

**CALL AUSTRALIA PTY LIMITED**

**STANDARD CUSTOMER AGREEMENT**

**(Effective from 1 November 2004)**

## TABLE OF CONTENTS

<b>GENERAL TERMS</b>	<b>1</b>
1. OUR AGREEMENT WITH YOU	1
2. PROVISION OF SERVICES AND EQUIPMENT	1
3. CHARGES & PAYMENT	2
4. SECURITY DEPOSIT & SPEND LIMITS	3
5. TRANSFER OF YOUR SERVICES TO US	4
6. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER	4
7. PERSONAL INFORMATION AND BUSINESS INFORMATION	5
8. CONSENT TO CREDIT CHECK	6
9. YOUR OBLIGATIONS	7
10. SERVICE NUMBERS, CLI & IPND	8
11. TERMINATION, SUSPENSION & CANCELLATION	9
12. OUR LIMITATION OF LIABILITY	11
13. YOUR INDEMNITY	12
14. CONFIDENTIALITY	12
15. FORCE MAJEURE	12
16. ASSIGNMENT	13
17. CARRIERS & CARRIAGE SERVICE PROVIDERS	13
18. GENERAL	13
19. INTERPRETATION & DEFINITIONS	14
<b>PART A – PACKAGES</b>	<b>18</b>
20. APPLICATION OF THIS PART	18
21. ELIGIBILITY REQUIREMENTS TO RECEIVE PACKAGE	18
22. MINIMUM MONTHLY SPEND	18
23. PERIOD OF AGREEMENT	19
24. TERMINATION OF SERVICES AGREEMENT	20
25. INTERPRETATION & DEFINITIONS	22
<b>PART B – RENTAL EQUIPMENT</b>	<b>23</b>
26. APPLICATION OF THIS PART	23
27. INSTALLATION	23
28. PERIOD OF AGREEMENT	23
29. PAYMENT	24
30. OWNERSHIP	24
31. THINGS YOU MUST DO	24
32. THINGS YOU MUST NOT DO	25
33. INSURANCE	25
34. DESTRUCTION	26
35. OUR ACTION	26
36. UPGRADES TO RENTAL EQUIPMENT	26
37. SOFTWARE	26
38. MAINTENANCE CHARGES	26
39. TERMINATION	27
40. DEFINITIONS	27
<b>PART C – MAINTENANCE AND SOFTWARE</b>	<b>28</b>
41. APPLICATION OF THIS PART	28
42. MAINTENANCE OF EQUIPMENT	28

43.	NON-MAINTAINED EQUIPMENT	29
44.	PARTS FOR THE EQUIPMENT	29
45.	WHAT OUR MAINTENANCE DOES NOT COVER	29
46.	EXTRA WORK AND CHARGES	29
47.	YOUR OTHER OBLIGATIONS	30
48.	YOU MUST USE RECOMMENDED CONSUMABLES	30
49.	OUR RIGHT OF ENTRY	30
50.	DEFINITIONS	30
<b>PART D – VOICE SERVICES</b>		<b>31</b>
51.	APPLICATION OF THIS PART	31
52.	PROVISION OF VOICE SERVICES	31
53.	VOICE SERVICES CHARGES	32
54.	PROVISION OF VOICE SERVICES RELATED EQUIPMENT	32
55.	FAULT REPORTING	33
56.	SERVICE LEVELS	33
57.	TERMINATION	33
58.	DEFINITIONS	34
<b>PART E – DATA &amp; INTERNET SERVICES</b>		<b>36</b>
59.	APPLICATION OF THIS PART	36
60.	PROVISION OF DATA & INTERNET SERVICES	36
61.	PERIOD OF AGREEMENT	36
62.	DATA & INTERNET SERVICES CHARGES	37
63.	SHIFTS/ MOVES/ UPGRADES	37
64.	INDEMNITY	38
65.	SERVICE LEVELS	38
66.	ACCEPTABLE USE POLICY	38
67.	SOFTWARE	38
68.	PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT	38
69.	INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT	39
70.	YOUR OBLIGATIONS IN RELATION TO DATA & INTERNET SERVICE RELATED EQUIPMENT	39
71.	FAULT REPORTING AND MAINTENANCE	42
72.	TERMINATION	43
73.	DEFINITIONS	45
	SCHEDULE 1 – MISCELLANEOUS CHARGES FOR DATA & INTERNET SERVICES	46
	SCHEDULE 2 – CALL AUSTRALIA BROADBAND	50
	SCHEDULE 3 – INTERNET SERVICES ACCEPTABLE USE POLICY	53
<b>PART F – MOBILE SERVICES AND MOBILE EQUIPMENT</b>		<b>58</b>
74.	APPLICATION OF THIS PART	58
75.	APPROVED EQUIPMENT	59
76.	MINIMUM TERM	59
77.	MINIMUM MONTHLY SPEND	59
78.	SIM	60
79.	VALUE ADDED FEATURES	61
80.	MOBILE SERVICES CHARGES	61
81.	MOBILE NUMBER PORTABILITY	61
82.	MOBILE EQUIPMENT AND MOBILE PLANS	63
83.	CHANGING PLANS	64

84.	ACCEPTABLE USE	64
85.	LOST AND STOLEN AND FAULT REPORTING	64
86.	TERMINATION	65
87.	DEFINITIONS	66
	SCHEDULE 1 – MOBILE SERVICES ACCEPTABLE USE POLICY	68
<b>PART G – PURCHASE EQUIPMENT</b>		<b>73</b>
88.	APPLICATION OF THIS PART	73
89.	INSTALLATION	73
90.	PERIOD OF AGREEMENT	73
91.	PAYMENT	74
92.	OWNERSHIP	74
93.	THINGS YOU MUST DO	75
94.	THINGS YOU MUST NOT DO	75
95.	INSURANCE	75
96.	DESTRUCTION	76
97.	OUR ACTION	76
98.	UPGRADES TO PURCHASE EQUIPMENT	76
99.	TERMINATION	76
100.	SOFTWARE	77
101.	DEFINITIONS	77

## GENERAL TERMS

### 1. OUR AGREEMENT WITH YOU

- 1.1 Our agreement: By entering into this standard customer agreement with Call Australia Pty Limited (ACN 082 538 501), you contract with us for the supply of Services, Equipment, Software and Maintenance as relevant to you. This standard customer agreement has been filed with the ACA and is a standard form of agreement for the purposes of Part 23 of the Act.
- 1.2 Application Form: You may request us to supply the Services, Equipment, Software and Maintenance to you in a manner accepted by us from time to time which may include completing and providing to us our relevant approved application form (“**Application**”). If you complete a written Application we may accept and rely on, and you will be bound by, a facsimile copy or an electronic copy (from you by email) of your Application as if it were an original. As described in your Application, you can acquire Services, Equipment, Software and Maintenance either:
- (a) as a Package – by which you will enter into one or more separate contracts with us, as described in Part A; or
  - (b) by entering into a separate contract with us for the supply of Services – as described in the other Parts of this standard customer agreement.
- 1.3 This standard customer agreement is structured as follows:
- (a) clauses 1 to 19 comprise the General Terms. The General Terms apply to each Part of your agreement with us, as relevant to you;
  - (b) Part A contains the terms that apply to the Packages. Part A will apply if we supply you with any of the Services, Equipment, Software or Maintenance as a bundled package. Your Application will contain several details referred to in Part A and should be read in conjunction with Part A; and
  - (c) the other Parts specify the terms and conditions that apply to the various Services, Equipment, Software and Maintenance available to you.
- 1.4 When this standard customer agreement is binding: This standard customer agreement is not legally binding on us until we accept your Application, except that we may undertake credit checking and use information supplied by you in accordance with clause 7 and 8, and we may process your Application and prepare to activate the Services, order required Purchase Equipment (if any), order required Data & Internet Services Related Equipment (if any), order required Voice Services Related Equipment, and deliver the required Rental Equipment (if any). If your Application is refused or cancelled, we may charge you an amount equal to our costs for this work. Your Application will be deemed to be accepted by us at the earlier of the date that your Services are activated, any Purchase Equipment is ordered, any Data & Internet Services Related Equipment is ordered, any Voice Services Related Equipment is ordered, or any required Rental Equipment is delivered to you.
- 1.5 Our right to vary: Subject to Part 23 of the Act, we may vary any part of this standard customer agreement, including the Service Level Agreements, Call Australia Rate Sheets and other charges, at any time.

### 2. PROVISION OF SERVICES AND EQUIPMENT

- 2.1 Services provided: We will provide you with the Services nominated, or reasonably assumed to be nominated by you in your Application and other services we may agree in writing to provide to you from time to time, on the terms of this standard customer agreement.

