keswick SA 5035.
- (c) Our customer service number is 1300 135 235.

Part B – Customer Contracts

3. Your Customer Contract

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

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

Service Terms for our main Services are attached.

4. Priority

In case of any inconsistency between them:

- (a) clauses 44 to 54 (inclusive) override anything else in the Customer Contract;
- (b) otherwise:
 - (i) Service Terms override General Terms and this Part B; and
 - (ii) Part B overrides General Terms.

5. Plans

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

6. 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.

7. Periodic Entitlements

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

eg An Internet Plan might let you download 100 gigabytes of data each month at no extra cost.

eg A local call Plan might let you make 50 local calls each 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 your Periodic Entitlement, extra Charges may apply or a Service may be limited in some way. Your Plan will give details.

8. 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 expire 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 prepaid entitlements (unless the Plan states otherwise).
- (d) We may specify minimum and/or maximum prepayments that you may make.
- (e) When your prepaid entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

9. Non-Prepaid Plans

For a Plan that is not a Prepaid Plan, you may use the Service without paying in advance in full, but:

- (a) We may require partial prepayment for a period of Service.
- (b) We may require a partial prepayment before or after your Service Start Date.
- (c) We may require you to maintain a minimum prepaid balance for a Service.
- (d) We may vary the amount of a required prepayment or minimum prepaid balance from time to time.
- (e) We may apply your prepaid balance to your next Bill or any later Bill/s.

10. Acceptable and Fair Use Policies

- (a) We may publish an Acceptable Use Policy and/or a Fair Use Policy for a Service or Plan.

- (b) An Acceptable Use Policy or Fair Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service and/or our resources.
- (c) You must comply with any applicable Acceptable Use Policy or Fair Use Policy.

For additional information regarding our Acceptable Use Policies, please visit www.esc.net.au/terms or alternatively to obtain a copy of the applicable policy – write to our Customer Information and Compliance Officer at our postal address (see clause 2(b)).

11. Legal Compliance Policies

- (a) We may publish a policy directed to ensuring that the use of a Service complies with all Laws.
- (b) You must comply with such a policy.

12. Interacting with our staff

- (a) You must interact with our staff courteously.
- (b) You must not be rude to our staff.
- (c) You must not harass or mislead our staff.
- (d) If you breach this clause in a serious way, or on more than one occasion:
 - (i) we may make a written request that you comply with it; and
 - (ii) if you breach it again, you are in material breach of your Contract.

13. 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.

14. Partner Requirements – General

- (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) Where a Partner Requirement states that a Partner has a certain right or power:
 - (i) the Partner itself may exercise that right or power; or
 - (ii) we may exercise the right or power on behalf of the Partner.
- (e) **ACL Consumers and ACL Small Businesses** If a new or amended Partner Requirement is materially detrimental to you, you may have Walk Away Rights under clause 57.

15. Fixed terms

A Plan may specify a fixed or minimum term. If it does:

- (a) A Contract for the Plan is a contract for at least that specified term.
- (b) Either you or we can terminate the Contract as at the end of that specified or minimum term, by giving at least 30 days' termination notice.
- (c) If a Contract is not terminated under clause (b) above, it becomes a month-to-month Contract.

16. 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:

- (a) we may terminate it on at least 30 days' notice; and
- (b) you may terminate it on at least 30 days' notice, taking effect at the end of a Billing Period (eg if you give notice on 26 March, your Contract ends on 30 April next).

17. Bundled Equipment

- (a) Under some of our Plans, you will be supplied with Equipment (eg 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 case we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.
- (c) Clause 33(c) explains when ownership of Bundled Equipment passes to you.

18. 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 Customers**' applies to you if you are a TCP Customer, but not otherwise.

19. Australian Consumer Law (ACL)

- (a) Some provisions of the ACL apply to:
 - (i) individuals who enter Consumer Contracts (as defined in the ACL). We call those persons **ACL Consumers** in our Customer Terms. Refer to the Dictionary for the detailed definition; and
 - (ii) businesses that enter Small Business Contracts (as defined in the ACL). We call those persons **ACL Small Businesses** in our Customer Terms. Refer to the Dictionary for the detailed definition.

- (b) A term or note in our Customer Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.
- (c) A term or note in our Customer Terms headed 'ACL Small Businesses' applies to you if you are an ACL Small Business but not otherwise.

20. ACL Consumers, ACL Small Businesses and Unfair Contract Terms

- (a) Our Customer Terms apply to a wide variety of customers and circumstances, and must reasonably protect our interests across that wide variety.
- (b) If you are an ACL Consumer, or an ACL Small Business and a term of your Contract would (except for this clause) be unfair (within the meaning of section 25 of the ACL) we will not apply or rely on that term without also taking steps to appropriately mitigate any unfairness.
- (c) Those steps will be tailored to the particular situation, but may include eg offering you Walk Away Rights and a reasonable period to exercise them.

21. Consumer Guarantees

- (a) Under the Australian Consumer Law, consumers (as defined in the ACL) have the benefit of certain **Consumer Guarantees**:
 - (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) Your Contract never operates to exclude the Consumer Guarantees (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

22. Understanding and navigating our Customer Terms

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 115.
- (b) Rules for interpreting other expressions in our Customer Terms are set out in clause 114.
- (c) The Index is at the end.

Part C – General Terms

23. Application for Service

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

24. Processing an application

- (a) We do not have to accept an application.
- (b) Each Service in your application is subject to availability, service qualification and provisioning feasibility.

- (c) 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.
- (d) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 68.

25. 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 **Service Start Date** is the first to occur of:
 - (i) the date you first use the Service;
 - (ii) if we notify you that the Service is available for use in person or by telephone or by fax, SMS, email or instant messaging – the date of notification; and
 - (iii) if we notify you that the Service is available for use by mail – the second Business Day after posting.

26. Providing Service

- (a) We will commence Service as soon as reasonably practicable after the Contract Date, and we may commence billing you as soon as the service is provisioned.
- (b) We may provide Service using Our Facilities and/or third-party Partner Facilities, as we decide from time to time. Together, we call those Facilities our **Network**.
- (c) The Service is delivered to the Network Boundary Point.

27. 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) Anyone who makes use of a Service with your consent or from your premises or using your equipment or log-in credentials 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 the Customer Contract if done (or not done) by you.

28. Using a Service

- (a) When using a Service, you must comply with:
 - (i) the Customer Contract (including any applicable Acceptable Use or Fair Use Policy); and
 - (ii) all Laws.
- (b) You must not use a Service:
 - (i) in breach of any Law;
 - (ii) to breach anyone else's rights;

- (iii) to infringe copyright;
- (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;
- (vii) in a way that is misleading or deceptive, where that is contrary to Law;
- (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.

29. Exploitative Use

- (a) 'Exploitative Use' means:
 - (i) using an unlimited mobile telephone Service to generate mobile terminating access or SMS message terminating access payments (for example, by using SIM boxing);
 - (ii) using a Service to transit, refile or aggregate domestic or international traffic on Our Network;
 - (iii) using a Service with devices that switch or reroute calls to or from Our Network without our consent;
 - (iv) using a Service in a manner similar to the kinds described in clauses (i), (ii) or (iii); or
 - (v) any other use of a Service in a manner that cannot reasonably be considered to be within the range of uses for which the Service are ordinarily supplied – provided that use of a Service is not Exploitative Use merely because it is high volume use.
- (b) You must not engage in Exploitative Use.

30. Telephone numbers

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) We must comply with the 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:

- (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.

31. 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.
- (e) An IP address allocated to you:
 - (i) may be managed using Network Address Translation (**NAT**);
 - (ii) may not be 'globally routable' ie directly reachable by all other Internet users; and
 - (iii) may therefore not support applications or services that require inbound connections to be established (eg a Virtual Private Network).

This reflects common industry architecture and is not a defect in your Service.

- (f) We may allocate you with a globally routable IP address, if you request it or applicable Service Terms provide for it, subject to:
 - (i) availability;
 - (ii) Service Terms;
 - (iii) our current allocation policy at the time of request; and
 - (iv) payment of an additional Charge.

32. Dynamic IP addresses

- (a) Unless your Internet Service specifies that we shall provide you with a static (ie 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 an Internet Service with a dynamic IP

address. If you intend to operate such a server you should use an Internet Service with a static IP address.

33. 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 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 each a **Security Period**.
- (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 Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
 - (ii) you are responsible for ascertaining what those technical 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:
 - (A) our negligence, or
 - (B) our breach of the Consumer Guarantees.

34. 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 advertised 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.

35. 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.

36. 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 we issue) 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 Guarantees.
- (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.

37. Installation Charges

- (a) We will charge you installation Charges as stated (or indicated by) in your Contract.
- (b) We will try to inform you in advance of any installation fees that may be charged by our Partners.

- (c) 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.

38. 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 (which may include materials supplied by our Partners at rates they determine).

39. Lost, stolen and damaged Equipment

Unless caused by us or our personnel or our Partner (including NBN):

- (a) You are responsible for any lost, stolen and damaged Equipment owned by us or our Partner and is in your possession, under your control or on your property.
- (b) You must pay for the replacement or (if reasonable) repair of such Equipment.

40. Return of Equipment

On the termination of your Contract for any reason, you must return all our Equipment without delay and (unless termination occurred due to our fault) at your cost.

41. PPS Law**41.1 Application of clause**

- (a) This clause 41 applies to the extent that your Customer Contract provides for or contains a "security interest" for the purposes of the PPS Law (or part of it).
- (b) The security interest granted to us is a 'purchase money security interest' to the extent that it can be under section 14 of the PPS Law.

41.2 Registration and rights

- (a) We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
 - (i) ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and
 - (iii) enabling us to exercise rights in connection with the security interest.
- (b) Our rights under your Customer Contract are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our agreement and/or under such other law, as we see fit.

41.3 PPS Law exclusions and waivers

- (a) The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are 'contracted out' of your

Customer Contract in respect of goods that are not used predominantly for personal, domestic or household purposes:

- (i) section 95 (notice of removal of accession to the extent it requires us to give a notice to you);
 - (ii) section 96 (retention of accession);
 - (iii) section 125 (obligations to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - (v) section 132(3)(d) (contents of statement of account after disposal);
 - (vi) section 132(4) (statement of account if no disposal);
 - (vii) section 135 (notice of retention);
 - (viii) section 142 (redemption of collateral); and
 - (ix) section 143 (reinstatement of security agreement).
- (b) The following provisions of the PPS Law:
- (i) section 123 (seizing collateral);
 - (ii) section 126 (apparent possession);
 - (iii) section 128 (secured party may dispose of collateral);
 - (iv) section 129 (disposal by purchase); and
 - (v) section 134(1) (retention of collateral) –

confer rights on us. You agree that in addition to those rights, we shall, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment during its Security Period, not only under those sections but also, as additional and independent rights, under your Customer Contract and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- (c) You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

41.4 Non-disclosure

We and you agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this clause.

