

Field Solutions Group Pty Ltd Mobile Service Terms

Part A – Introduction

1 About this document

- (a) These are Field Solutions Group Pty Ltd Mobile Service Terms.
- (b) When we supply you with Mobile Products, our Mobile Service Terms apply by agreement between us or, failing agreement, under section 479 of the Telco Act.
- (c) When we supply you with non-Mobile Products, our Mobile Service Terms apply as our standard terms of business.

2 When these Mobile Service Terms start

The Start Date is 1 January 2022. These Mobile Service Terms apply to:

- (a) all Service Agreements that are first made or are renewed; and
- (b) all month-to-month (or other periodical) Service Agreements that rollover to a new month (or other period) –

after midnight at the start of the Start Date, otherwise, Service Agreements that pre-date the Start Date continue their existing terms.

3 About us

- (a) FSG or ‘we’ means Field Solutions Group Pty Ltd ACN 155 490 074.
- (b) Our website is at <https://www.fieldsolutions-group.com>
- (c) Our postal address is at 38/23 Narabang Way Belrose NSW 2085
- (d) Our customer service number is 1300 000 488 or support@fieldsolutions-group.com
- (e) Apart from Our Network, the principal carrier whose network we use to provide our Mobile Services is Optus, but we are responsible for the services we provide, and we are not affiliated with or related to that carrier.

Part B – Customer Contracts

4 Your Customer Contract

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

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

Service Schedules for our main Mobile Services are attached.

5 Plans

- (a) Mobile Services may be 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 Priority

If there is any conflict between the parts of your Contract, the priority (from highest to lowest) is:

- (a) any provision applicable to ACL Consumers and ACL Small Businesses’;
- (b) clauses 37 to 47 in Part C;
- (c) the terms of any Plan you select;
- (d) any Service Schedule for the Mobile Service;
- (e) this Part B; and
- (f) the remainder of Part C.

7 Periodic Entitlements

- (a) A Plan may include the right to use a certain amount of a Mobile Service during a certain period. We call these Periodic Entitlements.
e.g. A Plan might let you transfer 10 gigabytes of data each month at no extra cost.
e.g. A Plan might let you make 200 minutes of international calls to selected countries each month at no extra cost.
- (b) Unless specifically stated otherwise, 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 Mobile 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 Mobile Service. We are not responsible for the consequences of Mobile Service ceasing.

9 Non-Prepaid Plans

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

- (a) We may require partial prepayment for a period of Mobile 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 Mobile 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 Mobile 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 Mobile Service and/or our resources.
- (c) You must comply with an applicable Acceptable Use Policy or Fair Use Policy.

For additional information regarding our Acceptable Use Policies, please visit our website (see clause 3) or alternatively, to obtain a copy of the applicable policy – write to our Customer Information and Compliance Officer at our postal address (see clause 3).

11 Legal Compliance Policies

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

12 Interacting with our staff

- (a) You must deal 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 Mobile 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) Mobile Services are commonly provided in whole or part 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 Mobile Service to you subject to such Partner Requirements.
- (c) You must comply with the 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.

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 50.

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. You or we can terminate it with effect from the end of the fixed or minimum term on at least 30 days' notice to the other. Fees may apply
- (b) If a Contract is not terminated under clause 15(a), 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', '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 (e.g. if you give notice on 26 March, your Contract ends on 30 April next).

17 Bundled Equipment

- (a) Under some of our Plans, you may be supplied with Equipment (e.g. a mobile handset) 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 31 explains when ownership of Bundled Equipment passes to you.

18 Telecommunications Consumer Protections (TCP) Code

(a) The TCP Code applies to consumers and some business customers, called TCP Customers in our Mobile Service Terms. Refer to the Dictionary for the detailed definition.

(b) A term or note in our Mobile Service 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 Mobile Service 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 Mobile Service Terms. Refer to the Dictionary for the detailed definition.

(b) A term or note in our Mobile Service Terms headed 'ACL Consumers' applies to you if you are an ACL Consumer, but not otherwise.

(c) A term or note in our Mobile Service 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 Mobile Service 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 24 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, e.g. 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 Mobile Service Terms

(a) Expressions used in our Mobile Service Terms are explained in the Dictionary in clause 108.

(b) Rules for interpreting other expressions in our Mobile Service Terms are set out in clause 107.

(c) The Index is at the end.