- 2.2 Equipment provided: We will provide you with the Rental Equipment and/or Purchase Equipment nominated, or reasonably assumed to be nominated, by you (if any) in your Application and other Rental Equipment and/or Purchase Equipment that we may agree in writing to provide to you from time to time, on the terms of this standard customer agreement.
- 2.3 Packages provided: Rental Equipment, Purchase Equipment, Maintenance and Software is only available to you if you nominate Voice Services, Data & Internet Services, Mobile Services, or any other Services in your Application as a Package.
- 2.4 Business Purposes: The Package or the Services are only available to customers who are business customers and who will use the Service or the Package for business purposes only. The Services or the Package are not available to you if you use the Services or the Package for purposes other than business purposes. If you have indicated in your Application that you will use the Services or the Package for business purposes only, then:
- (a) you warrant that the Services or any and all components of the Package will be used for business purposes and the amounts payable under this standard customer agreement are outgoings necessarily incurred by you in carrying on your business; and
  - (b) we are not liable to you for any statements made regarding your legal rights or taxation position and you warrant that you have satisfied yourself in relation to such matters.

### 3. CHARGES & PAYMENT

- 3.1 Charges: You must pay the charges for the provision of the Services or the Package, at the relevant rates as notified to you from time to time, as well as any other charges incurred by you in accordance with this standard customer agreement.
- 3.2 Invoicing: We will usually invoice you monthly for charges due under this standard customer agreement. Our first invoice will be issued either in the month that we commence provisioning Services to you or, in our discretion, the following month. We may vary invoice frequency at our discretion. We may issue interim invoices. We may bill you more often if you exceed your spend limit (see clause 4.2).
- 3.3 Method of Billing: We will usually invoice you in advance for periodic charges relating to Data & Internet Services and in arrears for other periodic charges, connection and service fees (where applicable) and usage charges, unless expressly stated to the contrary or we expressly agree in writing otherwise. We will endeavour to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods (for example, if charges made by a Supplier are not received by us until a later billing period). We will endeavour to not bill you more than three months in arrears.
- 3.4 Time & Method for Payment: All charges are due and payable by the due date shown on the invoice ("**Due Date**"). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by us.
- 3.5 Cancelled or failed payments: If an invoice is paid by cheque and that cheque is dishonoured, cancelled or otherwise fails, you will be liable for a charge which will be added to your next invoice.
- 3.6 Supplier charges:
- (a) Our charges to you may pass on any charges another Supplier charges to us (including increases and special or one-off charges).
  - (b) You will pay us any charge which any other Supplier or other person renders to us:
    - (i) if you approach that other Supplier or person directly, or otherwise than through us;
    - or

(ii) for connection or initiation of any service or for cancellation of any service.

(c) If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with this clause 3.6.

3.7 Default charge: If you are a company, we may impose a default charge on any part of the charges not paid to us by the Due Date. That charge will be calculated daily on each outstanding amount from the Due Date for payment of that amount until the date that amount is paid in full. At any time the charge will be a rate per annum determined by us to be 3% above the Commonwealth Bank's corporate overdraft reference rate at that time.

3.8 Administration Fee: If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees, we may recover these amounts from you in addition to the overdue amounts.

3.9 Taxes & GST: Unless expressly stated otherwise, charges for the Services or the Package are exclusive of government taxes, duties (including stamp duty), imposts or levies, which will be your responsibility and will be itemised on your invoice. Unless expressly stated otherwise, all fees, charges and other amounts payable (and all quotes given) under or in accordance with the terms of this standard customer agreement (including charges for Services or the Package, repair fees, late payment charges, Services Early Termination Charge, reconnection fees, installation costs) are exclusive of GST and you must pay to us in addition to the charges an amount equal to any GST payable on the supply of the Services or the Package. That additional amount is payable at the same time as any part of the charges for the Services or the Package is payable. We will issue a tax invoice to you for the supply of those Services or the Package at or before that time.

3.10 Set off: You must pay all charges without any set off, counter claim or deduction. We may set off any amount payable to you against any amount payable by you to us.

3.11 Records determinative: Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.

#### **4. SECURITY DEPOSIT & SPEND LIMITS**

4.1 Security: We may require you to lodge a security bond as a condition of our providing the Services or the Package to you. You authorise us to deduct from that bond any amounts remaining owing to us 30 days after the date of an invoice which has been issued to you. If you have paid all of our invoices on time for 12 consecutive months, we may (at our discretion) elect to refund the bond or credit it to your account.

4.2 Spend limits: We may from time to time set a dollar limit for the amount we will allow you to spend on the Services or the Package during a month ("**spend limit**"). The spend limit is only a guideline for our credit management action, which may be varied depending on the amount by which you have exceeded your spend limit, and may include the following:

- (a) verbal advice to you of total cumulative charges;
- (b) written correspondence to you advising the value exceeding the spend limit; and
- (c) an interim invoice, upon which payment must be received, in order to continue supply of the Services or the Package.

- 4.3 We will not monitor your Service for excessive or unusual usage or your level of liability for charges for such usage. You acknowledge and agree that in addition to our rights under clause 11 we can suspend, cancel or bar your Service if it is used in an excessive or unusual way, but do not promise to do so. If we do suspend, bar or cancel your Service, you still have to pay for any charges incurred for any excessive or unusual usage (regardless of how caused) and the provisions relating to liability and indemnity also remain unaffected. There may be excessive or unusual use if you have a call that remains connected for an unusually long period of time or where an unusually large volume of calls to premium-rate or international services start being made from your Service. We will not be responsible for any equipment tampering or service fraud. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to a Service or telecommunications equipment, please contact us and we will endeavour to provide such information or direct you to an appropriate source of information.

## **5. TRANSFER OF YOUR SERVICES TO US**

- 5.1 Changing your current arrangements: If in providing the Services or the Package we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause.
- 5.2 Transferring to us:
- (a) You authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name.
  - (b) You agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request.
  - (c) You will immediately pay to your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to our name.
- 5.3 Existing credits: If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.
- 5.4 Existing debts: If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you must pay your previous Supplier that amount.
- 5.5 Indemnity: We will not accept any liability for any amounts owing by you to your previous Supplier for services which your previous Supplier provided to you prior to the commencement of the Services. You indemnify us against any claims made by your previous Supplier against us in relation to any such amounts.

## **6. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER**

- 6.1 Transferring from us: If you (or a Supplier acting with your authority) ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.
- 6.2 Termination of Services on transfer: The provision of Services ceases on the date on which we transfer your Services to another Supplier.
- 6.3 Invoicing: We will endeavour to invoice you for Services which you transfer to another Supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.

6.4 Indemnity: We will not accept liability for any amounts owing by you to a Supplier or other person. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.

## 7. PERSONAL INFORMATION AND BUSINESS INFORMATION

7.1 This clause 7 applies where you are a natural person or a business. If you are a natural person, we may collect Personal Information about you including but not limited to your electronic contact details such as email ("**your Personal Information**"). If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("**business information**").

7.2 You acknowledge and agree that:

- (a) if you do not supply the information we request on our Application, we may not be able to provide the Services or the Package to you;
- (b) we will use your Personal Information or business information:
  - (i) to assess any application by you for Services or the Package to be provided by us;
  - (ii) to collect payments that are overdue in respect of any Services or the Package provided by us;
  - (iii) to provide the Services or the Package to you (including the investigation or resolution of disputes relating to any Services or the Package provided to you); and
  - (iv) we may use your Personal Information or business information to send commercial electronic messages, as defined under the *Spam Act 2003* (Cth);
- (c) we will also disclose or transfer your Personal Information or business information:
  - (i) to other Suppliers for the purpose of enabling us to provide the Services or the Package to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services);
  - (ii) to other Suppliers about your account, including particulars of calls and call charges;
  - (iii) to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and ACA) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services or the Package for the purpose of enabling investigation and resolution of those disputes or complaints;
  - (iv) if you elect to participate in an affinity or loyalty program with us, to other entities with whom we have established or will establish the affinity or loyalty program, to enable you to participate in the affinity or loyalty program;
  - (v) to other entities who provide services to us related to the provision of the Services or the Package to you, including a mail house and resellers (or contractors engaged by resellers) to enable them to provide those services to us or administer payment arrangements in connection with those services;
  - (vi) to anyone to whom this standard customer agreement is sold, transferred or otherwise assigned in accordance with clause 16.2;
  - (vii) to our Related Bodies Corporate, partners, agents, or dealers; or
  - (viii) where you have otherwise consented.