41.5 No competing security interest

You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in Equipment during its Security Period other than with our express written consent.

41.6 Sub-hiring Equipment during Security Period

- (a) You must not lease, hire, bail or give possession of (sub-hire) the equipment to anyone else unless we (in our absolute discretion) first

consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our agreement with you.

- (b) You must take all steps including registration under PPS Law as may be required to:
 - (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enable us to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
 - (iii) enable each of us to exercise our respective rights in connection with the security interest.

41.7 Costs

We may recover from you the cost of doing anything under this clause 41, including registration fees and the costs of notification.

42. TCP Customers and Authorised Representatives

- (a) If you are a TCP Customer, you can appoint an Authorised Representative to act on your behalf if you require.
- (b) To be effective, we require that any such appointment:
 - (i) is in writing;
 - (ii) is signed by you (unless you are incapable of signing, in which case we shall work out a feasible and mutually acceptable alternative with you);
 - (iii) is verified by you in person or by telephone, including reasonable evidence of your identity (unless you are incapable of communicating with us in person or by telephone, in which case we shall work out a feasible and mutually acceptable alternative with you); and
 - (iv) states any limitations on the authority of your Authorised Representative (eg time limit; limit on access to your account or personal information; limit on authority to incur expense on your behalf).
- (c) If your appointment does not state any limitations, your Authorised Representative has the power to act on your behalf as if they are you.
- (d) If your appointment states any limitations, your Authorised Representative has powers, including access to your information, in accordance with your appointment and those limitations.

43. TCP Customers and Advocates

- (a) You can use an Advocate to communicate with us if you require.
- (b) We presume that an Advocate is not authorised to establish or make changes to your account or Services, unless the Advocate is also your Authorised Representative under clause 42.

- (c) A person acting as your Advocate has no power to act on your behalf and has no access to your information without you being present and agreeing to such action.

44. Rights and remedies for PDH goods and services

Important consumer information: Full details of the consumer rights and remedies referred to in clauses 44 and 45 can be obtained from the Australian Competition and Consumer Commission (ACCC) at www.accc.gov.au or from a local consumer protection agency.

- (a) If we supply you with goods or services of a kind ordinarily acquired for personal, domestic or household (PDH) use or consumption you have important rights under the Australian Consumer Law (ACL) including Consumer Guarantees and remedies.

Nothing in your Contract limits those rights and remedies in any way.

- (b) If we supply you with PDH Goods or Services, and you are told they come with a 'manufacturer's warranty' or 'one year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

45. Rights and remedies for non-PDH goods costing no more than \$40,000

If we supply you with goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and cost no more than \$40,000 you have important rights under the ACL including Consumer Guarantees and remedies but:

- (a) in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
 - (i) replacing the goods or supplying equivalent ones;
 - (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent ones; or
 - (iv) paying the cost of having the goods repaired; and
- (b) in relation to these services, our liability for failure to comply with a Consumer Guarantee is limited to:
 - (i) supplying the services again; or
 - (ii) paying the cost of having the services supplied again.
- (c) If we supply you with non-PDH Goods or Services that cost no more than \$40,000, and you are told they come with a 'manufacturer's warranty' or 'one year product assurance' or similar, those rights are in addition to, and not instead of, your rights under the ACL.

46. Personal injury or death

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

47. Service Level Agreements

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

- (a) we are liable for any remedy or rebate specified by the SLA; and

- (b) subject to clauses 44 to 46, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

48. Exclusion of implied terms

Important consumer information: Nothing in this clause 48 limits the consumer rights and remedies referred to in clauses 44 and 45.

Subject to clauses 44, 45, 46 and 47:

- (a) Any representation, warranty, condition or undertaking (whether in favour of you or us) 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.

49. Limitation of Liability- General

Important consumer information: Nothing in this clause 49 limits the consumer rights and remedies referred to in clauses 44 and 45.

Subject to clauses 44, 45, 46, 47 and 50 we are never liable to you for; and you release us from any Claim for, any Loss.

50. Limitation of liability – ACL Consumers and ACL Small Businesses

Important consumer information: Nothing in this clause 50 limits the consumer rights and remedies referred to in clauses 44 and 45

If:

- (a) you are an ACL Consumer or an ACL Small Business; and
- (b) clause 49 is determined by a court or tribunal to be Unfair –

then:

- (c) clause 49 will not apply but:
 - (i) neither of us is liable to the other for economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or contracts, anticipated savings, loss of profits, loss of data, indirect or consequential loss, an obligation to indemnify another person, or an obligation to contribute to the compensation of loss or damage suffered by another person; and
 - (ii) except for liability under clauses 51(a), 51(b), 51(c), 53 or 54 the liability of each of us to the other for any Loss is limited to \$1,000 in aggregate in respect of the Term.

51. Liability- 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.

TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

- (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 except to the extent that we caused or contributed to the Loss by our negligence, breach of any Law or breach of your Contract.
- (f) Your obligations under this clause survive termination of your Contract.

52. Liability – 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.

53. 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.

54. Liability and our Partners

54.1 No Claims against a Partner

If:

- (a) except for this clause, you would have a Claim against a Partner arising out of or in connection with your Service or their role in its supply; and
- (b) our Partner has required us to exclude the Claim and/or we are liable to indemnify it against the Claim

then:

- (c) you must not make the Claim;
- (d) you release our Partner from the Claim; and

- (e) you indemnify us and our Partner against any Loss we suffer if you do make the Claim.

54.2 Partner indemnity

If we are liable to indemnify a Partner against any Claim or Loss arising out of or in connection with your Service or their role in its supply, you must indemnify us against our liability to the Partner except to the extent that we caused or contributed to the Claim or Loss by our negligence, breach of any Law or breach of your Contract.

54.3 No application where Unfair

If:

- (a) you are an ACL Consumer or an ACL Small Business; and
- (b) clause 54.1 or 54.2 is determined by a court or tribunal to be Unfair- it will not apply.

55. Maintenance and faults

55.1 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, which may be given by email or by publishing it on our web site.

55.2 Reporting faults

- (a) You may report faults in relation to a Service or the Network by contacting our help line during its operating hours.
- (b) 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.
- (c) You must not report a fault directly to one of our Partners unless we ask you to do so.
- (d) If you report a fault that turns out to be a 'false alarm', or not related to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

55.3 Repairing faults

- (a) We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.
- (b) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.
- (c) 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).

55.4 Cost of repairs

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

56. General power to vary your Contract

We may vary your Contract from time to time on notice to you but variations do not have retrospective effect.

ACL Consumers and ACL Small Businesses: Subject to clause 57.2, we shall give you reasonable notice, having regard to:

- (a) the nature of the variation; and
- (b) the means by which notice is to be provided; and
- (c) the length of time remaining before the variation is to occur; and
- (d) any other matter that is reasonably relevant –

and we may also give you Walk Away Rights as explained in clause 57.

57. ACL Consumers, ACL Small Businesses and Contract variations

This clause only applies to ACL Consumers and ACL Small Businesses.

57.1 Reminder about ACL Consumers and ACL Small Businesses

'ACL Consumers' means individuals who enter certain kinds of contracts. 'ACL Small Businesses' means certain businesses that enter certain kinds of contracts. Refer to the Dictionary for the detailed definitions.

57.2 Beneficial or minor negative impact

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

- (a) we will not give you notice, and
- (b) we will not give you Walk Away Rights.

57.3 Variations arising from amendments by a Partner

If:

- (a) a Partner supplies a service (**Resupply Service**) to us; and
- (b) we resupply the Resupply Service to you (either as a separate service or as part of another service); and
- (c) the Partner exercises a legal right to vary its terms of supply of the Resupply Service –

then:

- (i) we may vary your Contract in accordance with the Partner's variation;
- (ii) we give you notice of the variation; and
- (iii) we will give you Walk Away Rights if you also pay any costs (eg early termination fee or similar) that we will have to pay for cancelling the Resupply Service with the Partner.

57.4 Other variations

In any other case:

- (a) We will give you notice of the variation.
- (b) We will also offer you the right to terminate your Contract within 14 days of the date of the notice without incurring charges other than:
 - (i) usage or network access charges to the date your Contract ends; and
 - (ii) outstanding amounts for installation of Equipment; and
 - (iii) outstanding amounts for Equipment that is compatible with other suppliers' services; and

- (iv) where applicable, any amount under clause 57.3– (**Walk Away Rights**).

58. 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.

59. Customer transfers to us

59.1 Obligations to your current supplier

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.

59.2 Where we manage the churn process

- (a) In some cases, there is an industry process under which we initiate and manage the transfer of your Service from another supplier to us (Industry Churn Process).
- (b) Where we notify you that an Industry Churn Process is in place, 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.

59.3 Where there is no Industry Churn Process

Unless we notify you that there is an Industry Churn Process in place, you are solely responsible for terminating your contract with and any services from your current supplier in accordance with your contract with it, which might continue to charge you until you have done so.

59.4 Charges payable to your current supplier

You must promptly pay your current supplier all amounts you owe it.

60. Transfers from us

- (a) If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
- (b) If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – see clause 83.

61. 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 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 second copy of a 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.

62. Charges & payment (2): Prices

- (a) Subject to clause 64, our prices are as stated in your Plan.
- (b) Our current prices at any time are referred to as our 'Price List'.

63. 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.

64. Varying Charges

We may vary the Charges or add new Charges from time to time in accordance with clauses 56, 57 and 58.

65. 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.

66. 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.

67. 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.

TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you acquire.

- (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.

TCP Customers: We will base the requirement for a security on the outcome of a credit assessment conducted in relation to you and the Service you acquire.

- (c) We may use a security payment to pay any billed Charge that is overdue, where you have not disputed the Charge.

TCP Customers: Before we access a security payment, we will advise you that it will be accessed within 5 working days and provide you an opportunity to pay within that period.

68. Credit management (2): Credit Checks & Reporting**68.1 Credit checks**

- (a) At our discretion, we may obtain a credit report about you to help us decide whether to accept your application for service and to help us collect overdue amounts.
- (b) In the course of a credit check, we may disclose personal information about you to a credit reporting agency or other credit information provider. We may receive a credit report and other information about you, including personal information.
- (c) A credit reporting agency may include the fact that we obtained a credit report about you in its credit information file on you.

68.2 Disclosure of information

We may disclose to a credit reporting agency:

- (a) information in your application;
- (b) details of your account;
- (c) that you have applied for credit with us;
- (d) that we are a current credit provider to you;
- (e) payments that are more than 60 days overdue and are subject to collection processes;
- (f) any cheque of yours for \$100 or more which has been dishonoured more than once;
- (g) any serious credit infringement you have committed;
- (h) that payments are no longer overdue.