Part C – General Terms

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- 23 Application for Mobile Service**
- (a) You must comply with any application form or process we specify.
 - (b) All information you provide in connection with an application (including Credit Assessment Information) must be true, correct, complete and not misleading.
- 24 Processing an application**
- (a) We do not have to accept an application.
 - (b) Before we confirm that we can and will provide Mobile Service, if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.
 - (c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 61.
- 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 Mobile Service is the **Contract Date**.
 - (c) The date when we notify you that Mobile Service is available for use (or the date you first use the Mobile Service, if that is earlier) is the **Service Start Date**.
- 26 Providing Mobile Service**
- (a) We will commence Mobile 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 Mobile Service using Our Facilities and/or third-party Partner Facilities, as we decide from time to time. Together, we call those Facilities our Network.
- 27 Use of Mobile Service by others**
- (a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell, or resupply a Mobile Service for remuneration or reward.
 - (b) Anyone who makes use of a Mobile Service with your consent or using your equipment or log-in credentials is counted as your End User.
 - (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
 - (d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.
- 28 Using a Mobile Service**
- (a) When using a Mobile Service, you must comply with:
 - (i) your Customer Contract (including any applicable Acceptable Use Policy or Fair Use Policy); and
 - (ii) all Laws.
 - (b) You must not use a Mobile 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 is likely to result, in damage to property or injury to any person; or
- (ix) in any way that damages or interferes with our Mobile Services to our other customers, our Partners, or any Facilities, or exposes us to liability.

29 Exploitative Use

- (a) 'Exploitative Use' means:
 - (i) using an unlimited Mobile Service to generate mobile terminating access or SMS message terminating access payments (for example, by using SIM boxing);
 - (ii) using a Mobile Service to transit, refile or aggregate domestic or international traffic on Our Network;
 - (iii) using a Mobile Service with devices that switch or reroute calls to or from Our Network without our consent;
 - (iv) using a Mobile Service in a manner similar to the kinds described in clauses 29(a)(i), (ii) or (iii); or
 - (v) any other use of a Mobile Service in a manner that cannot reasonably be within the range of uses for which the Mobile Service are ordinarily supplied – if use of a Mobile 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 Mobile 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 Mobile 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 Mobile Service and its number to another service provider) you have no right to retain a particular number when your Contract ends.

31 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 and grant us a 'security interest' over it for the purposes of the PPS Law.
- (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 Mobile 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.

32 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.

33 Additional Equipment services

- (a) You may ask us to supply additional services in relation to Equipment 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).

34 Return of Equipment

- If:
- (a) your Contract terminates for any reason (except our fault); and
 - (b) you hold any Equipment we have sold you, but you haven't yet fully paid for – we may:
 - (c) charge you for the unpaid balance of the price of Equipment; or
 - (d) require you to return it to us at your cost within ten days, failing which we may:
 - (e) take steps to recover it; or
 - (f) charge you for its replacement value.

35 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 (e.g. 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.

36 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 Mobile Services unless the Advocate is also your Authorised Representative under clause 35.
- (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.

37 Rights and remedies for PDH goods and services

Important consumer information: Full details of the consumer rights and remedies referred to in clauses 37 and 38 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.

38 Rights and remedies for certain non-PDH goods

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 \$100,000, 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 \$100,000 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.

39 Personal injury or death

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

40 Service Level Agreements

If a Mobile 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 37 to 39, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

41 Exclusion of implied terms

Important consumer information: Nothing in this clause 41 limits the consumer rights and remedies referred to in clauses 37 and 38.

Subject to clauses 37, 38, 39 and 40:

- (a) Any representation, warranty, condition or undertaking (whether in favour of you or of 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 Mobile Services or Facilities or that the Mobile Services or Facilities will operate free from faults, errors, or interruptions.

42 Limitation of liability – General

Important consumer information: Nothing in this clause 42 limits the consumer rights and remedies referred to in clauses 37 and 38.

Subject to clauses 37, 38, 39, 40 and 43, we are never liable to you for, and you release us from any Claim for, any Loss.

43 Limitation of liability – ACL Consumers and ACL Small Businesses

Important consumer information: Nothing in this clause 43 limits the consumer rights and remedies referred to in clauses 37 and 38.

If:

- (a) you are an ACL Consumer or an ACL Small Business; and
- (b) clause 42 is determined by a court or tribunal to be Unfair –

then:

- (c) clause 42 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 44(a), (b) or (c), 46 or 47 the liability of each of us to the other for any Loss is limited to \$1,000 in aggregate in respect of the Term.