- 7.3 You acknowledge that in certain circumstances, we may be permitted or required by applicable laws to use or disclose Personal Information or business information about you, including your name, address, service number and other details. Such uses or disclosures may include, without limitation:
- (a) disclosures to the operator of the Integrated Public Number Database ("IPND");
  - (b) disclosures to law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
  - (c) uses or disclosures to assist in the recovery of lost or stolen equipment;
  - (d) uses or disclosures in accordance with orders made by a court or if required or authorised by law;
  - (e) uses or disclosures to lessen or prevent serious threats to an individual's life, health or safety, or to public health or safety; or
  - (f) uses to assist in our internal investigations into suspected fraud or other unlawful activities.
- 7.4 Any calls you make to our customer call centres may be monitored and/or recorded for quality assessment, administration and/or customer information purposes.
- 7.5 Unless you ask us not to, we will use your Personal Information or business information to:
- (a) provide information to you about other goods or services which we or any of our Related Bodies Corporate or any of our partners, associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, and agents may offer to you;
  - (b) provide information to our Related Bodies Corporate, our partners and associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, and agents so that they can provide information to you about goods and services they offer; and
  - (c) send commercial electronic messages as defined under the *Spam Act 2003* (Cth).
- 7.6 If you do not want us to use your Personal Information or business information in this way, you may ask us not to by ticking the appropriate box in your Application or by contacting our privacy officer on 1800 007 000.
- 7.7 We will provide you with access to most Personal Information or business information that we have about you, but sometimes that will not be possible, in which case we will tell you why. If you want to find out what information we have about you contact our privacy officer on 1800 007 000.
- 7.8 If you think that any Personal Information or business information we hold about you is not accurate, complete and up-to-date, you may request us to correct that information. We will take reasonable steps to correct such Personal Information or business information unless we disagree with you about whether the information is accurate, complete and up-to-date.
- 7.9 Clause 8 contains further information on how we may also use your Personal Information and business information to perform credit checks.

## **8. CONSENT TO CREDIT CHECK**

- 8.1 If you are a company, please note that we will be performing credit checks on you.

8.2 If you are a natural person you:

- (a) understand that the Privacy Act allows us to give a Credit Reporting Agency certain Personal Information about you. The information we disclose to a Credit Reporting Agency includes permitted information which will allow you to be identified, the fact that you have applied for credit and the amount, the fact that we are a current credit provider to you, repayments that are more than 60 days overdue and for which debt collection action has started, information that in our opinion you have committed a serious credit infringement (i.e. acted fraudulently or shown an intention not to comply with your credit obligations), and cheques drawn by you for \$100 or more which have been dishonoured more than once;
- (b) agree:
  - (i) to our obtaining from a Credit Reporting Agency a credit report containing information about your personal credit worthiness for the purpose of assessing your application and for the purpose of assisting in collecting overdue payments; and
  - (ii) to our obtaining information about your commercial activities or commercial creditworthiness from any business which provides information about the commercial credit worthiness of persons, your accountant or any other supplier to you;
- (c) agree to our giving to and obtaining from any credit provider named in your Application or in a credit report on you issued by a Credit Reporting Agency, information about your credit arrangements for the purposes of:
  - (iii) assessing your Application;
  - (iv) notifying a default by you;
  - (v) allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers; and
  - (vi) generally assessing your credit worthiness.

8.3 You understand the information exchanged can include any information about your personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

## 9. YOUR OBLIGATIONS

9.1 Compliance: You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services or the Package, and their use.

9.2 Equipment: You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACA under the Act unless such connection is made in accordance with a connection permit issued under the Act or connection rules made under the Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.

9.3 Resupply: You must not resupply the Services, Equipment, Software, and/or Maintenance to anyone else without our prior written consent, which we may withhold in our absolute discretion.

9.4 Liability for Charges: You are liable to us for all charges in relation to the Services or the Package whether or not you authorised the use of that Service or any and all components of the Package by another person.

- 9.5 Change of address: If you change your address, phone number or other billing contact details, you must notify us within 14 days.
- 9.6 Use of Services etc: You must not use the Services, Value Added Features, Software, any of the Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment or any and all components of the Package in such a manner that may:
- (a) menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person;
  - (b) expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute;
  - (c) involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;
  - (d) damage our, or our Supplier's, network or systems or cause the quality of the Services to be impaired;
  - (e) infringe any person's intellectual property or other rights; or
  - (f) be unlawful.

You agree to comply with the Acceptable Use Policies set out on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au).

- 9.7 Unsolicited data: You must not use the Services, Voice Services Related Equipment, Data & Internet Services Related Equipment, Value Added Features, Equipment or Software, to send unsolicited information to third parties.

## 10. SERVICE NUMBERS, CLI & IPND

- 10.1 Ownership of numbers: You acknowledge that the Government owns service numbers such as telephone numbers and mobile numbers ("**Service Numbers**"). The Telecommunications Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Telecommunications Numbering Plan. You acknowledge that you do not own or have any legal interest or goodwill in any Service Number or PIN issued to you and:
- (a) you are entitled to continue to use any Service Number we issue to you except in circumstances where the Telecommunications Number Plan allows us to recover the Service Number from you; and
  - (b) you can transfer a Service Number or PIN to another person if you get our consent first.
- 10.2 Caller Line Identification ("**CLI**"):
- (a) If you do not bar CLI in respect of calls made from your equipment then you agree that when a call is made or SMS sent from your equipment your Service Number may be sent automatically to the equipment of the called party.
  - (b) You agree that if a party calling your equipment has not barred CLI in respect of a call made from their equipment then the Service Number of the calling party may be displayed on the screen of your equipment at the time the call is made.
- 10.3 IPND: We, like other Suppliers, are required by law to provide your name, address, Service Number and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only provided for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service

organisations or law enforcement agencies. You must contact us if you wish to have your IPND data altered in any way.

## **11. TERMINATION, SUSPENSION & CANCELLATION**

11.1 Our termination rights: We may terminate this standard customer agreement or suspend, limit or cancel the provision of any Service or Package, without prior notice to you if:

- (a) you fail to pay any amount due under this standard customer agreement by the due date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within seven days after we give you that notice;
- (b) subject to paragraph (a), you breach any provision of this standard customer agreement;
- (c) you are declared bankrupt;
- (d) a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors;
- (e) we reasonably determine that such action is desirable or necessary for the purpose of network maintenance or restoration of any part of our or our Supplier's network;
- (f) we are unable to enter your premises to inspect or maintain any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you;
- (g) you are in breach of a licence, permit or authorisation relating to the use of your telecommunications equipment, the Equipment, the Package, or the Services;
- (h) you do not provide security as required by us;
- (i) we reasonably suspect you of fraud or attempted fraud;
- (j) you vacate the premises to which we had been supplying Services or a Package to you;
- (k) you change your address, phone number or billing contact details without notifying us in accordance with clause 9.5;
- (l) we reasonably believe that your usage of the Services is unusually high;
- (m) we are unable to supply or continue to supply you with the Services or any and all components of the Package due to the cancellation, suspension or termination of any agreement with our Suppliers, for whatever reason;
- (n) we are unable to supply or continue to supply you with the Services or any and all components of the Package due to geographical coverage, capacity or technical capability limitations;
- (o) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy; or
- (p) we are permitted or required to do so by law.

11.2 Termination on your death: If you are an individual, in the event of your death, we reserve the right to terminate this standard customer agreement without prior written notice as soon as we become aware of your death. All outstanding charges under this standard customer agreement must be paid by your estate.