68.3 Other credit disclosures

We may disclose information about you and any debt you owe us to:

- (a) a debt collection service we engage; and
- (b) anyone who takes, or is considering taking, an assignment of any debt you owe us.

68.4 Your consents

- (a) If you are an individual, you agree that we can conduct a credit check and verify your personal details, in accordance with this clause.
- (b) If you are self-employed, you agree that we can:
 - (i) obtain and use any report or information from a credit reporting agency, which contains information about your commercial activities or commercial credit worthiness;
 - (ii) exchange with your other credit providers, any credit report or other report about your credit worthiness or history, or personal information contained in those reports –in accordance with this clause.

68.5 Further acknowledgments

You acknowledge that credit and other information about you may be used to:

- (a) assess your application;
- (b) assist you to avoid defaulting on your credit obligations;
- (c) notify other credit providers of a default by you; and
- (d) assess your creditworthiness.

69. Credit management (3): 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:
 - (i) to uncap or un-limit any cap or other limits that apply to it,
 - (ii) to change Plans,
 - (iii) to disconnect Service, and
 - (iv) 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.

70. When we can bill

- (a) Your **Billing Period** is the period between bills. Our standard Billing Period is monthly, but we may vary it.
- (b) We can bill a part-period e.g. to align your Billing Period with your billing anniversary.
- (c) Subject to clause 70(d), we may bill for Charges as follows:

Type of Charge:	may be billed:
(i) hardware	when you order it
(ii) set up Charge	when you order hardware and/or a Service
(iii) first Billing Period's periodic Charge	when you order a Service
(iv) periodic Charge	14 days before the start of the period it relates to
(v) usage Charge	at the end of each Billing Period
(vi) prepaid Charge	when you buy a prepaid Service
(vii) call connection Charge	at the end of each Billing Period
(viii) miscellaneous Charge	at the end of each Billing Period
(ix) third party Charge	Immediately
(x) Equipment Charge	when or before we dispatch the Equipment

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

71. Bills – General

- (a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.
- (b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.
- (c) 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.

TCP Customers: We will supply a Bill to you for each current Billing Period, except where:

- (a) you pay by Auto Pay and the Charges for that Billing Period are for the same fixed amount in each Billing Period – and in that case you and we agree that, although a Charge for that fixed amount will be payable by you, a Bill will not be issued unless the total amount payable in that Bill is more than 10% higher than that fixed amount; or
- (b) your Service is Prepaid; or
- (c) You request us not to.

72. Recharge Billing

Where Recharge Billing applies to a Service:

- (a) The Service is only supplied on when using Auto Pay.

- (b) At the commencement of the Service, we shall Top Up your Recharge Balance.
- (c) Charges that you incur will be billed against your Recharge Balance in accordance with these terms.
- (d) Whenever your Recharge Balance falls below your Top Up Trigger, we shall Top Up your Recharge Balance again.
- (e) You authorise us to Extract funds to make Top Ups in accordance with this clause.

73. 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.
- (b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is \$2.50 per bill, or as otherwise notified in our Price List.

74. Billing information – TCP Customers

74.1 Requesting information

If you are a TCP Customer and request it, we will provide all Billing information related to your Service (including, if you request it, itemised details of Charges associated with the Service) relating to up to 72 months prior to your request, provided that:

- (a) for information relating to the 24 months prior to your request:
 - (i) we shall provide it through at least one medium (of our choice) free of charge; and
 - (ii) otherwise we may impose a Charge for providing the information, limited to the cost of the providing it;
- (b) for information relating to a period between 24 and 72 months prior to your request, we may impose a Charge for providing the information, limited to the cost of the providing it;
- (c) you may request provision of Billing information via other mediums and formats normally available from us and we may impose a Charge for providing the information in that way, limited to the cost of the providing it.

74.2 Electronic Billing data

If you are a TCP Customer and we make information from, or about, a Bill, available in an electronic form, we will offer at least one method of accessing that information that does not involve paying access Charges to us (but to avoid any doubt, this does not prevent us from making any Charge that is authorised by clause 74.1).

74.3 Itemised Billing

- (a) We require notice in order to supply itemised billing details to you.

- (b) Unless we advise you otherwise, the notice period is:
 - (i) 14 days where the information relates to Charges first billed within the last 12 months;
 - (ii) 21 days where the information relates to Charges first billed within 12 to 24 months; and
 - (iii) otherwise – 28 days.

75. Costs of telephone Billing Enquiries

If we provide access to our billing enquiry point by telephone, you agree that standard call rates apply (including timed charges for national and mobile calls).

76. 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.

77. GST

- (a) In this clause, an expression within a pair of asterisks means the same 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.

78. Late billing

- (a) We may late bill.

TCP Customers: We shall only do so up to 160 days in arrears.

- (b) Some Charges in a Bill may relate to a previous Billing Period.

79. When you must pay

- (a) Where an Auto Pay arrangement applies, we may Extract payment for Charges:
 - (i) after it is billed (if we issue a Bill for the Service); or
 - (ii) after the end of the current Billing Period (if we do not issue a Bill for the Service).

TCP Customers: All Billing information will be accessible before we do so, but you agree that we need not allow 10 working days before Extraction (as would otherwise be required by clause 5.7.1(c) of the TCP Code).

- (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.

80. How you can Pay

- (a) If your Plan specifies 'Auto Pay only' (or similar) then:
 - (i) Auto Pay payment is a precondition to supply of Service to you.
 - (ii) We may suspend Service if Auto Pay arrangements are not maintained.
 - (iii) You must not cause to be reversed any Auto Pay 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.

TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

- (b) In any other case:
 - (i) Auto Pay is our preferred payment method and incurs no surcharges unless we advise you otherwise.
 - (ii) You may pay by MasterCard or Visa or any other card we notify you that we accept.
 - (iii) Payments made using credit cards may be subject to a surcharge as notified on our website.
- (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.

81. Late payment (1)

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.

TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

82. Late Payment (2) – accounts over 60 days

If your payment is 60 days or more overdue or we otherwise consider it is reasonable to do so –

- (a) we may refer it to an external collections agency;
- (b) we notify you that our collection fees and expenses under clause 81(b)(iii) may:
 - (i) include the external agency's collection fee and/or
 - (ii) include a minimum recovery charge.

TCP Customers: We will not impose Credit Management Charges unless the Charges are a reimbursement of our costs and you are advised of their amount or method of calculation.

83. 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:
 - (i) any amount we remain liable to pay to a third party (eg a wholesale supplier) for goods or services we cannot resell or resupply to other customers; and
 - (ii) a reasonable estimate of our lost profit as a result of an early termination.

84. Billing disputes

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

ACL Consumers and ACL Small Businesses: 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: We will not take Credit Management action in relation to a disputed amount that is the subject of an unresolved complaint, if we are aware that the complaint has not been resolved to your satisfaction and is being investigated by us, the TIO or a relevant recognised third party but:

- (i) you must still pay all undisputed portions, and
 - (ii) 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 6 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.

85. 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 Guarantees.

86. Billing agents

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

87. Calls to Mobiles

- (a) Unless otherwise expressly stated, our prices for usage of mobile phones (eg calls, messaging, data transfers) are always quoted on the basis that:
 - (i) you are using the phone in Australia, and
 - (ii) any phone you are calling or messaging is in Australia.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply.

88. 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.

89. 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.

90. Complaints – General (see clause 91 if you are a TCP Customer)

- (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.
- (b) We will handle your complaint in accordance with our complaints procedure. You can get information on our complaints procedure 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.

91. TCP Customers and Complaints

If you are a TCP Customer:

- (a) We will handle complaints in accordance with the Complaint Handling Procedure on our website, and the TCP Code.
- (b) Our Complaint Handling Procedure will be free of charge other than for:
 - (i) call costs at local rates or low cost when calling from our network;
 - (ii) a costs recovery levy of providing access to information we hold about you that we collected more than 2 years earlier;
 - (iii) a costs recovery levy of providing information that is not in the standard form generated by our customer records and billing systems or is equivalent to more than 50 A4 pages.

92. Termination & suspension by us (1): Early termination

Subject to clause 94, we may terminate a Contract, or suspend or restrict 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 are subject to an Insolvency Event (except for as long as an Insolvency Protection Stay applies - see Clause 100)
- (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 (except for as long as an Insolvency Protection Stay applies – see Clause 100)
- (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.

93. Termination & suspension by us (2): Other events

Subject to clause 94:

- (a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or become subject to an 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 (except for as long as an Insolvency Protection Stay applies – see Clause 100)
- (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.

94. TCP Customers – Disconnection, Suspension and Restriction

If you are a TCP Customer:

- (a) We will not disconnect, suspend or restrict a Service for credit and/or debt management reasons, without first informing you unless:
 - (i) we assess that you or the account status presents an unacceptably high credit risk to us; or
 - (ii) we reasonably suspect fraud or attempted fraud; or
 - (iii) you have nominated to us an agreed point at which Service will be limited and that point has been reached.

- (b) Except where clause 94(a) applies, we will give you at least 5 working days' notice prior to disconnecting, suspending or restricting your Service, including an indication of the earliest date disconnection, suspension or restriction could occur and the date of issue of correspondence if you are informed in writing; and
- (c) we shall otherwise comply with the rules in the TCP Code about disconnection, suspension or restriction of the Service.

95. 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 (eg because we have offered you that option following a variation to your Contract), 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 95(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 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 if we agree that you may do so), we may also 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.

96. Termination by you

You may terminate your Contract:

- (a) (except during a fixed or minimum term) – on at least 30 days' written notice, taking effect at the end of a Billing Period (eg if you give notice on 26 March, your Contract ends on 30 April next); or
- (b) in any other circumstances where your Contract provides for it.

97. Post-termination

If a Contract ends:

- (a) Our obligations to you under that Contract are at an end (except for any accrued entitlements you may have under the consumer rights and remedies referred to in clauses 44 and 45).
- (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.
- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Auto Pay them from your credit card or bank account if you normally pay by Auto Pay.
- (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 pre-dating 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.

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

98. Suspension of Service

We may suspend Service at any time, without liability and immediately and (except in the case of an emergency or your death) by reasonable notice to you, 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 the Customer Contract (which is not the subject of a *bona fide* dispute) 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 your Customer Contract, including terms relating to your use of the Service or any Acceptable Use or Fair Use Policy, and that breach cannot be remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable or 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 (except for as long as an Insolvency Protection Stay applies – see Clause 100);
- (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 (except for as long as an Insolvency Protection Stay applies – see Clause 100);
- (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 the Customer Contract.

99. 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.