44 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 if and when required (less any amounts you may already have paid for the Equipment). You must also pay us fair compensation for any damage to such Equipment before it is returned. Fair wear and tear do not count as damage.
- (c) You must indemnify us for any Loss we suffer as a result of or in connection with:
 - (i) your breach of your Contract;
 - (ii) your use of a Mobile Service or Equipment; or
 - (iii) a Claim against us by an End User in relation to a Mobile Service we supply to you –

except to the extent that we caused or contributed to the Loss by our negligence, breach of any Law or breach of your Contract.

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.
- (d) You indemnify us for any Loss we suffer in connection with any Claim made against us by a third party arising out of or in relation to your use of Mobile 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.
- (e) Your obligations under this clause survive termination of your Contract.

45 Liability – legal requests, etc.

- (a) This clause applies where we reasonably incur expenses 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 Mobile 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 Mobile Service; or
 - (iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Mobile Service.
- (b) You must reimburse our expenses on request.

46 Your liability to us – (alleged) illegal use, etc.

- (a) This clause applies where:
 - (i) your Mobile 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 expenses as a result.
- (b) You must make good our Loss and reimburse our expenses on request.

47 Liability and our Partners

47.1 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 Mobile 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.

47.2 *Partner indemnity*

If we are liable to indemnify a Partner against any Claim or Loss arising out of or in connection with your Mobile 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.

47.3 *No application where Unfair*

If:

- (a) you are an ACL Consumer or an ACL Small Business; and
- (b) clause 47.1 or 47.2 is determined by a court or tribunal to be Unfair – it will not apply.

48 **Maintenance and faults**

48.1 *Maintenance*

From time to time, the Network requires maintenance that may interfere with your Mobile Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

48.2 *Reporting faults*

- (a) You may report faults in relation to a Mobile 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 to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

48.3 *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).

48.4 *Cost of repairs*

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

49 **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 50.2, we shall give you reasonable notice, having regard to:

- (a) the nature of the variation; and
- (b) how 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 50.

50 ACL Consumers, ACL Small Businesses and Contract variations

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

50.1 *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.

50.2 *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.

50.3 *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:

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

50.4 *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 50.3 – (**Walk Away Rights**).

51 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.

52 Customer transfers to us

52.1 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.

52.2 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 Mobile 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 Mobile Service, you instruct and authorise us to arrange with your current supplier to transfer the Mobile Service to us and authorise us to act on your behalf with your current supplier to transfer the Mobile Services to us.

52.3 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.

52.4 Charges payable to your current supplier

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

53 Transfers from us

- (a) If you transfer a Mobile Service to another supplier, you must pay our Charges that accrue before completion of the transfer.
- (b) If you transfer a Mobile Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – see clause 76.

54 Charges & payment (1): Kinds of Charges

We have various kinds of Charges, including:

- (a) installation Charges e.g. for installing Equipment;
- (b) set up Charges e.g. a one-off Charge when you start on a Mobile Service;
- (c) periodic Charges e.g. a fixed monthly Charge;
- (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 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) equipment Charges e.g. the price of a handset we sell to you – and other Charges stated as part of a Plan.

55 Charges & payment (2): Prices

- (a) Subject to clause 57, our prices are as stated in your Plan.
- (b) Our current prices at any time are referred to as our 'Price List'.

56 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.

57 Varying Charges

We may vary the Charges or add new Charges from time to time in accordance with clauses 49, 50 and 51.

58 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.

59 Bundled Plans

- (a) We may offer a group of Mobile Services as a package (bundle) for discounted total Charges (compared to the total Charges that would apply if you acquired the same Mobile Services not as a bundle).
e.g. We might offer bundled 'Phone + streaming music 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 dependent 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.

60 Credit management (1): Guarantees and security

- (a) We can make supply of Mobile 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 Mobile Service you acquire.
- (b) If we become entitled to suspend or terminate Mobile Service, we may make the resumption of Mobile 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 Mobile 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.

61 Credit management (2): Credit checks

61.1 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) During 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.

61.2 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.

61.3 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.

61.4 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.

61.5 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.