- 11.3 Ongoing liability: You remain liable for all charges payable by you under this standard customer agreement up to the time of termination, which amounts will become immediately due and owing.
- 11.4 Collection agents: We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.
- 11.5 Unclaimed amounts: In the event that your account is terminated and monies are owed to you by us, we will notify you of these amounts. In the event you do not claim those monies within three months of being notified we will retain the money and you agree that you will have no further claim in relation to those monies.
- 11.6 Reconnection fee: If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (except if our action resulted from our mistake or manifest error).
- 11.7 Effect of termination: The termination or expiry of your contract for the rental of Rental Equipment on the terms specified in Part B, or for Maintenance and/or Software on the terms specified in Part C, or for the Purchase Equipment specified in Part G, will not automatically terminate your contract(s) for the supply of Services.
- 11.8 Survival of provisions: This clause and the following clauses will continue to apply despite termination or expiry of this standard customer agreement or the suspension, limitation or cancellation of any Services or any and all components of the Package:
- (a) General Terms: clause 3 (charges and payments), clause 7 (personal information and business information), clause 8 (consent to credit check), clause 11 (termination, suspension & cancellation), clause 12 (our limitation of liability), clause 13 (your indemnity), clause 14 (confidentiality), clause 16 (assignment), clause 18 (general), clause 19 (interpretation and definitions);
  - (b) Part A: clause 22 (minimum monthly spend), clause 24 (termination of services agreement), and clause 25 (interpretation and definitions);
  - (c) Part B: clause 27.5 (additional termination rights), clause 29 (payment), clause 30 (ownership), clause 31.1(e) (inspection or testing), clause 34 (destruction), clause 35 (our action), clause 39 (termination), and clause 40 (definitions);
  - (d) Part C: Schedule 5 (software);
  - (e) Part D: clause 53 (voice service charges), clause 54.5 (access to premises), clause 57 (termination), and clause 58 (definitions);
  - (f) Part E: clause 62 (data & internet service charges), clause 63 (shifts/moves/upgrades), clause 64 (indemnity), clause 70.8(e) (inspection or testing), clause 70.8(f) (removal), clause 70.12 (destruction), clause 70.13 (our action), clause 72 (termination), and clause 73 (definitions);
  - (g) Part F: clause 76 (minimum term), clause 77 (minimum monthly spend), clause 80 (mobile service charges), clause 81 (mobile number portability), clause 82 (mobile equipment & mobile plans), clause 83 (changing plans), clause 86 (termination), and clause 87 (definitions); and
  - (h) Part G: 89.4 (additional termination rights), 91 (payment), 92 (ownership), 93 (things you must do), 94 (things you must not do), 95 (insurance), 96 (destruction), 97 (our action), 99 (termination), and 101 (definitions).

## 12. OUR LIMITATION OF LIABILITY

- 12.1 Exclusion of implied conditions and warranties: To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied by legislation, the common law, equity, trade, custom or usage or otherwise relating to the provision by us of the Services, Maintenance, Software, the Equipment, or any other equipment or otherwise in connection with this standard customer agreement are expressly excluded.
- 12.2 Limitation of liability:
- (a) To the maximum extent permitted by law, we, and our Related Bodies Corporate, will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, any and all components of the Package, or any other equipment under this standard customer agreement or otherwise in connection with the relationship established by this standard customer agreement, including any loss or damage caused by our negligence or any fundamental breach of this standard customer agreement.
  - (b) Subject to clause 12.2(c) our liability, and that of our Related Bodies Corporate, for any direct, indirect or consequential loss or damage arising out of or otherwise in connection with this standard customer agreement, including for any breach of any term, condition, warranty or under any remedy implied by law (which cannot be excluded), will be limited at our option to any one or more of the following:
    - (i) if the supply relates to goods, the repair or replacement of the goods or the payment of the cost of having the goods repaired or replaced; and
    - (ii) if the supply relates to services, the resupply of those or equivalent services or the payment of the cost of having those services resupplied.
  - (c) Clause 12.2(b) only applies where those goods or services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption and section 68A(2) of the *Trade Practices Act 1974* (Cth) does not apply.
- 12.3 Exclusion of liability:
- (a) To the maximum extent permitted by law, we, and our Related Bodies Corporate, have no liability to you or to any other person for:
    - (i) acts or defaults of any Supplier or other person;
    - (ii) faults or defects in any facility or equipment (including the Equipment and Software) we supply to you or the Services, which are caused by or contributed to by your, or a third party's, conduct or misuse; or
    - (iii) faults or defects that arise in services not provided under this standard customer agreement (even if they are connected, with our consent, to Services which we have arranged under this standard customer agreement), which are due to incompatibility with the Services, Software, Rental Equipment and Purchase Equipment, or any other equipment that we or our Suppliers provide to you.
  - (b) To the maximum extent permitted by law, our Suppliers have no liability to you in connection with this standard customer agreement.

### **13. YOUR INDEMNITY**

- 13.1 You indemnify us and will keep us, and our Related Bodies Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:
- (a) your breach of this standard customer agreement;
  - (b) any claim or demand against us (including for negligence) by any person other than you, which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
  - (c) any claim or demand (including for negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
  - (d) any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property;
  - (e) the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
  - (f) any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving the use of the Services, or any and all components of the Package, or any other equipment by you.

### **14. CONFIDENTIALITY**

- 14.1 Confidential Information: We retain all intellectual property rights in any information relating to the Services, any and all components of the Package, the design or operation of the Services and any and all components of the Package and other technical information relating to the provision of the Services and any and all components of the Package ("**Confidential Information**").
- 14.2 Protecting Confidentiality: You will keep the Confidential Information confidential, and will not allow any written or electronically recorded material to be copied.
- 14.3 Obligations on termination: On the termination of the standard customer agreement for any reason, you will return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.
- 14.4 Manner of supply: You will keep confidential the manner in which we arrange Services, any and all components of the Package, including our charges, savings, and other financial information.
- 14.5 Restrictions on use: You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

### **15. FORCE MAJEURE**

- 15.1 Events beyond our reasonable control: We are not liable for:
- (a) any delay in installing any Service, any and all components of the Package, or any other equipment;
  - (b) any delay in correcting any fault in any Service, any and all components of the Package, or any other equipment;
  - (c) failure or incorrect operation of any Service, any and all components of the Package, or any other equipment;
  - (d) Service outages; or

- (e) any other delay or default in complying with the standard customer agreement, if it is caused directly or indirectly by any event beyond our reasonable control.

## **16. ASSIGNMENT**

- 16.1 Consent to assignment: You must not assign, transfer or otherwise deal with any of your rights or obligations under this standard customer agreement, except with our prior written consent.
- 16.2 We may assign: We may (subject to your rights under this standard customer agreement) assign, transfer, sell or otherwise deal with our rights under this standard customer agreement and/or the Equipment and/or any component of the Package, and your consent is not required.

## **17. CARRIERS & CARRIAGE SERVICE PROVIDERS**

- 17.1 You represent that you are not a carrier or a carriage service provider (as those terms are defined in the Act). If you are or become a carrier or carriage service provider, you must promptly notify us of that fact and we may immediately terminate this standard customer agreement by notice to you.

## **18. GENERAL**

- 18.1 Authority: If you are a business customer then you agree that if we need your consent to undertake certain actions, then provided we act in good faith, we may rely upon the authority of any of your employees, who warrants to be authorised to provide consent on your behalf.
- 18.2 Assurances: You warrant that you have provided full and accurate Personal Information and business information to us in connection with this standard customer agreement and your Application and you have full power and authority to enter this standard customer agreement and Application.
- 18.3 Governing law:
  - (a) This standard customer agreement and your Application are governed by the laws of New South Wales.
  - (b) Notwithstanding paragraph (a), with respect to any applicable cooling-off period legislation, the governing law will be the law of the state or territory in which the contract was formed.
- 18.4 Entire agreement: This standard customer agreement contains the whole understanding between us and supersedes all prior arrangements and understandings between us in connection with it.
- 18.5 Promotions: From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this standard customer agreement and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.
- 18.6 No reliance: You acknowledge that you enter into this standard customer agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly specified in this standard customer agreement.
- 18.7 No waiver: The failure by either party to exercise any right or remedy under this standard customer agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.
- 18.8 Severability of provisions: If a provision of this standard customer agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this standard customer agreement will not be affected.
- 18.9 Disputes: You may complain in writing or orally by calling our customer service number on 1300 761 488 or the contact number located on our website at [www.callaustralia.com.au](http://www.callaustralia.com.au). We will comply with our customer complaints policy located on our website at [www.callaustralia.com.au](http://www.callaustralia.com.au), when endeavouring to resolve your complaint. If we are not able to resolve your complaint to your

satisfaction, you may refer your complaint to the Telecommunications Industry Ombudsman or the ACA.

- 18.10 Notices: Any notice, demand, consent or other communication required to be given to either of us must be delivered personally or sent by prepaid mail or by facsimile to the address of the other last notified.
- 18.11 Blank Spaces: You authorise us to complete any blank spaces or incomplete information in the MNP Customer Authorisation required for the Mobile Services and in your Application and including but not limited to the serial numbers and other identification details of the Equipment, any and all components of the Package and any other equipment being provided to you.
- 18.12 Agency: We may engage an agent, dealer, contractor or franchisee to conduct any aspect of service or equipment provision and maintenance under this standard customer agreement. You acknowledge that we may enter into this standard customer agreement as principal or as agent. Where we enter into this standard customer agreement as an agent, all references to our rights are to be read as references to us and our principal. Our performance of this standard customer agreement may, at our discretion, be carried out by a Related Body Corporate of Call Australia or any other party arranged by Call Australia or a Related Body Corporate (and your obligations under this standard customer agreement will be owed to Call Australia or that Related Body Corporate or that other party, as relevant).