100. Insolvency Protection Stays

- (a) If
 - (i) You are a corporation; and
 - (ii) Your contract started on or after 1 July 2018- our enforcement of certain rights may be stayed by the operation of sections 415D, 434J or 451E of the Corporations Act (Insolvency Protection Stay).
- (b) If and for as long as the Insolvency Protection Stay operates, we do assert an entitlement to enforce any right that is subject to it.
- (c) This Clause 100 does not prevent us from disputing that an Insolvency Protection Stay applies, or making an application for an Insolvency Protection Stay to be lifted in whole or part or exercising our legal rights.

101. 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.

102. Carrier or Carriage Service Provider

- (a) You promise 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.

103. 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.

104. Assignment

- (a) We may assign or novate all or part of our rights and obligations under your Contract 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.

105. Notices**105.1 How we give notices**

We may give notice to you in connection with, or as required by our Customer Terms:

- (a) in person;
- (b) by fax;
- (c) by email;
- (d) by post;
- (e) by Instant Messaging;
- (f) by SMS; or
- (g) in any other way allowed by law –

or by sending you (by one of the above means) notice of the address of a web page where the notice can be read.

105.2 Address or number for notices

We may direct a notice to:

- (a) a number or address that we reasonably believe to be current;
- (b) in any event, the most recent number or address that you have notified to us; and
- (c) if you are a company, your registered office.

105.3 A notice is taken to have been received:

- (a) if we deliver it to you in person – at the time of delivery;
- (b) if we fax it during business hours in your locality – two hours later, subject to our fax machine receiving a successful transmission confirmation;
- (c) if we fax it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to our fax machine receiving a successful transmission confirmation;
- (d) if we email it during business hours in your locality – two hours later, subject to a 'delivery failure' message not being received;

- (e) if we email it outside business hours in your locality – at 9am on the next Business Day in your locality, subject to a ‘delivery failure’ message not being received;
- (f) if we post it – at noon on the second Business Day after posting;
- (g) if we send it by Instant Message it – two hours later;
- (h) if we SMS it – two hours later;
- (i) if we send you notice of the address of a web page – two hours after that notice is taken to have been received; or
- (j) if there is evidence that you received it at an earlier time – that earlier time.

106. Governing law

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

ACL Consumers and ACL Small Businesses: 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.

107. Entire Agreement

Your Contract is the entire agreement between You and Us regarding its subject matter, and you acknowledge that:

- (a) your Contract does not include any term, condition, warranty representation or guarantee that is not expressly set out in it, other than a Consumer Guarantee to the extent it may not lawfully be excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Contract.

108. Delays

- (a) Time is not of the essence in the performance of our obligations, including the provision of Service, under your Contract.
- (b) We are not liable to you for any delay in the provision of any Service.
- (c) You may not cancel or amend an order for a service on the grounds of any delay in providing it.

ACL Consumers and ACL Small Businesses: If your Contract does not fix a time within which a Service will be provided and the time is not to be determined in a way agreed between us, we shall supply it within a reasonable time and you may have rights and remedies under the ACL if we fail to do so.

109. 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.

110. Commission

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

111. 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.

112. 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 – 1300 135 235; or
- (b) National Relay Service – 133 677 or 1800 555 677; or
- (c) Translating and Interpreting Service – 131 450.

113. Commercial Electronic Messaging

- (a) Subject to this clause, we may send you Commercial Electronic Messages regarding telecommunications goods and services, and ancillary goods and services, and you consent to us doing so.
- (b) You consent under clause 113(a):
 - (i) applies while your Contract is in force and for a year afterwards; and
 - (ii) is in addition to any other consent that you may give, or which may be inferred, for the purposes of section 16(2) of the Spam Act; but
 - (iii) terminates if you give us reasonable written notice that it is withdrawn.
- (c) Any Commercial Electronic Message we send you does not have to comply with section 18(1) of the Spam Act.
- (d) This clause 113 survives the termination of your Contract.

114. Interpreting your Contract

- (a) If an expression is defined in the Dictionary in clause 115, 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) The rule of construction known as *ejusdem generis* shall not apply, and clauses containing examples shall be construed without regard to that rule.

- (e) A provision of your Contract will not be construed against a party because that party proposed or drafted it.
- (f) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (g) A schedule to a document is part of that document.
- (h) A reference to the singular includes the plural and vice versa.
- (i) There is no significance in the use of gender-specific language.
- (j) A 'person' includes any entity which can sue and be sued.
- (k) A 'person' includes any legal successor to or representative of that person.
- (l) A reference to a law includes any amendment or replacement of that law.
- (m) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (n) Anything we can do, we may do through an appropriately authorised representative.
- (o) Any matter in our discretion is in our absolute and unfettered discretion.
- (p) A reference to a document includes the document as modified from time to time and any document replacing it.
- (q) 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.
- (r) The word **month** means calendar month and the **year** means 12 months.
- (s) 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.
- (t) 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.
- (u) Money amounts are stated in Australian currency unless otherwise specified.
- (v) A reference to a **notice** means a notice that can be read, unless stated otherwise.
- (w) A reference to data quantity or usage is done so on the following basis:
 - (i) 'Kilobyte' and 'KB' means 1000 bytes;
 - (ii) 'Megabyte' and 'MB' means 1000 Kilobytes;
 - (iii) 'Gigabyte' and 'GB' means 1000 Megabytes;
 - (iv) 'Terabyte' and 'TB' means 1000 Gigabytes.

This meaning applies the same to bits.

115. Dictionary

<i>The expression:</i>	<i>means:</i>
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	see clause 10
ACL	Australian Consumer Law, which is set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i>
ACL Consumer	an individual who enters a Standard Form Contract for goods and/or services wholly or predominantly for personal, domestic or household use or consumption
ACL Small Business	means a business that (a) enters a Standard Form Contract on or after 12 November 2016 that: I. has a duration of 12 months or less and an upfront consideration of \$300,000 or less or II. has a duration of more than 12 months and an upfront consideration of \$1,000,000 or less; and (b) when it enters the Contract employs fewer than 20 persons(excluding casual employees who are not employed on a regular and systematic basis).
Application Date	see clause 25(a)
Advocate	the same as in the TCP Code
Authorised Representative	the same as in the TCP Code
Automatic Direct Debit	a periodic payment that is automatically deducted by us from your nominated financial institution account.
AutoPay	A periodic payment that is automatically deducted by us from your credit card or nominated financial institution account.
Bill	an invoice from us which advises you of the total of each Charge that is due for payment
Billing Period	see clause 70(a)
Bundled Equipment	see clause 17
Business Day	Monday to Friday excluding statutory holidays
Carriage Service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	the same as in the Telecommunications Act
Charge	a charge applicable under the Customer Contract

<i>The expression:</i>	<i>means:</i>
Claim	any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim)
Commercial Electronic Message	same as in the <i>Spam Act 2003</i>
Consumer Contract	the same as in the ACL
Consumer Guarantee	the same as in the ACL
Contract	the same as Customer Contract
Contract Date	see clause 25(b)
Credit Management	the process by which we: <ul style="list-style-type: none"> • help customers to manage their expenditure on Services; • manage any credit risk to us; and • collect outstanding debts from customers and former customers
Customer Contract	see clause 3
Customer Terms	see clause 1
Delivery Date	see clause 35
Dictionary	this table of defined terms
Direct Debit	a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit
Early Termination Fee	see clause 83
End User	see clause 27(b)
Equipment	a handset, modem, router or other hardware
Extract	deduct an amount by Autopay
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
General Terms	the terms in Part C
GST	Goods and Services Tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
Inbound Number	a 1300, 13 or 1800 number or any other number that functions as a virtual telephone number that can be routed to flexible answer points

<i>The expression:</i>	<i>means:</i>
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
Instant Messaging	means SMS, iMessage and any similar instant messaging service by which you and we can exchange text or voice messages.
Internet Service	a Service that provides access to the Internet
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	laws, Acts of Parliament, regulations, mandatory standards and industry codes and including the requirements or directions of any Regulator
Listed Carriage Service	as defined in the Telecommunications Act (but covers most public voice and data communications services)

<i>The expression:</i>	<i>means:</i>
Loss	<p>means losses, harm, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained actual or contingent, including but not limited to:</p> <ul style="list-style-type: none">(a) economic loss;(b) business interruption;(c) loss of revenue, profits, actual or potential business opportunities or contracts;(d) anticipated savings;(e) loss of profits;(f) loss of data;(g) indirect or consequential loss;(h) an obligation to indemnify another person;(i) an obligation to contribute to the compensation of loss or damage suffered by another person.
MDF	the main distribution frame in the multi-occupancy building in which your premises are located.
My Account	the same as Account Page
Naked DSL	a DSL Internet Service that we expressly offer on terms that you need not acquire or maintain a Standard Telephone Service using the same copper pair as the one used to supply the DSL Internet Service.
NBN	<p>means either:</p> <ul style="list-style-type: none">(a) NBN Co and any nbn Sub-Wholesaler and their related bodies corporate and their respective officers, employees, agents, subcontractors and consultants; or(b) the national broadband network it directly or indirectly owns and/or operates and/or controls – as the context requires.

<i>The expression:</i>	<i>means:</i>
NBN Boundary	the point where an nbn Service is provided, ie: (a) in relation to an nbn FTTP Service, an nbn HFC Service and an nbn Fixed Wireless Service – your side of the user network interface on the nbn Connection Box; (b) in relation to an nbn FTTB service – your side of the user network interface on the MDF; (c) in relation to an nbn FTTN Service – your first phone point on the line after the line enters your premises.
NBN Co	NBN Co Ltd ACN 136 533 741
NBN Connection Box	also known as a network termination device (NTD) supplied through nbn for use with an nbn Service including data and/or voice ports.
NBN Equipment	any equipment that is owned, operated or controlled by NBN.
NBN Fair Use Policy	the document entitled Fair Use Policy published at www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-wba2-product-catalogue-fair-use-policy_20160407.pdf (or another address chosen by nbn from time to time) as re-named, updated or replaced from time to time.
NBN Fixed Wireless Network	the parts of the nbn where service is delivered by Fixed Wireless.
NBN Fixed Wireless Service	an nbn Service using Fixed Wireless.
NBN FTTB Network	the parts of the nbn where service is delivered using FTTB
NBN FTTB Service	an nbn Service using FTTB.
NBN FTTN Network	the parts of the nbn where service is delivered using FTTN.
NBN FTTN Service	an nbn Service using FTTN.
NBN FTTP Network	the parts of the nbn where service is delivered using FTTP.
NBN FTTP Service	an nbn Service using FTTP
NBN HFC Network	the hybrid fibre coaxial cable parts of the nbn.
NBN HFC Service	an nbn Service supplied using the nbn HFC Network.
NBN Information	relevant information provided to us by nbn about using the nbn, which we pass on to you from time to time.