62 Credit management (3): Mobile Services you acquire for others

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

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

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

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

63 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 may bill a part-period e.g. to align your Billing Period with the first day of each month.
- (c) Subject to clause 63(d), we may bill for Charges at or after any of the following points:

<i>Type of Charge:</i>	<i>may be billed:</i>
(i) set up Charge	when you place an order
(ii) periodic Charge	one Billing Period before the start of the period it relates to
(iii) usage Charge	the end of each Billing Period
(iv) prepaid Charge	when you buy or top up a prepaid Mobile Service
(v) call connection Charge	the end of each Billing Period
(vi) miscellaneous Charge	the end of each Billing Period
(vii) third party Charge	when you place an order that will incur the Charge
(viii) Equipment Charge	when you place an order

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

64 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 Mobile Service, including a Standard Telephone Service.
- (c) If we do provide an invoice, statement, or Bill for a Mobile 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:

- (d) you pay by Direct Debit and the Charges for that Billing Period are for a 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 by you on receipt of that Bill is more than 10% higher than that fixed amount (provided that any Charges you have already paid to us during the relevant Billing Period will not be included for the purposes of determining whether the Bill varies from the fixed amount by more than 10%); or
- (e) your Mobile Service is Prepaid.

65 Recharge Billing

Where Recharge Billing applies to a Mobile Service:

- (a) The Mobile Service is supplied on a Direct Debit only basis.
- (b) At the commencement of the Mobile 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.

66 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 as notified in our Price List.

67 Billing information – TCP Customers

67.1 Requesting information

If you are a TCP Customer and request it, we will provide all Billing information related to your Mobile Service (including, if you request it, itemised details of Charges associated with the Mobile 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.

67.2 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 67.1).

67.3 Itemised Billing

- (a) We require notice 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.

68 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).

69 Out-of-pocket expenses

- (a) We may notify you that, to supply a Mobile 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 Mobile 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.

70 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.

71 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.

72 When you must pay

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

73 How you can Pay

- (a) If your Plan specifies 'Direct Debit only' (or similar) then:
 - (i) Direct Debit payment is a precondition to supply of Mobile Service to you.
 - (ii) We may suspend Mobile Service if Direct Debit arrangements are not maintained.
 - (iii) You must not cause to be reversed any Direct Debit payment to us unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

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) Direct Debit is our preferred payment method and incurs no surcharges.
 - (ii) You may pay by:
 - (A) MasterCard or Visa or any other card; or
 - (B) any other payment option – we notify you that we accept for that Plan.
 - (iii) Payments made using credit cards or other payment options – except Direct Debit – may be subject to a surcharge as notified on our website or a Bill.
- (c) If any payment you make is dishonoured, we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

74 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 date the Bill was due for payment 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.

75 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 collection agency;
- (b) we notify you that our collection fees and expenses under clause 74(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.

76 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 (e.g. 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 early termination.

77 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 the disputed portion is payable, you must pay that amount within 5 days.
- (c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

78 Billing for unauthorised use of your account

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

79 Billing agents

- (a) We may bill you via a billing agent (e.g. 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.

80 Calls to Mobiles

- (a) Unless otherwise expressly stated, our prices for usage of mobile phones (e.g. 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 device is outside its home network. If it is, extra Charges may apply.

81 Payment for third party services

- (a) Using a Mobile Service may depend on you having goods or services supplied by third parties. For instance, in order to use a Mobile Service, you must have a suitable mobile device.
- (b) You are solely responsible for the costs of all third-party goods and services you acquire.

82 Your cooperation

- (a) You must give us all reasonable cooperation that we require in order to provide a Mobile 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 Mobile Service is a carriage service within the meaning of the Telco Act, we or a Partner may be required:
 - (i) to intercept communications over the Mobile Service, and
 - (ii) monitor usage of the Mobile Service and communications over it.

83 Complaints – General (but see clause 84 if you are a TCP Customer)

- (a) If you have any complaints in connection with the Mobile 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 can try to resolve your complaint at that stage.
- (d) We may bill you a reasonable complaint handling Charge.

84 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.