## 19. INTERPRETATION & DEFINITIONS

### 19.1 Definitions:

The following definitions apply unless the context requires otherwise:

**ACA** means the Australian Communications Authority.

**Act** means the *Telecommunications Act 1997* (Cth).

**Application** has the meaning given to it in clause 1.2 of the General Terms.

**Business Hours** means 9am to 5pm on a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**Call Australia Rate Sheets** means Call Australia's standard rate sheets for the Services or any and all components of the Package as amended from time to time, copies of which are available at our offices.

**Credit Reporting Agency** has the meaning given in section 6 of the *Privacy Act*.

**Data & Internet Services Related Equipment** means equipment that is not Equipment, Other Equipment or Voice Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services as specified in Part E.

**Data & Internet Services** mean our internet access, e-mail facilities, wide area networking services, web-page facilities, broadband, digital subscriber line, frame relay and any other related facility or services that we may provide from time to time, including any technical and other advice provided by us, to be provided to you under Part E and as specified in your Application.

**Data & Internet Equipment** or **D&IE** means equipment which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services and as specified in your Application.

**Eligible Calls** for Voice Services are Local Calls (voice not data), National Calls (voice not data), International Calls (voice not data), Fixed to Mobile Calls (voice not data), 13, 1300, 1800 Inbound

Services. For clarity, they do not include PSTN data calls, calls to 13, 1300, 1345, calls to international mobiles, calls to time and weather and or any other call type not specifically identified as being an Eligible Call (including where so identified under a Call Australia Rate Sheet).

**Equipment** means all or any of the Data & Internet Equipment, Mobile Equipment, Rental Equipment, Purchase Equipment, or other equipment specified in your Application but does not include Other Equipment.

**Equipment Charge** means the monthly charge for the Rental Equipment and/or Purchase Equipment as specified in your Application and as varied in accordance with this standard customer agreement.

**GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including but not limited to any copyright, trade mark, domain name, business name, design, patent, circuit layout, semi-conductor or other similar proprietary rights and licences and sub-licences of such rights (irrespective of whether or not such rights are registered, or formal or informal); trade secrets, technical or non-technical data, knowledge, information or documentation; secret or confidential operations or information; business systems, business methods or business plans (whether registered, registrable, formal, informal or otherwise); customer lists, supplier lists and other proprietary lists, names, addresses or information not generally known; techniques, diagrams, data, proofs, prints, particulars, inventions and prototypes.

**Maintenance** means any maintenance we provide as specified in your Application and under the terms of Part C of this standard customer agreement.

**Maintenance Agreement** means the contract with us for the supply of Maintenance under this standard customer agreement.

**Maintenance Charge** means the charge for Maintenance as specified in your Application and as varied in accordance with this standard customer agreement.

**Minimum Monthly Spend** means the minimum monthly spend as specified in your Application and as varied from time to time in accordance with this standard customer agreement.

**Minimum Term or Minimum Term Contract** means the term of this standard customer agreement as specified in your Application.

**Mobile Equipment** means any equipment as specified in your Application that is not Data & Internet Services Related Equipment, Voice Services Related Equipment or SIM cards, but may include handsets, accessories and equipment supplied by us.

**Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you under Part F and as specified in your Application.

**MNP Customer Authorisation** means the MNP Customer Authorisation in your Application on the terms of this standard customer agreement.

**Other Equipment** means equipment that is not Equipment provided by us.

**Other Software** means software that is not Software provided by us.

**Package** means a bundled offering of any or all Services, Equipment, Software and/or Maintenance which is supplied on the terms of Part A and as described in your Application.

**Part** refers to any section of this standard customer agreement so described.

**Peripheral equipment** means the peripheral equipment in your Application marked with an asterisk (\*), and which is part of the Rental Equipment or Purchase Equipment, but it is not serviced by us as part of Maintenance.

**Personal Information** means any information or document referred to in section 276(1) of the Act and any personal information within the meaning given in section 6 of the *Privacy Act*.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Purchase Equipment** means the equipment specified in your Application and supplied to you in accordance with Part G, in which ownership of that equipment transfers to you on the expiry of the Minimum Term.

**Purchase Equipment Agreement** means the contract with us for the supply of Purchase Equipment under this standard customer agreement.

**Purchase Equipment Charge** means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this standard customer agreement, including any residual amounts owing to us at the expiry of the Minimum Term (such amounts which must be paid by you before ownership transfers to you, in accordance with Part G).

**Related Body Corporate** has the same meaning as in section 9 of the *Corporations Act 2001* (Cth).

**Rental Agreement** means a contract for the rent of Equipment under this standard customer agreement.

**Rental Equipment** means the Equipment you rent as specified in your Application and in accordance with Part B.

**Rental Equipment Charge** means the monthly charge for the Rental Equipment as specified in your Application and as varied in accordance with this standard customer agreement.

**Service Level Agreement** means the Service Level Agreement as specified in your Application.

**Services** means the Data & Internet Services, Mobile Services, Voice Services or other services specified in your Application that we supply to you under this standard customer agreement.

**Services Agreement** means the contract with us for the supply of Services under this standard customer agreement.

**Site** means the site described in your Application.

**Software** means the software we provide as specified in your Application and under the terms of Part C of this standard customer agreement but does not include Other Software.

**standard customer agreement** means each of the contracts described in clause 1.1 of these General Terms.

**Supplier** means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.

**Value Added Features** means any of the Mobile Services value added features as specified in your Application.

**Voice Services** means the telecommunications services to be provided to you under Part D and as specified in your Application.

**Voice Services Related Equipment** means equipment that is not Equipment, Other Equipment or Data & Internet Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Voice Services as specified in Part D.

**we, us** means the entity referred to in clause 1.1 of the General Terms.

**you, your** means the customer, as specified in your Application.

19.2 Interpretation:

- (a) Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a clause or schedule is a reference to a clause of or a schedule to, this standard customer agreement.
- (g) A reference to an agreement or document (including a reference to this standard customer agreement) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this standard customer agreement or that other agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to dollars and \$ is to Australian currency.

19.3 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

## **PART A –PACKAGES**

### **20. APPLICATION OF THIS PART**

- 20.1 This Part A applies if you have requested in your Application that we supply you with a Package and sets out the terms and conditions on which we will supply you with that Package. The supply of a Package means that you enter into separate agreements with us for the supply of certain Services, Equipment, Software, and/or Maintenance as specified in your Application.
- 20.2 To the extent relevant, the General Terms apply to this Part A as though specified in full in this Part A.
- 20.3 The Minimum Term, the Minimum Monthly Spend, the Services, the Rental Equipment, Purchase Equipment, Software, Maintenance, the Rental Equipment Charges, the Purchase Equipment Charges, Maintenance Charges, and other specific conditions relating to your Package will be specified in your Application, as varied in accordance with this Part A.
- 20.4 To the extent relevant, your acquisition of any or all of the Services, Equipment, Maintenance, and Software under a particular Package may allow you to obtain a saving if you meet the eligibility requirements specified in your Application (see clause 22.3).
- 20.5 The provisions of Parts of this standard customer agreement, as relevant to Services, Equipment, Maintenance, and Software acquired by you under a Package, will apply to this Part A to the extent that those provisions are consistent with this Part A.

### **21. ELIGIBILITY REQUIREMENTS TO RECEIVE PACKAGE**

- 21.1 To be eligible to receive a particular Package, you must satisfy the eligibility requirements specified in your Application. These eligibility requirements could include:
- (a) a requirement for you to apply for certain Services, Equipment, Maintenance, and Software in your Application;
  - (b) a requirement for you to apply for a minimum and a maximum number of Equipment in your Application;
  - (c) agree to the Minimum Term and Minimum Monthly Spend requirements for that Package;
  - (d) use the Package for business purposes only;
  - (e) meet our minimum credit requirements; and
  - (f) satisfy all other eligibility criteria and pre-conditions specified in your Application (including continuing to satisfy all those criteria and conditions during the term of your agreement with us).

### **22. MINIMUM MONTHLY SPEND**

- 22.1 Charges: Each monthly payment will comprise the amount of the minimum monthly spend for the Services and the amount for other components of the Package (any or all of Equipment, Maintenance, and Software) as specified in your Application ("**Minimum Monthly Spend**"). There may also be one-off connection and set-up charges which are identified in your Application and any other charges which we can charge under this standard customer agreement. In our absolute discretion we may invoice you in advance for the Minimum Monthly Spend.
- 22.2 Minimum Monthly Spend:
- (a) You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.

- (b) The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of supply in the relevant month.