<i>The expression:</i>	<i>means:</i>
NBN Operations Manual	means the document titled NBN Co Operations Manual, published at www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-wba2-operations-manual_20170320.pdf (or another address chosen by nbn from time to time) as re-named, updated or replaced from time to time.
NBN Policies	means all instructions, requirements, policies and procedures as issued and updated from time to time by nbn, including the nbn Fair Use Policy, the nbn Equipment terms of use as issued and updated from time to time, the nbn Operations Manual and nbn Information, all of which are available at www.nbnco.com.au
NBN Power Supply Unit (PSU)	provides power to Network Termination Device.
NBN Service	means a Service provided on the nbn.
NBN Sub-Wholesaler	an entity that directly or indirectly acquires nbn Services from nbn on a wholesale basis and directly or indirectly resupplies them to us on a wholesale basis, for resupply to you.
NBN Sub-Wholesale Agreement	an agreement under which an nbn Sub-Wholesaler resupplies nbn Services to us, for resupply to you.
NBN Utility Box	is also referred to as the Premises Connection Device (PCD). It is a connection box for the fibre from the street and is found on the outside of the building.
NBN Wholesale Broadband Agreement	means the agreement under which nbn makes available to us wholesale nbn Services for resupply to you (and where we acquire nbn Services on a wholesale basis from an nbn Sub-Wholesaler, includes our nbn Sub-Wholesale Agreement with that Sub-Wholesaler).
Network	see clause 26
Network Boundary Point	the same as Telecommunications Act.
Non-Standard Installation	an nbn installation other than one that nbn classifies as a Standard Installation
Numbering Plan	the Telecommunications Numbering Plan
Off-peak	see clause 6
Operational Directions	see clause 13
Our Customer Terms	is the document containing our Standard Form of Agreement (SFOA) which is available online at www.esc.net.au/terms

<i>The expression:</i>	<i>means:</i>
Our Facilities	Facilities we own and/or operate
Our Suppliers	third parties that we engage to supply us with goods or services.
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	see clause 14
PDH	personal, household or domestic
Peak	see clause 6
Periodic Entitlements	see clause 7
Personnel	in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants.
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
PMSI	a purchase money security interest under the PPS Law
Post-Paid Plan	a Plan where you can use all or part of the Service before you pay for it
PPS Law	<i>Personal Property Securities Act 2009</i>
PPSR	Personal Property Securities Register
Premises; Your Premises	The location that you request the service to be supplied to
Prepaid Plan	a Plan where you must pay in full for Service before you use it
Price List	see clause 62
Privacy Act	<i>Privacy Act 1988</i>
Product	goods and / or services
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and any other relevant government or statutory body or authority and the Telecommunications Industry Ombudsman and Communications Compliance Limited
Related Body Corporate	means the same as in the Corporations Act 2001.

<i>The expression:</i>	<i>means:</i>
Security	a personal or corporate guarantee, payment of a bond or security, bank guarantee or a Security Interest, in each case in an amount and otherwise on terms to our satisfaction
Security Interest	the same as in the PPS Law
Security Period	in respect of any Equipment means the applicable period, if any, under clause 33(c)
Service	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 <i>Telecommunications Regulations 2001</i> (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the <i>Telecommunications Regulations 2001</i>
Service Level Agreement	a written service quality assurance titled as such
Service Start Date	see clause 25(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	see clause 35
Service Level Agreement	a written service quality assurance titled as such.
Service Schedule	terms and conditions that apply to particular Services, usually as set out in a document titled as such.
Service Start Date	see clause 25(c)
Site	see clause 35
SLA	Service Level Agreement
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act
Spam Act	<i>Spam Act 2003</i>
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Form Contract	a Customer Contract that is a standard form contract within the meaning of section 23(1)(b) of the ACL.
Standard Installation	means an installation that nbn classifies as a standard installation.
Standard Telephone Service	as in section 6 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
Subsequent Installation	any subsequent nbn installation at a Service Address after a prior Standard Installation or Non-Standard Installation.

<i>The expression:</i>	<i>means:</i>
TCP Code	Industry Code C628:2012 <i>Telecommunications Consumer Protections Code</i>
TCP Customer	(a) a person who acquires a Telecommunications Product from us for the primary purpose of personal or domestic use and not for resale; or (b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into a contract with us: <ul style="list-style-type: none"> (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
Telco Act	the same as Telecommunications Act.
Telecommunications Act	<i>Telecommunications Act 1997</i>
Telecommunications Goods	any goods we supply for use in connection with the supply of a Telecommunications Service, whether or not the goods are supplied in conjunction with, or separately from, a Telecommunications Service
Telecommunications Product	Telecommunications Goods and/or a Telecommunications Service
Telecommunications Service	<ul style="list-style-type: none"> • a Listed Carriage Service or any service we supply in connection with that service; and • a content service (other than a subscription broadcasting service or a television subscription narrowcasting service) we provide in connection with the supply of a Listed Carriage Service
Term	means from the Contract Date until your Contract ends
Unfair	in relation to a term in a Consumer Contract or a Small Business Contract means the same as in section 24 of the ACL
Use-by Date	see clause 8(b)
Walk Away Rights	the right to cancel your Contract (even during a minimum or fixed term) and pay only 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
We, us, etc	see clause 2

<i>The expression:</i>	<i>means:</i>
Wholesaler Supplier	unless stated otherwise, Telstra Wholesale or Optus and/or NBN Co, AAPT or Vocus Group or SABRENet.

Part D – ADSL Internet Service Terms

116. Partner Requirements – ADSL Services

Where we supply you with an ADSL Internet Service:

- (a) The Service can only be provided over a copper wire pair approved by Telstra Corporation where Telstra Corporation or a reseller of Telstra Corporation supplies an operational standard telephone service over that copper wire pair.
- (b) You warrant to us that you are the same end user to whom Telstra Corporation or a reseller or agent of Telstra Corporation supplies such a standard telephone service over that copper wire pair.
- (c) You acknowledge that the ADSL Internet Service will only be supplied for so long as you continue to acquire such a standard telephone service over that copper wire pair.
- (d) You acknowledge that the ADSL Internet Service may be terminated where you change carriers, cease to acquire, or suspend, or have suspended, or relocate or terminate, such a standard telephone service over that copper wire pair;
- (e) You acknowledge that if your ADSL Internet Service has been terminated under clause 116(d) or 116(i)(ii):
 - (i) our Wholesale Supplier may charge an early termination fee in respect of the ADSL Internet Service;
 - (ii) we may recoup that early termination fee from you;
 - (iii) if you want the ADSL Internet Service reconnected, our Wholesale Supplier may charge us a connection fee; and
 - (iv) we may recoup that connection fee from you.
- (f) In some instances, such as where you are acquiring an alarm monitoring service, you will need to install central splitters (at your own cost) before the ADSL Service can be connected.
- (g) Installation and operation of the ADSL Service may cause temporary disruption in the standard telephone services received by you or a monitoring service.
- (h) Installation and operation of a monitoring service may cause temporary disruption to the ADSL Service.
- (i) Some products are incompatible with ADSL services:
 - (i) Installation of an ADSL Service may mean that some incompatible products that might have been available from Telstra Corporation to you will not be supplied to you using that copper wire pair – a complete list of incompatible products is available upon request.

- (ii) If you order an incompatible service, it may terminate your ADSL service.
- (j) You must notify your alarm monitoring service provider of the following:
 - (i) installation and operation of an ADSL Service may cause temporary disruption in the standard telephone services or a monitoring service received by you; and
 - (ii) installation of equipment at your premises such as central splitters and network termination devices may be required under clause 116(f).
- (k) You must ensure that all devices connected to the same copper pair as the ADSL service are, at your own cost, correctly filtered with the use of a central splitter or an in-line filter/splitter.
- (l) Alterations to your ADSL service may not be possible when existing orders are in progress on the standard telephone service on the same copper pair.
- (m) As far as the law allows, you release our Wholesale Supplier and its third party supplier(s) from all liability to you, and you indemnify them against all costs, expenses, liability, loss or damage incurred or suffered by them in conjunction with any claims, actions or proceedings against them (including third party claims or claims by you or Telstra Corporation) arising out of the following (to the extent that the liability is caused by the provision or cancellation of the ADSL Service):
 - (i) disruption of your telephone service or monitoring service;
 - (ii) cancellation of the ADSL Service;
 - (iii) suspension of the provision of the ADSL Service or to a particular internet address(es);
 - (iv) cancellation of, or refusals to provide, any incompatible products; and
 - (v) possible breaches of the Telecommunications (Customer Service Guarantee) Standard in respect of you.

117. ADSL Transfer

EscapeNet is subscribed to the quick transfer or churn scheme. This enables you to migrate from another participant to EscapeNet in quicker timeframe and without disconnecting your previous service.

- (a) Your Churn Authority Date is the date you complete your adsl order with us, or reauthorise us to act on your behalf.
- (b) You authorise us to act on your behalf as of the Churn Authority date.
- (c) You must not cancel your existing service with your carrier until we confirm your service is active.
- (d) The fast churn order process may cause temporary disruption in the standard telephone services and ADSL service received by you.
- (e) We may only log a fault after close of business of the day of the transfer.

Part E– NBN Service Schedule

118. Application

This Service Schedule applies in addition to the General Terms when we supply you with an nbn Service. Technical specifications of NBN Services are available from NBN Co's website.

119. nbn Service conditions

- (a) We can only supply you with an nbn Service if and for as long as your Service Address is serviced by the nbn.
- (b) After you switch to an nbn Service, you may not be able to access or switch back to non-nbn Services at that Service Address.

120. Connecting your premises to the nbn**120.1 nbn connection charge**

- (a) If your Service Address is serviced by the nbn but not already connected to it, you may have to pay an extra connection charge for connection to the nbn.
- (b) We may invoice the connection charge in full in advance when you sign up for an nbn Service.
- (c) If we invoice the connection charge by monthly installments, the unpaid balance of the connection charge can be included in an Early Termination Fee if the nbn Service terminates before the end of your minimum or fixed term.

120.2 Landlord's consent

If you do not own the premises at your Service Address:

- (a) you must obtain the owner's approval for connection to the nbn and the location of any associated equipment at the Service Address; and
- (b) whether or not you and the owner share the costs of connection is up to you and them; we will invoice you, and you must pay the invoice and recover any agreed contribution from the owner.

120.3 Consent – shared HFC sites

If anyone else owns, uses or is the account holder for fixed line services delivered via an existing HFC service at or near your Service Address, you must obtain that person's approval for the installation of an nbn HFC Service on the nbn HFC Network, including their agreement that their existing service may be unavailable during the installation.

120.4 Consent – other shared sites

If you are not the only account holder of fixed line services currently connected at your Service Address, you must obtain the approval of all other account holders at the Service Address for the installation of an nbn Service.