85 Termination & suspension by us (1): Early termination

Subject to clause 87, we may terminate a Contract, or suspend or restrict Mobile Service if, in relation to that or any other Contract or Service:

- (a) you fail to pay us any money that is due;
- (b) your Credit Assessment Information was materially adversely inaccurate;
- (c) you threaten not to pay us money that you owe us, or will owe us in the future;
- (d) you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement);
- (e) you are in material breach of your Contract;
- (f) you are subject to an Insolvency Event (except for as long as an Insolvency Protection Stay applies – see clause 93);
- (g) we reasonably believe that you have vacated your Service Address without notice to us;
- (h) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm;
- (i) it becomes technically infeasible for us to continue Mobile Service;
- (j) you use a Mobile Service in a way that places unreasonable demands on our Network;
- (k) there is an emergency that warrants it;
- (l) you have told us that you no longer require the Mobile Service;
- (m) if we reasonably suspect fraud or attempted fraud involving the Mobile Service;
- (n) we suspend, become entitled to suspend, the Mobile Service, and the suspension or entitlement continues for more than a month (except for as long as an Insolvency Protection Stay applies – see clause 93);
- (o) you are, or become, a carrier or carriage service provider under the Telco Act (and we did not agree to provide you with Mobile Service despite that); or
- (p) in any other circumstances stated elsewhere in our Mobile Service Terms.

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

86 Termination & suspension by us (2): Other events

Subject to clause 87:

- (a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or are 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 93).

- (b) We may suspend or restrict the supply Mobile 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 Mobile Service may cause death, personal injury, or damage to property.
- (c) We may suspend or restrict Mobile 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.

87 TCP Customers – Disconnection, Suspension and Restriction

If you are a TCP Customer:

- (a) we will not disconnect, suspend, or restrict a Mobile 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 Mobile Service will be limited and that point has been reached; and
- (b) except where clause 87(a) applies, we will give you at least 5 working days' notice prior to disconnecting, suspending or restricting your Mobile 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 Mobile Service.

88 Early termination by you

- (a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term unless our Mobile Service 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 (e.g. 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 88(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.

89 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 (e.g. 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.

90 Post-termination

If your 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 37 and 38)
 - (b) We may bill you for any Mobile 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 Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.
 - (e) You must return to us, promptly, any of our Equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)
 - (f) Any cause of action that either of us had against the other pre-dating the termination is not affected.
 - (g) The limitations of our liability, and our rights of indemnity, under our Mobile Service Terms continue,
 - (h) No other Contract is affected unless we also terminate it
- Otherwise, that Contract is at an end for all purposes

91 Suspension of Mobile Service

We may suspend Mobile 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 Mobile Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Mobile Service under your 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 Mobile Service or any Acceptable Use Policy, and that breach cannot be remedied;
- (d) you breach your Customer Contract, including terms relating to your use of the Mobile Service or any Acceptable 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 subject to an Insolvency Event (except for as long as an Insolvency Protection Stay applies – see clause 93);
- (f) we reasonably suspect that you, an End User, or any person in connection with the Mobile Service is fraudulent or where evidence suggests illegal conduct in relation to the Mobile Service;
- (g) we reasonably believe that you may be a credit risk in relation to the Mobile Service (except for as long as an Insolvency Protection Stay applies – see clause 93);
- (h) you are a natural person (i.e. not a company), and you die;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Mobile Service or integrity of the Network;
- (k) the Mobile Service may cause death, personal injury, or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Contract.

92 Charges during a period of suspension

If we suspend Mobile 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.

93 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 an Insolvency Protection Stay operates, we do not assert an entitlement to enforce any right that is subject to it.
- (c) This clause 93 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 otherwise exercising our legal rights.

94 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 Mobile Services by reason of any such errors or misprints.

95 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 Mobile Service and terminate your Contract by notice to you.

96 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.

97 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.

98 Notices

98.1 How we give notices

Subject to clause 98.2, we may give notice to you in connection with, or as required by, our Mobile Service Terms:

- (a) in person;
 - (b) by fax;
 - (c) by email;
 - (d) by post;
 - (e) by Instant Messaging; or
 - (f) in any other way allowed by law –
- or by giving you (by one of the above means) notice of the address of a web page where the notice can be read.

98.2 Form of notice

- (a) If our Mobile Service Terms, or any Law, requires a notice to be in writing, we will give it in writing.
- (b) Otherwise, we may give a notice:
 - (i) verbally or in writing; or
 - (ii) by voice call (including an a robocall call or a recorded message that contains the notice) or, if you do not answer a voice call, by leaving voicemail.

98.3 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.

98.4 Time of receipt

A notice is taken to have been received:

- (a) if we give it to you in person (including a voice call you are a party to) – at the time of delivery;

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

99 Governing law

Your Contract is governed by and must be construed in accordance with the laws of the State or Territory where our postal address is (see clause 3). You and we submit to the exclusive jurisdiction of the courts of the State or Territory where our postal address is (see clause 3) 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.