22.3 Calculation of savings: To the extent relevant, the amount of the savings you make will be calculated by us based on your Minimum Monthly Spend. The reference to savings in this clause is to the amount that we charge you as a result of your taking out the Package, as compared with the amount that we would otherwise charge you.

22.4 Your right to vary the Minimum Monthly Spend: To the extent permitted in your Application for a particular Package:

- (a) at any time during the Minimum Term, you can choose to increase the Minimum Monthly Spend, with our agreement;
- (b) at any time during the Minimum Term, you may notify us in writing that you wish to add other Services, Equipment, Maintenance, Software to your Package and by doing so you acknowledge that your Minimum Monthly Spend may increase as a result;
- (c) subject to paragraph (d), for the duration of the Minimum Term, you may within one month prior to each 12-month anniversary of the date of delivery of the relevant Equipment, notify us in writing that you wish to vary the Minimum Monthly Spend;
- (d) to the extent relevant, if the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the savings that you will make based on your chosen new minimum monthly spend and our then current Call Australia Rate Sheets;
- (e) you cannot decrease your Minimum Monthly Spend below an amount equal to:
  - (i) the Equipment Charges; and
  - (ii) 70% of your average actual spend on Eligible Calls for Voice Services as billed by us for the 3 months immediately prior to the date of your notification to decrease the Minimum Monthly Spend in accordance with clause 22.4 (c).
- (f) if we do not receive any notification from you to vary the Minimum Monthly Spend within the time frame allowed by paragraph (c), then you will continue to receive the Package on the same terms and conditions until one month prior to the following 12 month anniversary date when you will again have an opportunity to vary your Minimum Monthly Spend in accordance with this clause 22.4.

## 23. PERIOD OF AGREEMENT

23.1 Minimum Term: The Minimum Term of this standard customer agreement is the minimum term as specified in your Application, commencing on the date the relevant Equipment or Software is installed or delivered (as the case may be), or Maintenance is provided, whichever is earlier.

23.2 Extension:

- (a) Unless you notify us in writing at least one month prior to the expiration of the Minimum Term that you will be delivering the Equipment to us at the expiration of the Minimum Term, the Minimum Term of this standard customer agreement will be automatically extended from month to month ("**Holding Over Period**") at the same rate and on the same terms and conditions.
- (b) We may terminate the Holding Over Period by demanding possession of the Equipment from you. You may terminate the Holding Over Period by delivering the Equipment to us. In either case, this standard customer agreement will terminate on the date of delivery of the Equipment to us.

## 24. TERMINATION OF SERVICES AGREEMENT

24.1 Termination by you: You may terminate the Services Agreement:

- (a) in accordance with this clause 24, in which case the consequences of termination specified in clause 24.3(b) will apply; or
- (b) otherwise by giving us 30 days prior written notice, in which case the consequences of termination specified in clause 24.3(a) will apply.

24.2 Termination by us: We may terminate the Services Agreement:

- (a) by giving you 30 days prior written notice; or
- (b) if you cease to be eligible to receive the Package as specified in clause 21.1; or
- (c) in accordance with clause 11.1 of the General Terms and the relevant termination provisions specified in any Part that applies to the supply of the Package.

24.3 Consequences of termination:

- (a) If the Services Agreement is terminated by us in accordance with clause 24.2(b) or clause 24.2(c) or by you in accordance with clause 24.1(b) then we may require the following:
  - (i) within seven days of termination you must pay to us a Services Early Termination Charge calculated in accordance with clause 24.4;
  - (ii) you must pay to us any outstanding charges payable under this standard customer agreement including but not limited to the Maintenance Charge, the monthly charge for the Software (as the case may be), and any duty payable;
  - (iii) you must continue renting or paying for the Equipment, at the same charges specified in your Application, in accordance with the terms of Part B or Part G (as the case may be) of this standard customer agreement, for the remainder of the Minimum Term; and
  - (iv) you must, if we request and at our option, either immediately:
    - (A) return (at your cost) all of our or our Supplier's Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be);
    - (B) make such equipment available for our, or our Supplier's, collection (at your cost); and
    - (C) pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be) and making repairs that we determine are necessary; or
    - (D) if we are not able to repossess such Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be), an amount equivalent to the sum of:
      - (D1) our current installation fees for that equipment as specified in our Call Australia Rate Sheet or as advised by Call Australia;
      - (D2) any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be); and

(D3) any interest payable.

(b) If the Services Agreement is terminated by us in accordance with clause 24.2(a), or by you in accordance with clause 24.1(a) then:

- (i) you must pay to us any outstanding charges payable under this standard customer agreement including but not limited to the Maintenance Charge, the monthly charge for the Software (as the case may be), and any duty payable;
- (ii) you must continue renting or paying for the Equipment, at the same charges specified in your Application, in accordance with the terms of Part B or Part G (as the case may be) of this standard customer agreement, for the remainder of the Minimum Term; and
- (iii) you must, if we request and at our option, either immediately:
  - (A) return (at your cost) all of our or our Supplier's Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be);
  - (B) make such equipment available for our, or our Supplier's collection (at your cost); and
  - (C) pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be) and making repairs that we think necessary; or
  - (D) if we are not able to repossess such Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be), an amount equivalent to the sum of:
    - (D1) our current installation fees for that equipment as specified in our Call Australia Rate Sheet;
    - (D2) any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment and/or Voice Services Related Equipment (as the case may be); and
    - (D3) any interest payable.

24.4 Calculation of Services Early Termination Charge is the amount specified in your Application or where no amount is specified in your Application then the Services Early Termination Charge is calculated in accordance with the following formula:

**Services Early Termination Charge** = *(the Monthly Recurring Service Charge component of the Minimum Monthly Spend x N x 20%)*, where:

**N** = the number of months, or part thereof, between the date of termination of your Package and the expiry of the next following anniversary date of the installation or delivery (as the case may be) of the relevant Equipment or Software, or the provision of Maintenance, whichever is earlier.

You agree that the Services Early Termination Charge is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early cancellation of the relevant Service from your Package. For clarity, the Services Early Termination Charge is applied to each Service specified in your Application, but does not apply to Services obtained under Part F, and in such a case the Early Termination Charge for Mobiles is specified under clause 86.4(b)(c) + (d).

- 24.5 Suspension of Services: Where any Services have been limited or suspended due to non-payment of charges, there will be no reduction in your Minimum Monthly Spend.
- 24.6 Effect of termination: For clarity, termination of the Rental Agreement or the Purchase Equipment Agreement or Maintenance Agreement under a Package does not terminate the Services Agreement under the Package (or vice versa).

## **25. INTERPRETATION & DEFINITIONS**

- 25.1 Definitions: The following definitions apply unless the context requires otherwise.

**Services Termination Charge** means the charge set out in clause 24.4 which is applied to each Service specified in the Application on the terms of this Part A.

## **PART B – RENTAL EQUIPMENT**

### **26. APPLICATION OF THIS PART**

- 26.1 This Part B applies if you have requested in your Application that we supply you with Rental Equipment and sets out the terms and conditions on which we will supply you with the Rental Equipment. You are only eligible to rent Equipment if you also subscribe to Voice Services, Data & Internet Services, Mobile Services, or any other Services specified in your Application on the terms of Part A.
- 26.2 In addition, we may provide you with Maintenance and/or Software on the terms specified in Part C and the terms of the relevant Schedule to Part C relating to the level of service you have selected in your Application.
- 26.3 To the extent relevant, the General Terms apply to the Rental Equipment and the Rental Equipment Charge as though specified in full in this Part B and such terms or part of such terms will be relevant except to the extent they relate to Voice Services and Data & Internet Services and Mobile Services and charges for Voice Services, Mobile Services and Data & Internet Services.
- 26.4 For the avoidance of doubt all your rights and obligations in relation to the Rental Equipment and payment of the Rental Equipment Charges are contained in Part B.
- 26.5 Rental Equipment where specified in your Application means the rent of any or all of the Equipment and associated equipment, but does not include Data & Internet Services Related Equipment, Voice Services Related Equipment, Purchase Equipment, or Other Equipment.

### **27. INSTALLATION**

- 27.1 We will provide the Rental Equipment nominated by you in your Application. You acknowledge that the Rental Equipment may be either new or refurbished.
- 27.2 You are responsible for all costs of delivery and installation and for preparing the Site for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.
- 27.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.
- 27.4 The Rental Equipment is at your risk from the time of its delivery to the Site.
- 27.5 We may terminate this standard customer agreement by written notice to you if you have not enabled installation of the Rental Equipment to take place within 60 days of the Proposed Installation Date in your Application. In that event you will pay us liquidated damages for our storage, handling, re-scheduling and other administration costs of an amount equivalent to 30% of the Rental Equipment Charges for the remainder of the Minimum Term. You agree that this amount is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early termination of this standard customer agreement.