120.5 Withdrawn approval

You must notify us immediately if:

- (a) a third party has given approval for the installation of an nbn Service at your Service Address; and
- (b) that approval is withdrawn before the installation is completed.

120.6 Installing nbn Equipment

- (a) nbn is an independent entity, responsible for installing all nbn Equipment.
- (b) Our role is to request installation on your behalf. nbn manages and controls the process and its timing after that.

120.7 nbn Connection Box

- (a) nbn will determine its preferred position for an nbn Connection Box.
- (b) If you request a different position:
 - (i) nbn will determine whether it can or will comply; and
 - (ii) if it does comply, it may deem your installation to be non-Standard, and additional costs may apply.

120.8 FTTB Installations

If you order an FTTB Service and your Service Address is not FTTB-ready:

- (a) nbn will require access to the premises including its telecommunications infrastructure to make the premises FTTB-ready; and
- (b) you must arrange that access with your building management.

120.9 Types of installation

At the time of installation, nbn will assess whether it is:

- (a) a Standard Installation;
- (b) a Non-Standard Installation; or
- (c) a Subsequent Installation.

120.10 Non-Standard and Subsequent Installations

A Non-Standard Installation or a Subsequent Installation may incur additional costs; before starting a Non-Standard Installation or Subsequent Installation, nbn will:

- (a) provide you with a quote for any additional costs; and
- (b) only perform the installation if you agree to pay those costs (billed through us).

121. nbn Mains Power Requirements

- (a) Normal operation of nbn Services requires the availability of mains power, which you must provide and maintain at your own cost.
- (b) For an nbn FTTP Service or an nbn Fixed Wireless Service, you must provide an unobstructed double power point located within 3 metres of the nbn Connection Box.

121.2 nbn connection charge

- (a) If your Service Address is serviced by the nbn but not already connected to it, you may have to pay an extra connection charge for connection to the nbn.
- (b) We may invoice the connection charge in full in advance when you sign up for an nbn Service.

- (c) If we invoice the connection charge by monthly instalments, the unpaid balance of the connection charge can be included in an Early Termination Fee if the nbn Service terminates before the end of your minimum or fixed term.

121.3 nbn connection box location

You need to consider the following technical requirements for the PSU (if applicable) and NTD, prior to installation as they may cause the installation to be delayed or to become a non-standard installation:

- (a) They are to be installed within 1.5 meters of a 240V power point;
- (b) Are located near your existing phone or network cabling;
- (c) In a cool, dry and well-ventilated area; and
- (d) Away from busy areas where it may be knocked or damaged.

122. Standard Installation

Standard Installations do not incur a fee. A standard installation includes the following (subject to any changes in NBN Co's installation practices):

- (a) The installation of a NBN utility box (Optical Premises Connection Device (PCD)) or an outdoor antenna unit both on the outside of your premises.
- (b) The drilling of a hole through the wall of your premise to feed a cable from the PCD or outdoor antenna to a wall plate and then connect to a NBN Connection Box (Network Termination Device (NTD)) inside your premises.
- (c) If applicable, for fibre installations, a Power Supply Unit (PSU) will be installed near a 240v power point and connected to the NTD using a 12V power supply cable within 1.5 meters of each other.
- (d) The installation of the NTD within 1.5 meters of a power point as power boards and extension cords are not permitted to be used.
- (e) Test once the installation is complete.

123. Non-Standard Installation

Non-Standard Installations incur a fee. The NBN Co technician will advise you if the installation will be a Non Standard Installation. You must ensure that you discuss all your requirements in detail with the installer and they will advise you if the installation will be standard or non-standard.

- (a) A non-standard installation may include the following tasks or situations but is not limited to them;
 - (i) The installation is difficult, complex, uncommon or there maybe safety concerns.
 - (ii) The installation is not from the closest or most direct point from the street.
 - (iii) The installation involves using underground cabling where overhead cabling is usually used.
 - (iv) If you have any special requirements that may fall in the non-standard installation category.
 - (v) Exceeding cabling limits as set out by NBN Co.

- (b) You agree that you are responsible for costs associated with a non-standard installation.
- (c) "In roof" installations are classified as non-standard and will be undertaken at NBN Co's discretion.
- (d) You need to advise the NBN Co representative of anything that may affect your installation, for example
 - (i) Any known or suspected asbestos;
 - (ii) Any pest treatment;
 - (iii) Any heritage listings or restrictions;

124. Information relating to Telephone Bundle for NBN

- (a) The Telephone Bundles are available for both the NBN Fibre and Wireless Services.
- (b) The NTD battery backup only provides backup to the NTD not any other equipment. The router will not have power and you will not be able to make or receive calls (including emergency 000) in a power failure.
- (c) The terms of the Part G – Internet Telephone Service Terms apply.
- (d) If your NBN service is cancelled then your Telephone Service will be cancelled also and you may be liable for early termination fees and any outstanding call cost.

125. Terms Applying to All NBN Services

125.1 Appointments

- (a) You agree that you are responsible to ensure that you or a person over the age of 18 years and authorised by you, will be at the premises for scheduled appointments.
- (b) You agree that you, or another nominated adult, will be present at the Premises whilst we or NBN Co carry out any works.
- (c) At the installation appointment you or the authorised adult may need to;
 - (i) provide access to the Premises for installation work;
 - (ii) approve the final location of the installation; or
 - (iii) approve any additional charges for a non-standard installation if necessary.
 - (iv) Make decisions relating to the installation and are authorised to do so.
- (d) You agree that;
 - (i) If you or the nominated adult miss an appointment a Non Attendance Fee may apply (refer to our website).
 - (ii) If you need to reschedule an appointment you must provide us with two (2) business days' notice. A fee may apply (refer to our website).

125.2 Third Party Services

- (a) You are responsible for any third party services that may be required as part of the installation of the service to the Premises.
- (b) You may need new cabling to connect to the NTD. This cabling is your responsibility as it is not included in the NBN installation. The cabling must be carried out by an ACMA licensed cable installer.
- (c) If you have faulty wiring you are responsible for organising a licensed cable installer to fix the problem. You should consider your current and any future cabling needs and discuss them with a licensed cable installer.
- (d) You are responsible for cabling beyond the Network Boundary point. This includes, the internal wiring required for additional data points, internal phone outlets etc.

125.3 Customer Equipment Requirements

- (a) In order to access the Service you will need additional equipment.
 - (i) You are responsible for the purchase, installation maintenance, operation and ownership of any equipment beyond the Network Boundary Point. This includes, power supply, computer equipment, tablets, phones, routers or modems, etc.
 - (ii) You must ensure that the equipment is ACMA approved, compatible with the Service and will be used for the purpose that it was intended to be used for.
 - (iii) You must ensure that any equipment is in good working condition.
 - (iv) We do not provide technical support for equipment not sold by us.
 - (v) ADSL routers may not be suitable to use with the NBN.
- (b) Upon request you must urgently remove, disconnect or deactivate any equipment that we reasonably believe to be incompatible, interfering, damaging or deteriorating the NBN network, any other network, or the supply of service to you or any other customer using those networks.

125.4 Equipment Responsibilities

- (a) You acknowledge and agree that the PCD, PSU and NTD remain the property of NBN Co. NBN Co responsibility stops at the data (UNI-D) / voice (UNI-V) ports on the NBN connection box.
- (b) You will keep the NBN Equipment in good working order and will not damage, tamper, remove, dispose, relocate, disconnect, dismantle, remove warnings, stickers or labels from the equipment. Replacement charges will be applied if the equipment is damaged or removed for any reason.

125.5 Battery Backup

- (a) NBN Services require mains power to operate and will not function during power outages. This means that data and voice (if you have a NBN telephone) will not work. You will need to have another means to make and receive phone calls, eg a mobile phone.
- (b) We do not provide a battery backup as part of this Service.

- (c) If you churn to EscapeNet with an existing battery backup your NBN service will not work during a power outage because the service is connected to the UNI-D port, which is not backed up by the battery backup. The battery backup is designed to provide up to four hours backup power to the UNI-V Port only on the NTD.
- (d) If you have the Telephone bundle that service will not work during a power outage. You **will not be** able to make or receive phone calls during a power outage, including emergency 000 calls, so you need to make sure that you have another way of making phone calls.

125.6 Service Responsibilities

- (a) We do not make any claims, representations or warranties that the NBN service is or will be free of errors, interruptions, defects or be available at all times. The NBN Services are operated by third party supplier and as such we cannot guarantee the operation of the network. Any network failures are beyond our control and we cannot be held responsible or liable to you for such failures. You acknowledge that there may be variations in quality and capacity of the service but this does not alter your commitment to pay your monthly charges.
- (b) Our aim is to provide you with an efficient service, however we cannot make guarantees on the time it takes to provision a service, detect faults or to restore or repair a fault that develops on the NBN Service.

125.7 Service Activation

- (a) We will notify you of service activation using details you provided in your application. This may occur by email, telephone call or text notification.
- (b) If you ordered hardware from us we will organise to have that promptly delivered to you.
- (c) You acknowledge that the service may be activated before you receive the hardware.
- (d) If you advise us that the hardware supplied is not operating as it should and may be faulty, you agree that you will do the necessary troubleshooting with Us to ascertain what the problem may be. We may need to test your computer and you agree to us doing so. If the hardware is found not to be faulty then you may be charged an Incorrect Call Out fee (refer to our website).

125.8 Broadband Speeds

You acknowledge that:

- (a) All speeds quoted are theoretical maximum speeds that the service can deliver.
- (b) The actual speed experienced is dependent on several factors including, but not limited to;
 - (i) The technical capabilities of your router.
 - (ii) Your computer hardware and software and use of them with the service.
 - (iii) Your local area network and computer or access device
 - (iv) The source of the content and the method of transfer.

- (v) Local and international transit capacity;
- (vi) Number of simultaneous users.
- (c) The NBN access port speeds which may be reflected in our plan names are not necessarily indicative of the speeds that the service will achieve.

125.9 Plan Changes

- (a) You can request a change to your NBN broadband plan (in terms of speed and/or quota) at any time; these will be actioned on your monthly service rollover date. A fee may apply for changes as listed in the Fee Schedule.
- (b) Changes will not affect the duration of the Contract term.
- (c) We will apply any fees paid in advance by you against the fees payable for the change in service.

125.10 Data Packs

You may purchase additional data packs. The relevant fees can be found on the NBN product page on our website. Any unused allowance in the current billing month cannot be rolled over to the new billing month.

125.11 Warranty

- (a) We cannot warrant any products or equipment that you have purchased from somewhere else.