100 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.

101 Delays

- (a) Time is not of the essence in the performance of our obligations, including the provision of Mobile Service, under your Contract.
- (b) We are not liable to you for any delay in the provision of any Mobile 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 Mobile 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.

102 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.

103 Commission

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

104 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.

105 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 – see clause 3 for the number.
- (b) National Relay Service – 133 677 or 1800 555 677
- (c) Translating and Interpreting Service – 131 450

106 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) Your consent under clause 106(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 106 survives the termination of your Contract.

107 Interpreting your Contract

- (a) If an expression is defined in the Dictionary in clause 108, 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 blue', then 'coloured' means 'painted blue'.)
- (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 Mobile Service 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 or before the next Business Day.
- (r) The word 'month' means calendar month and '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.

108 Dictionary

Account Page means a web page or facility we may provide that permits you to view and / or manage details of your account.

Acceptable Use Policy means a policy so titled and issued under clause 10.

ACL means Australian Consumer Law, which is set out in Schedule 2 of the *Competition and Consumer Act 2010*.

ACL Consumer means 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 means the same as in the TCP Code.

Authorised Representative means the same as in the TCP Code.

Automatic Direct Debit means a periodic payment that is automatically deducted by us from your nominated financial institution account.

Bill means an invoice from us stating Charges that you are liable to pay and, where the TCP Code applies, including debits and credits applied during that Billing Period and advising you of the total amount due, or in credit, and where an amount is due, the payment method.

Billing Period – see clause 63(a).

Bundled Equipment – see clause 17.

Business Day – Monday to Friday excluding statutory holidays.

Carriage Service means the same as in the Telco Act.

Carriage Service Provider means the same as in the Telco Act.

Carrier means the same as in the Telco Act.

Charge means a charge applicable under your Customer Contract.

Claim means any and all claims, alleged claims, actions, suits, or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising (including by way of set off, cross-claim or counterclaim).

Commercial Electronic Message means the same as in the Spam Act.

Consumer Contract means the same as in the ACL.

Consumer Guarantee means the same as in the ACL.

Contract means the same as Customer Contract.

Contract Date – see clause 25(b).

Credit Assessment Information means information that we obtain from you and reasonably use for the purpose of assessing your capacity to pay for Mobile Products you ask us to supply.

Credit Management means the process by which we:

- (c) help customers to manage their expenditure on Services;
- (d) manage any credit risk to us; and
- (e) collect outstanding debts from customers and former customers.

Customer Contract – see clause 4.

Dictionary means this table of defined terms.

Direct Debit means a payment that is deducted by us from your nominated financial institution account, including an Automatic Direct Debit.

Early Termination Fee – see clause 76.

End User – see clause 27(b).

Equipment means a handset, modem, SIM card, router, cabling or other hardware.

Exploitative Use – see clause 29(a).

Extract means deduct an amount by Direct Debit.

Facilities means equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service.

Fair Use Policy means a policy so titled and issued under clause 10.

General Terms means the terms in Part C.

GST means Goods and Services Tax.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.

IDC means a code that identifies this version of our Mobile Service Terms i.e. CMSFOA20200127-TYD.

Inbound Number means 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.

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.

Insolvency Protection Stay – see clause 93.

Instant Messaging means SMS, RCS message, iMessage, Facebook Messenger and any similar messaging service by which you and we can exchange text or voice messages.

Intervening Event means an event beyond our reasonable control which interferes with and prevents us from providing the Mobile Services to you. Such events include any act or omission of our Partners, any disruption to our or our Partners' 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 means law, Act of Parliament, regulation, mandatory standard, and industry code and including a requirement or direction of any Regulator.

Listed Carriage Service means the same as in the Telco Act (but covers most public voice and data communications services).

Loss 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:

- (f) economic loss;
- (g) business interruption;
- (h) loss of revenue, profits, actual or potential business opportunities or contracts;
- (i) anticipated savings;
- (j) loss of profits;
- (k) loss of data;
- (l) indirect or consequential loss;
- (m) an obligation to indemnify another person;
- (n) an obligation to contribute to the compensation of loss or damage suffered by another person.

Mobile Goods means any goods we supply for use in connection with the supply of a Mobile Service, whether or not the goods are supplied in conjunction with, or separately from, a Mobile Service.