### **28. PERIOD OF AGREEMENT**

- 28.1 You agree to rent the Rental Equipment for the Minimum Term described in your Application, commencing on the date we install the relevant Rental Equipment, or otherwise in accordance with these terms and conditions.
- 28.2 Extension:
- (a) Unless you notify us in writing at least one month prior to the expiration of the Minimum Term that you will be delivering the Rental Equipment to us at the expiration of the Minimum Term, the Minimum Term of this standard customer agreement will be automatically extended from

month to month ("**Holding Over Period**") at the same rate and on the same terms and conditions.

- (b) We may terminate the Holding Over Period by demanding possession of the Rental Equipment from you. You may terminate the Holding Over Period by delivering the Rental Equipment to us or arranging for and permitting us to recover the Rental Equipment. In either case, this standard customer agreement will terminate on the date of delivery of the Rental Equipment to us.

## **29. PAYMENT**

- 29.1 You agree to pay the Rental Equipment Charges stated in your Application each month throughout the Minimum Term or as varied in accordance with clause 36.2.
- 29.2 You agree that we may (subject to your rights under this Part B) sell, transfer or assign our rights under this Part B and/ or to the Rental Equipment that is the subject of the Rental Agreement and that your consent to such a dealing is not required.
- 29.3 Termination of any other part of this standard customer agreement does not constitute or effect a termination of this Rental Agreement.
- 29.4 If the Services Agreement is terminated in accordance with clause 24, you must continue renting the Rental Equipment, at the same charges specified in your Application, in accordance with the terms of this Part B, for the remainder of the Minimum Term.
- 29.5 You acknowledge that in respect of any amounts we receive from you in relation to the Minimum Monthly Spend, we will attribute them to Rental Equipment Charges initially and then to any charges for Services.

## **30. OWNERSHIP**

- 30.1 The Rental Equipment is and remains our property (or the property of an entity related to us) and you hold it for us.
- 30.2 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Rental Equipment.
- 30.3 You have no right to buy the Rental Equipment at the end of this standard customer agreement or at any other time.
- 30.4 Manuals provided to you are subject to copyright. The Rental Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Rental Equipment without our written permission.
- 30.5 The warranty period (if any) for each item of the Rental Equipment and installation workmanship (if installed by us) is detailed in your Application. Any warranty we provide you only covers the Rental Equipment and nothing else, including but not limited to things attached to the Rental Equipment or the wiring already at the Site.

## **31. THINGS YOU MUST DO**

- 31.1 You must:
  - (a) arrange for the Rental Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty;
  - (b) comply with the manufacturer's instructions relating to the Rental Equipment and its use;
  - (c) comply with all laws and regulations relating to the Rental Equipment, the use or possession of it, or any premises on which it is situated;

- (d) keep the Rental Equipment at the Site address indicated in your Application or at such other place as we approve in writing;
- (e) produce the Rental Equipment for inspection or testing by us, or a person approved by us, at our request, and for this purpose allow us access to any place where the Rental Equipment is kept. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or a person approved by us, against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, which must be during normal Business Hours, we may limit, suspend or cancel the Services. We may also charge you, at our standard rates, should we, or our Suppliers, not be able to access your premises at the agreed appointment time (regional areas will attract an additional charge);
- (f) keep the Rental Equipment under your control or the control of your employees; and
- (g) notify us immediately in writing if the Rental Equipment is lost, stolen or damaged or any person asserts any rights to the Rental Equipment.

### **32. THINGS YOU MUST NOT DO**

#### **32.1 You must not:**

- (a) change the Rental Equipment, make any addition to it or install anything with it without our written consent. You agree that the changed Rental Equipment, including any other goods supplied with or attached to it, becomes our property and will comprise the Rental Equipment for the purposes of this standard customer agreement;
- (b) use the Rental Equipment for any purpose which is unlawful or might endanger the safety or condition of the Rental Equipment or prejudice our interest in it;
- (c) alter or cover up any insignia, number or mark in or on the Rental Equipment; or
- (d) alter the installation of the Rental Equipment in a way that makes it a fixture.

### **33. INSURANCE**

#### **33.1 You must:**

- (a) insure the Rental Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- (b) take out and maintain an adequate level of public risk liability insurance in relation to the Rental Equipment and its use;
- (c) take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
- (d) punctually pay all premiums on each insurance policy and not prejudice any policy;
- (e) if we request, provide us with adequate evidence of the insurance policies;
- (f) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Rental Equipment or any injury, death, damage or loss caused by the Rental Equipment or its use; and
- (g) appoint us your attorney:
  - (i) to make, recover and/or compromise in your name any claim under such insurance or against any person; and

- (ii) to appropriate any insurance money or other amount received at our option towards repair or replacement of the Rental Equipment or towards any money payable by you to us or to any third party.

#### **34. DESTRUCTION**

- 34.1 If the Rental Equipment is lost, stolen or substantially destroyed we may terminate this standard customer agreement by notice to you.
- 34.2 We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you under clause 39.2.
- 34.3 Except as provided in 34.1, your obligations under this standard customer agreement continue even if the Rental Equipment breaks down, is defective or damaged.
- 34.4 If the Rental Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold rent or other money.

#### **35. OUR ACTION**

- 35.1 If you fail to comply with any obligations under this standard customer agreement, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).
- 35.2 We may do anything which we consider desirable to protect or enforce our rights in the Rental Equipment and Software.
- 35.3 You irrevocably authorise us to act on your behalf in protecting or enforcing our rights in the Rental Equipment and Software, as we may reasonably require.

#### **36. UPGRADES TO RENTAL EQUIPMENT**

- 36.1 You may request us to upgrade the Rental Equipment during the Minimum Term and we will provide these upgrades if they are available. If you elect to accept the upgrade you will enter into a new standard customer agreement on our then current terms and at the applicable rental for that upgrade. This standard customer agreement will then terminate.
- 36.2 We may permit you to add on additional Rental Equipment to the standard customer agreement based on our then current Call Australia Rate Sheets, which addition can be documented by way of an acknowledgement issued by us and we may also permit you to vary your Minimum Monthly Spend if your Rental Equipment forms part of a Package.

#### **37. SOFTWARE**

- 37.1 We will only provide you with Software on the terms specified in Part C and which you have selected in your Application. We will not provide you with any Other Software in order to access and use the Rental Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Rental Equipment, but you must first get our prior written permission.
- 37.2 We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

#### **38. MAINTENANCE CHARGES**

- 38.1 If any Maintenance Charges or Software licence charges for the Rental Equipment have been included in the Rental Equipment Charges, you acknowledge that:
  - (a) those charges have been included at your request; and

- (b) no failure to perform the Maintenance services or provide the Software will affect your obligation to pay the Rental Equipment Charges and other money payable under this standard customer agreement and to perform your obligations under this standard customer agreement. Nothing, however, detracts from your rights under Part C of this standard customer agreement.

### **39. TERMINATION**

39.1 Termination: We may terminate this standard customer agreement:

- (a) under clause 11.1 of the General Terms; or
- (b) if the Rental Equipment is lost, stolen or substantially destroyed in accordance with clause 34.1.

39.2 If we terminate this standard customer agreement under clause 39.1, you must pay us by way of liquidated damages within seven days of our demand, an amount equal to the total of:

- (a) all unpaid amounts payable to us under this standard customer agreement up to the date of termination;
- (b) the present value of rental payments that would have been payable during the period from the date of termination to the end of the Minimum Term, using the discount rate to discount each such payment over the period by which the date for payment is brought forward by this clause (“**discount rate**” means the rate determined by us equal to not less than 70% of the implicit interest rate used by us to calculate the rentals under this standard customer agreement);
- (c) any duty payable on the amounts payable in paragraphs (a) and (b) above;
- (d) either:
  - (i) any costs incurred by us in repossessing the Rental Equipment and making repairs that we think necessary; or
  - (ii) if we are not able to repossess the Rental Equipment, an amount equivalent to three months' Rental Equipment Charges, plus any costs incurred by us in attempting to repossess the Rental Equipment; and
- (e) any interest payable.

### **40. DEFINITIONS**

40.1 In this Part, unless the context requires otherwise:

**Proposed Installation Date** means the date nominated in your Application or as advised by us.

## **PART C – MAINTENANCE AND SOFTWARE**

### **41. APPLICATION OF THIS PART**

- 41.1 This Part C sets out the terms and conditions on which we will supply you with Maintenance and Software in relation to Rental Equipment and Purchase Equipment. This Part C also sets out the terms and conditions on which we will supply you with Maintenance in relation to Other Equipment.
- 41.2 We will only provide Maintenance for Other Equipment during the period you subscribe to one of our Services as specified in your Application on the terms of Part A, unless we otherwise agreed.
- 41.3 Maintenance and Software consists of this Part C and the terms of the relevant Schedule attached to your Application relating to the level of service you have selected on your Application.
- 41.4 Software is only available to you if provided under licence with the Services, Equipment, or Maintenance specified in your Application.