125.12 General Information

- (a) When you submit an Application for a NBN Service either by telephone or via our website, you are agreeing to the Minimum Term as specified on our Website and/or in your Application. Early termination fees may apply if you terminate the Service during the minimum term. Details of early termination fees are available on the product page on our Website at www.esc.net.au.
- (b) Our NBN Services will only assign one IP address to your connection and therefore will only permit one device to be connected at a time. You may use a router to share the connection.
- (c) Both uploads and downloads are counted towards your data allowance. With this in mind, if the NBN plan you have selected is subject to a data allowance and once you reach your allocated data allowance, you will be shaped until your rollover date or you may choose to pay for extra data blocks.

125.13 Using the NBN Services

You agree that;

- (a) We may monitor the use of the Service to investigate a breach or suspected breach of any EscapeNet policies or breaches of the law or upon the request of an authorised authority.

125.14 Moving Premises

If you plan on moving Premises:

- (a) You need to let us know as early as possible.
- (b) You agree that the service is not transferable and will be cancelled if you move to another premise and you may have to pay early

termination and or reconnection fees if you are as set out in our Fee Schedule.

- (c) NBN Services may not be available at your new location.
- (d) If you move to premises that the NBN service is available, enabled and NBN equipment is installed we will connect the NBN to that new location and waive any early termination fees on the condition that you pay the relocation fee as listed on our website.
- (e) If you move to a premise that does not have NBN available, enabled or NBN equipment is not installed and you choose not to connect the NBN service, your Agreement with us will be terminated and you will be liable for any early termination fees as set out in the Fee Schedule.

125.15 Churn

Please note that at this stage, a 'NBN Broadband Churn' process may be available in some circumstances. The industry is working with NBN Co to streamline the process. Currently, this means that if you wish to change to another broadband services provider, you need to cancel the Service and order a new connection with another service provider. This may result in an outage of your broadband service. If you are still in a minimum term Agreement with us you will need to pay an Early Termination Fee as set out on our website.

125.16 Service Faults and Rectification

You agree that:

- (a) Your service is provided by EscapeNet and you do not have any service contract with NBN Co Limited.
- (b) You agree to report any service performance enquiries, issues or faults to us not to NBN Co. You can contact us by telephone or by email.
- (c) Prior to lodging a fault we will conduct a NBN service fault checklist that you must complete with us. You agree that you will reasonably co-operate in the resolution of the fault by completing this checklist.
- (d) If you lodge a fault on your NBN Service and a technician attends your premises and the fault is found to be beyond the Network Boundary Point then you will be liable for an Incorrect Call Out fee (refer to our website).
- (e) You agree that any error, fault, interruption or defect to the NBN Service caused by your equipment or anything else relating to the Premises does not alter your responsibility to pay your monthly charges.

125.17 No Interference

You agree that you will:

- (a) Not interfere with the normal operation of the NBN Service or any facility, or make either unsafe; and
- (b) Not access or attempt to access the NTD (or any other equipment used to provide the Service) located on your Premises.

126. Limitation of Liability for NBN Co

In Clauses 44, 45 & 48 of Our Customer Terms a reference to Us, includes NBN Co, its related Body Corporates and all of their personnel.

Part F- Standard Fixed Line Telephone Service Terms

127. Standard Telephone Service

Our standard fixed line telephone service provides a connection to the public switch telephone network.

- No priority assistance.
- Network Boundary Point.
- FastFix.
- Premium numbers will be billed direct from service carrier.

128. EscapeNet Pre-selection

EscapeNet pre-selection is the process to acquire national (std), 13/1300, mobile and international telephone calls through your standard fixed line phone through us whilst the standard fixed line telephone service is provided by a third party carrier of your choice.

- (a) Only standard fixed line telephone services are available for Pre-selection.
- (b) Pre-selection, may cause you to lose any discounts or break contractual agreements You may have in place with your previous carrier or service provider.
- (c) "Wide area call" options do not exist with our preselected Service. We bill by way of standard local call areas as defined by ACMA.
- (d) Service is not available standalone.
- (e) This service can only be cancelled by:
 - (i) The cancellation of the standard telephone service; or
 - (ii) Requesting your preferred carrier preselect your standard telephone service to their own network.

Part G- Internet Telephone Service Terms (VoIP)

129. Application

This Service Schedule applies in addition to the General Terms when we supply you with a Telephone Service utilising VoIP.

130. Compatible Equipment

- (a) You acknowledge and agree that this service does not support Priority Assistance. If you require Priority Assistance you must not order this service.
- (b) The Internet Telephone service uses Voice over Internet Protocol (VoIP) and as such you need to have it bundled with one of our broadband plans.
- (c) This service can be used to make standard local, national, 13 (six digit), 1300, 1800 mobile and international calls.
- (d) You acknowledge and agree that this service is not designed to be used as a primary telephone service and in order to provide you with

cheaper call rates than a primary telephone service we ask you to waive your entitlements under the Customer Service Guarantee (CSG) Standard 2011. The CSG standard and the associated waiver are found on our website and you must read both these documents so you are aware of what rights you are waiving.

- (e) You agree to waive any Customer Service Guarantee (CSG) rights you have in exchange for heavily discounted voice call rates.

131. Compatible Equipment

- (a) In order to use this Telephone Service, you need a compatible telephone handset and compatible router which must be supplied by us.

132. Limitations

You acknowledge and agree that:

- (a) Our aim is to provide you with an efficient service, subject to our obligations and your rights under Australian Consumer Law, however we cannot guarantee that the Service will be error free or uninterrupted. Factors including but not limited to network utilisation, technical capabilities, maintenance, geographic factors, interference or obstruction may mean that you may not be able to use this Service at all times;
- (b) The service will not operate:
 - (i) in the event of a power failure.
 - (ii) if your broadband connection is not working, set up incorrectly or over utilised;
 - (iii) if your broadband service is suspended or disconnected;
 - (iv) During a fault.
- (c) Your Internet Telephone Service will not function, including emergency 000 calls during any of the events mentioned in Clause 134(b).
- (d) The underlying transmission method will affect the quality of the service received.
- (e) Analogue based services such as security alarms, medical alarms, fax machines, EFT, TTY, emergency call services and other voice and data services are not guaranteed to operate with this service.
- (f) Calls to premium telephone numbers (such as 1900/0055 etc) are not available on this service;
- (g) Operator assisted services are not guaranteed to work.
- (h) Pre-selection with another carrier is not available with this service.
- (i) We will provide you with a new telephone number when we provision the Telephone Service, unless we can port (at an additional cost) your existing telephone number.
- (j) You may choose to have your telephone number on a public telephone directory listing or you can choose to have a silent number. If you elect to list your telephone number the listing can be a full listing (name and full address or a suppressed address listing (name and suburb only). You also have the option of removing this information from the

directory for future editions. You need to advise us in writing that you do not want your number on the telephone directory.

- (k) VoIP numbers provided by EscapeNet are sourced from the capital city calling zone unless specifically mentioned. This means that people that call YOU may be charged at higher rates than they normally have experienced.
- (l) Only calls which are originating and terminating using EscapeNet's VoIP platform are eligible for "Escape-Escape" Free calls.

Part H- Call Detail Records

133. If we supply you with a telephone service, the following apply;

- (a) The Telephone service can be used to make local, national, mobile and international calls.
- (b) Telephone calls generate call detail records.
- (c) Complete call detail records are available in My Account, and in general are accurate up to the previous 24 hours. Some calls may take longer to appear on your call summary and/or Invoice. If you are concerned about a call not appearing you should call us for clarification.
- (d) By default all invoices will be a summarise bill for each call type. You may request a fully itemised bill by post which will be provided by email, fax or on the internet.
- (e) You acknowledge that some calls made during the previous period may not appear on Your latest invoice. Any such calls will be billed in the next or subsequent billing period.
- (f) If we become aware of unusual or high use of your Service, we may suspend the Service without notice, however we are under no obligation to do so. Upon discussion with You about the usage, We may require a pre-payment for the Service.
- (g) We will update your details with the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public numbers and customer data for emergency services organisations.

Part I – Mobile Telephone Service Terms

134. Partner Requirements – Mobile Telephone Services

Where we supply you with a Mobile Telephone Service:

- (a) If arrangements between our Wholesale Supplier and us are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Mobile Telephone Services to you may be altered to the nearest applicable rate plan of our Wholesale Supplier in the event that our rights and obligations under your Contract are assigned or novated to our Wholesale Supplier so that our Wholesale Supplier provides the Mobile Telephone Services directly to you.

- (b) You may not resell or resupply the Mobile Telephone Services provided by us.
- (c) We shall have the right to assign or novate all or part of its rights and obligations under your Contract to our Wholesale Supplier without your consent. You cannot assign or novate all or part of your rights and obligations under your Contract other than in accordance with this clause 136(c).
- (d) For the purposes of novation, you agree to novate your Contract to our Wholesale Supplier on receipt of a notice from either us or our Wholesale Supplier, such novation to be on terms no less favourable than the terms of your Contract in existence immediately prior to the novation.
- (e) You consent to allow us to disclose to our Wholesale Supplier or Optus Mobile Pty Ltd ACN 054 365 696 (or its Related Bodies Corporate) your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you.
- (f) You consent to allow our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by us, our Wholesale Supplier or by Optus Mobile Pty Ltd. Without the express permission of us, our Wholesale Supplier or Optus Mobile Pty Ltd (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.
- (g) Our Wholesale Supplier and Optus Mobile Pty Ltd are not liable to you (in contract, tort (including negligence) or otherwise) in relation to any Mobile Telephone Service resupplied to you by us, any delay or any failure to provide Mobile Telephone Services.
- (h) You promise that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act).
- (i) If you become a Carrier or Carriage Service Provider, then we, our Wholesale Supplier or Optus Mobile Pty Ltd may immediately cancel the Mobile Telephone Service by notice to you. If we, our Wholesale Supplier or Optus Mobile Pty Ltd does so, that party will negotiate in good faith with you to enter into an agreement governing supply of the Mobile Telephone Service, on terms to be agreed.

Part J – Residential Fibre Broadband

135. Application

This Service Schedule applies in addition to the General Terms when we supply you with a Residential Fibre Broadband connection.

136. Definitions

In this Service Schedule:

- (a) **Optical Network Terminal (ONT)** means a device installed by Technicians on the day of activation for fibre broadband access.

137. Service information

- (a) The service is fibre to the premise (FTTP) and available in areas that are connected to the supplier's network.

138. Equipment

- (a) It is your responsibility to ensure that any equipment that is connected to the ONT is used as intended and complies with all laws, directions and notices governing this service.
- (b) Clauses 33-38 apply.

139. Fault reporting, network maintenance and rectifications

140. Charges for fibre services

Part K- Gig City Service Schedule

141. Application

This Service Schedule applies in addition to the General Terms when you are authorised by the Precinct Manager and we supply a Gig City Service to you.