Mobile Product means Mobile Goods and/or a Mobile Service.

Mobile Service means (a) a public mobile telecommunications service within the meaning of section 32 of the Telco Act, including where it is supplied as a Standard Telephone Service; or (b) ancillary goods or service of a kind specified in the *Telecommunications Regulations 2001*.

Mobile Service Terms – see clause 1.

Network – see clause 26.

Numbering Plan means the Telecommunications Numbering Plan.

Operational Directions – see clause 13.

Optus means Optus Wholesale Pty Limited ABN 86 092 227 551 and/or its Related Bodies Corporate.

Our Facilities means Facilities we own and/or operate.

Partner means a third party that, under a contract with us, provides (a) access to Facilities they own, control, manage or maintain or (b) content or (c) a Service – that we resupply to you.

Partner Facilities means Facilities that are managed or maintained by a Partner.

Partner Requirements – see clause 14.

PDH means personal, household, or domestic.

Periodic Entitlements – see clause 7.

Personnel means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants.

Plan means a particular set of features, entitlements, term of contract, Charges, and special conditions in connection with a Mobile Service.

Post-Paid Plan means a Plan where you can use all or part of the Mobile Service before you pay for it.

Prepaid Plan means a Plan where you must pay in full for Mobile Service before you use it.

Price List – see clause 55.

Privacy Act means the *Privacy Act 1988*.

Product means goods and / or services.

Recharge Balance means an amount we specify as the Recharge Balance from time to time.

Recharge Billing means billing in accordance with clause 65.

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*.

Security Period in respect of any Equipment means the applicable period, if any, under clause 31(c).

Service means any service we provide to you.

Service Agreement means an agreement by us to provide a Service, whether made before or after the Start Date.

Service Level Agreement means a written service quality assurance titled as such.

Service Schedule means 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).

SLA means a Service Level Agreement.

Spam means an unsolicited commercial electronic message within the meaning of the Spam Act.

Spam Act means the *Spam Act 2003*.

Special Promotion means a special promotion we may offer from time to time, on terms we notify in connection with the offer.

Standard Form Contract means a Customer Contract that is a standard form contract within the meaning of section 23(1)(b) of the ACL.

Standard Telephone Service means the same as in section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Start Date – see clause 2.

TCP Code means Industry Code C628:2019 *Telecommunications Consumer Protections Code*.

TCP Customer means:

- (o) a person who acquires a Mobile Product from us for the primary purpose of personal or domestic use and not for resale; or

- (p) a business or non-profit organisation which acquires or may acquire one or more Mobile Products which are not for resale and, at the time it enters into a Customer Contract with us:
 - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer 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 \$40,000.

Telco Act means the same as Telecommunications Act.

Telecommunications Act means the *Telecommunications Act 1997*.

Term means from the Contract Date until your Contract ends.

Top Up means an amount Extracted by Direct Debit when a Top Up Trigger is reached, being the difference between the Top Up Trigger and the required Recharge Balance.

Top Up Trigger means an amount that we specify as the specified Top Up Trigger from time to time.

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 means 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 3.

Wholesaler Supplier means, unless stated otherwise, Telstra and/or Optus and/or TPG.

Part D – Mobile Service Schedule

109 Partner Requirements – Mobile Services

Where we supply you with a Mobile Service:

- (a) If arrangements between our Wholesale Supplier and we are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Mobile 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 Service directly to you.
- (b) You may not resell or resupply the Mobile Service 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 109(c).

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.

- (d) You consent to allow us to disclose to our Wholesale Supplier (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.

You consent to allow our Wholesale Supplier (or its Related Bodies Corporate) to use that information in order to facilitate the supply of carriage services to you by us or our Wholesale Supplier. Without the express permission of us, our Wholesale Supplier (or its Related Bodies Corporate) may not directly contact you with offers and information via electronic messaging (such as SMS) for marketing purposes.

- (e) Our Wholesale Supplier is not liable to you (in contract, tort (including negligence) or otherwise) in relation to any Mobile Service resupplied to you by us, any delay, or any failure to provide Mobile Services.
- (f) You promise that you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telco Act).
- (g) If you become a Carrier or Carriage Service Provider, then we or our Wholesale Supplier may immediately cancel the Mobile Service by notice to you. If we or our Wholesale Supplier does so, that party will negotiate in good faith with you to enter into an agreement governing supply of the Mobile Service, on terms to be agreed.

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