142. Definitions

In this Service Schedule:

- (a) **Access Agreement** means an access agreement that is entered into between the you and SABRENet Ltd ACN 115 957 090.
- (b) **Gig City Adelaide** means the initiative managed by the Department of State Development on behalf of the Government of South Australia.
- (c) **Gig City Network** means the both the active equipment and passive optical fibre network used to supply Gig City Services.
- (d) **Gig City Portal** means www.esc.net.au/gigcity
- (e) **Gig City Service** means a service that we provide to you using the Gig City Network.
- (f) **Layer 2** has the same meaning as the Open Systems Interconnection Model.
- (g) **Layer 3** has the same meaning as the Open Systems Interconnection Model.
- (h) A **Micro Business** is defined for a business entity by three metrics:
 - (i) having less than 5 staff; and
 - (ii) having less than \$2m annual turnover; and
 - (iii) utilising less than 2Tb per calendar month.
- (i) **Precinct** means an area so designated by Gig City Adelaide.
- (j) **Precinct Manager** means the person approved by either SABRENet Ltd or Gig City Adelaide as the Authorised Representative of the Precinct.
- (k) **Standard UNI** means the default UNI for a Precinct.

- (l) **UNI** means a User Network Interface, being the network demarcation or network boundary point.

143. Access Agreement

143.1 Compliance

You must comply with the SABRENet Ltd Access Agreement.

143.2 Immediate disconnection, etc

We may immediately suspend all or part of your Service at any time without notice to you if you are in breach of the Access Agreement (or if SABRENet Ltd informs us that you are in such breach, whether or not we independently verify that).

143.3 No claims against SABRENet Ltd

You agree that SABRENet Ltd will not be liable to you for any losses, damages, costs or expenses you incur or sustain as a result of the suspension of Service under clause 144.2.

143.4 No claims against us

You release us from and indemnify us against any Claim or Loss arising from the acts or omissions of SABRENet Ltd (including acts or omissions that breach your Access Agreement) except to the extent we caused or contributed to the Claim or Loss by our negligence, breach of any Law or breach of your Contract.

144. Gig City Services Information

- (a) Gig City offers alternate pricing for you depending on your business classification as either a “Micro Business” or standard “Business” entity.
- (b) All Services have a minimum term of one month, billed in monthly increments in advance, unless otherwise advised.
- (c) All Services must be ordered via the Gig City Portal.
- (d) You will be responsible to pay our ad hoc consulting rate of \$132/hour including GST during business hours, if you make:
 - (i) An incorrect fault report; or
 - (ii) A request for any service Adds, Moves, Changes or Deletes (where portal access permits you to do so).

145. Layer 2 Service Terms

145.1 Application

This clause applies if we supply you with a Layer 2 Gig City Service.

145.2 General Terms for Layer 2 Gig City Services

If we supply you with a Layer 2 Gig City Service:

- (a) The network boundary point is the UNI.
- (b) A standard UNI for a Precinct is prescribed in Schedule 1 Part 4. The choices are one of:
 - (i) RJ45/UTP Ethernet socket capable of 100M/1G/10G ethernet speeds,
 - (ii) SFP+ socket capable of 1G/10G ethernet speeds.
- (c) Non Standard optical UNI, subject to availability, will attract once off fees as follows:

- (i) SFP+ (10Gbp) - \$250 per port
- (ii) QSFP+ (40Gbps) - \$850 per port
- (d) SFP+ ports support LR compatible optical transceivers. Users must not connect other transceivers unless we otherwise advise.
- (e) All cabling required from the UNI to the end-user/wholesale end-user is the responsibility and cost of the end-user/wholesale end-user. We can organise this task for an extra Charge.
- (f) Activation of a standard UNI for a given Precinct is free.
- (g) Users must not do anything that will cause damage to our Network or the Gig City Network.
- (h) Users must ensure that traffic is shaped to conform to subscribed EVC bandwidth.
- (i) Users must ensure that only two mac addresses are present per EVC.
- (j) Cancelled UNIs are quarantined for 5 days.
- (k) Addition of a second or subsequent EVC on a free UNI will result in the UNI port fee being charged.
- (l) Requests for EVC's greater than 1Gbps must be approved by us.
- (m) Business Hours support unless otherwise specified.

145.3 Terms for Free EVC

- (a) One free EVC at 1Gbps/1Gbps, or less, is provided per UNI for all Customers.
- (b) The free EVC must only be used for Layer 3 internet access.
- (c) The free EVC must terminate to an EscapeNet UNI.

145.4 Terms for Free UNI for Micro Business Plans

- (a) A Micro-Business is entitled to a free UNI on a calendar month by calendar month basis subject to this clause 63.
- (b) No re-supply or reselling of service is allowed.
- (c) Must be a Standard UNI.
- (d) Maximum of one free UNI per Customer.
- (e) Addition of multiple EVC will activate billing of UNI and second and subsequent EVCs.
- (f) Both ends of the free EVC must be located within the designated precincts.
- (g) Users must only utilise a single dynamic or single static IP.
- (h) No BGP or dynamic routing permitted on a free UNI.
- (i) No tagged frames permitted on a free UNI.
- (j) If you exceed the 2Tb limit in a calendar month:
 - (i) the UNI will not be free; and
 - (ii) standard charges apply to the UNI -for that calendar month.

146. Gig City Internet Services

146.1 Application

This clause applies if we supply you with a Layer 3 Gig City Service.

146.2 Pricing

- (a) Layer 2 UNI & EVC costs are in addition to these costs.
- (b) Shaping with instant plan upgrade via portal.
- (c) Fair Use Policy Applies.

146.3 General Terms for Layer 3 Gig City Services

If we supply you with a Layer 3 Gig City Service:

- (a) Unless otherwise indicated all Services have free activation to a Gig City UNI.
- (b) The network boundary point is the UNI.
- (c) All cabling required from the UNI to the Customers is the responsibility and cost of the Customers. We can organise this task on for an extra Charge.
- (d) All speeds quoted are theoretical maximum speeds that the service can deliver. The actual speed experienced is dependent on several factors including, but not limited to, the technical capabilities of the Users router, local area network and computer or access device, the source of the content and the method used to transfer it, local and international transit capacity and number of users.

146.4 Micro-Business Plan

If you are a Micro-Business and we supply you with a plan that we designate as a Micro-Business Plan:

- (a) Micro-Business Plans represent a best effort service in relation to maximum speed obtainable and service level.
- (b) Micro-Business Plans are not for re-sale, resupply or aggregation.
- (c) The 200Gb Micro-Business Plan will be shaped at 1Mbps/1Mbps after usage exceeded. Should an addition 200Gb of data be used, access will be further restricted to 256k/256k ('shaped').
- (d) The Micro-Business Unlimited Plan is subject to a Fair Use Policy. Unlimited usage is based on the needs of a typical business. We consider fair use of this plan to be the monthly data usage of no more than 10 times national data average (<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8153.0Main%20Features4December%202016?opendocument&tabname=Summary&prodno=8153.0&issue=December%202016&num=&view=>). $2,500,000/18,000,000 = .13Tb \times 10 = 1200GB/MONTH$. If abuse of this policy is detected your Service will be shaped to 5Mbps/5Mbps until the monthly renewal of the Service. Should a Service be shaped twice within a 12 month period, the shaping will become permanent until the User exits the Micro-Business Plans.

146.5 Business Plans

- (a) We will purchase the necessary bandwidth of data from transit suppliers to ensure that generalised demand is met.
- (b) Business support is available with this service.
- (c) You may select one of three QoS profiles include in the Plans.

- (d) A static IP address, ability to set custom reverse DNS and BGP peering are included in these Plans.

Part L- Tonsley Free Wifi Service Schedule

147. Tonsley Free Wifi Service

- (a) The Service is a wifi service provided by EscapeNet for “bona fide” visitors to the Tonsley Main Assembly Building (MAB).
- (b) **Important information:** – This Service is a consumer grade best efforts service without security features. It is provided for occasional, convenient use.
- (c) A person under the age of 18 may use the Service under supervision of an adult.

148. Key Terms Used in this Part

A “bona fide” visitor is a person who attends the MAB in connection with its activities and functions.

149. Service Details

- (a) The Service provides internet access via specific Tonsley Free Wifi access points (“Access Points”) located within the Tonsley MAB.
- (b) At our discretion content filters may be applied to protect against exposure to inappropriate material and/or to protect the network. If and when restrictions are in place, we do not warrant that they will be accurate.
- (c) We aim to maintain access speeds sufficient to ensure a minimum user experience sufficient for web browsing, emails and social media comparable to a mobile phone network.
- (d) The Access Points, in aggregate, can facilitate approximately 2000 simultaneous users. The Service not designed for high density clusters within any one area and therefore the Service may be degraded in such situations.

150. Obtaining Access to Tonsley Free Wifi

- (a) You may only use the Service if you are:
 - (i) a “bona fide” visitor to the MAB; and
 - (ii) physically located in the MAB and within the signal coverage zone of the Access Points.
- (b) We do not warrant or represent that you will be able to access or use the Service immediately or each time you visit.
- (c) We do not guarantee that the Access Point coverage will remain consistent.
- (d) It is your responsibility to supply, configure and connect your device to the Service.
- (e) We do not guarantee compatibility between the Access Points and your device or your software.

151. Fair Usage Limits

In order to promote fair usage of this service, your daily data quota must not exceed 250MB, after which daily service may cease.

152. Limitations

- (a) No usage limit warnings will be provided.
- (b) We do not guarantee that any particular applications will work for example VPN & VoIP.
- (c) You must not extend or rebroadcast the wifi signal or cause the wifi service to be shared with multiple devices.
- (d) You must not cause disruption to others whilst using the Service.

153. Security & Privacy

- (a) Traffic across the Tonsley Free Wifi Service is unencrypted and insecure. You must exercise proper care to ensure your personal information is secured before being transmitted or received.
- (b) You must procure, maintain and support your own security software and/or devices.

154. Acceptable Use Policy

As you are in a public place, we require that in addition to our published acceptable use policy, you must also abide by the following conditions (which override conflicting terms in our general Acceptable Use Policy, in case of ambiguity):

- (i) You shall not access material which may be deemed objectionable, hateful, abusive, threatening, immoral, improper, indecent, unsociable or offensive to others including children.
- (ii) You are also prohibited from engaging in activities which, while not unlawful, are considered inappropriate or unacceptable for a public space, at our sole discretion.

Part M – Partner Requirements – specific

155. Partner Requirements - Wholesale Supplier

We notify you of the following Partner Requirements:

- (a) If our Wholesale Supplier has not been paid for a Service we have provided to you, and if you have not paid us for it, you must pay the amount you owe us to the wholesale supplier on demand.
- (b) You consent to us and our Wholesale Supplier exchanging your details and information about or in connection with your personal credit, commercial activities or commercial creditworthiness.
- (c) Our Wholesale Supplier may provide a Service that we resupply to you by means of a different carrier from time to time and as it sees fit.

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