### **42. MAINTENANCE OF EQUIPMENT**

- 42.1 We agree to service the Maintained Equipment for you for the term specified in your Application.
- 42.2 We will service Maintained Equipment according to our standard procedures at the time of servicing. These procedures are designed to keep the Maintained Equipment in good working order.
- 42.3 If you require the Maintained Equipment to be serviced, please call us on our service hotline 1300 761 488. We will advise you of the new number if the current hotline number changes.
- 42.4 Once you call us, we will respond to our commitment in accordance with the level of service indicated by you on your Application.
- 42.5 We do not have to respond at any time outside the coverage commitment in the relevant Schedules attached to your Application. For example if you have "8am-5pm, Mon-Fri" coverage, there is no coverage on a Saturday or Sunday.
- 42.6 The response time only runs during the coverage period. For example, assume your coverage period is 8am-5pm Monday-Friday, and the required response time is a same day response if the fault is reported before 1pm on that day, and you call us before 1pm on a work day, then we must respond the same day. If you call us after 1pm on a work day then we will respond the next work day between 8am and 5pm.
- 42.7 Our obligations under this Part C are to:
- (a) advise you of our fault fixing actions and additional charges (if any) (see clause 46);
  - (b) to expediently restore the Maintained Equipment to working order; and
  - (c) if we attend the Site, to leave the Site in the same condition as it was when we arrived.

#### **43. NON-MAINTAINED EQUIPMENT**

43.1 If we notice any problem with Equipment or Other Equipment not being maintained under this Part C, we will report it to you. However, checking such equipment is not part of our obligations under this Part C.

#### **44. PARTS FOR THE EQUIPMENT**

44.1 We will replace all faulty parts/components if the Fault is as a result of fair wear and tear.

44.2 Replacement parts will be of a quality that is fit for purpose.

44.3 Any replaced parts belong to us.

44.4 We do not have to supply any consumables (e.g. cabling and printer paper etc.). We may do so if we wish. If we do so, we may charge you for these items.

#### **45. WHAT OUR MAINTENANCE DOES NOT COVER**

45.1 This Part C does not cover:

- (a) servicing on Equipment, Other Equipment, Peripheral equipment, Data & Internet Services Related Equipment, Voice Services Related Equipment, consumables, or any other equipment or cabling, unless it is specified in your Application;
- (b) changing the Maintained Equipment or relocating it, or attaching things to it, or removing things from it;
- (c) fixing any Faults in the Maintained Equipment other than those caused in normal proper use;
- (d) taking responsibility for lines or network terminations on the Maintained Equipment, as this is your network provider's responsibility unless the work is performed by us (i.e. cabling); or
- (e) fixing problems or damage caused by events beyond our control, including accident, lightning, power surges, power failures, over-hot or over-cold conditions, vandalism, or misuse.

45.2 We do not have to fix any Fault caused or contributed to by:

- (a) anything attached to the Maintained Equipment, or to the Peripheral equipment (unless we agreed in writing to it being attached);
- (b) non-compliance with any guidelines on the use and care of the Maintained Equipment; or
- (c) anything done, or not done, to the Maintained Equipment by anybody apart from us and which affects the Maintained Equipment.

#### **46. EXTRA WORK AND CHARGES**

46.1 If we service any Fault not covered by this standard customer agreement, you must pay our extra charges (for parts and labour) but only if you agreed to pay beforehand.

46.2 If you have anything done to the Maintained Equipment without our written authority and, as a result, corrective work is required, we are entitled (but not obliged) to do that corrective work. If we elect to do it, you must pay our extra charges to do it.

46.3 You must pay any extra charges specified in the invoice we give you for them.

#### **47. YOUR OTHER OBLIGATIONS**

- 47.1 Unless you first get our written consent, you must not change or repair the Maintained Equipment, or attach anything to it.
- 47.2 When using the Maintained Equipment, you must comply with any guidelines of ours, or of the supplier or manufacturer of the Maintained Equipment.
- 47.3 You must tell us immediately you no longer have the Maintained Equipment.
- 47.4 You must protect the Maintained Equipment from electromagnetic interference.
- 47.5 If a Fault occurs wholly or partly because of something done, or not done contrary to this Part C, we do not have to fix it.
- 47.6 You must arrange for servicing of the Peripheral equipment by the manufacturer or any of its authorised service providers.

#### **48. YOU MUST USE RECOMMENDED CONSUMABLES**

- 48.1 You should only use consumable items that have been recommended for use with the Maintained Equipment. Consumables are things such as, for example, cassette and magnetic tapes, diskettes, cartridges, disk packs, printer ribbons, batteries and paper.
- 48.2 We take no responsibility for any Fault or loss which happens (whether to the Maintained Equipment or any software used with it) as a result of using consumable items.

#### **49. OUR RIGHT OF ENTRY**

- 49.1 We or our agents can enter the Site (or any other place) to service the Maintained Equipment. You must assist us in doing so.

#### **50. DEFINITIONS**

- 50.1 In this Part, unless the context requires otherwise:

**Faults** means faults, damage, operational errors and problems relating to the Maintained Equipment, excluding the Peripheral equipment.

**Maintained Equipment** means the Equipment or Other Equipment agreed pursuant to clause 41 to be serviced in accordance with this Part C.

## **PART D – VOICE SERVICES**

### **51. APPLICATION OF THIS PART**

- 51.1 This Part D applies if you have requested in your Application that we supply you with Voice Services and sets out the terms and conditions on which we will supply you with Voice Services.
- 51.2 To the extent relevant, the General Terms apply to the Voice Services as though specified in full in this Part D and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Mobile Services, Rental Equipment, Purchase Equipment, Maintenance, Software, Rental Equipment Charges, Maintenance Charges, charges for Software and Purchase Equipment Charges.
- 51.3 Voice Services consist of telecommunications services, including Local Calls, National Calls, International Calls, Fixed to Mobile Calls, Data Calls, Call Australia 13 Calls, Call Australia 1300 Calls and Call Australia 1800 Calls.

### **52. PROVISION OF VOICE SERVICES**

- 52.1 We will provide the Voice Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Voice Services have been completed or when your account with us has been established.
- 52.2 If you fail to nominate the required Voice Services option in your Application, we will assume you wish to select us as your default carrier for the Long Distance Preselection Option.
- 52.3 We will provide you with the relevant Voice Services, unless you dial another override code or, if required for access, you dial our override code as notified to you from time to time.
- 52.4 We will provide the Voice Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.
- 52.5 We will provide the required Voice Services subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Voice Services where capacity, geography, or technical capability, affect the application or installation of the service to your premises. We do not warrant that the Voice Services will be free of interruption, delays, or fault.

The *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)*, as amended and replaced from time to time, applies to the Voice Services as specified in that standard. For information on our customer service guarantee, visit our website at [www.callaustralia.com.au](http://www.callaustralia.com.au).

- 52.6 We reserve the right to bar access to 1900 numbers, data calls, internet service providers and any other calls we deem necessary from time to time.

- 52.7 If you are on a Minimum Term Contract:
- (a) the fixed minimum term of your Minimum Term Contract specified in your Application commences on the date that you sign your Application;
  - (b) for the fixed term of your Minimum Term Contract you agree:
    - (i) to maintain us as your carrier for, as a minimum, the Long Distance Pre-selection Option; and
    - (ii) to maintain the same level of business (or more) with us than as at the date that you sign your Application;
  - (c) you agree to give us reasonable notice in advance of any significant changes in your telecommunications requirements so that we can plan for these changes; and
  - (d) you acknowledge that the pricing available to you under the standard customer agreement is subject to you maintaining us as your carrier for, as a minimum, the Long Distance Pre-selection Option.

### **53. VOICE SERVICES CHARGES**

- 53.1 The charges applicable to the Voice Services are specified in the Call Australia Rate Sheets and your Application. Our miscellaneous charges for any changes to your Voice Services are available from us on request.

### **54. PROVISION OF VOICE SERVICES RELATED EQUIPMENT**

- 54.1 Application: For the avoidance of doubt, this clause applies to any equipment provided by us that is not Rental Equipment, Purchase Equipment, Mobile Equipment, and is not Data & Internet Services Related Equipment and may include equipment supplied by a Supplier.
- 54.2 When risk passes: If you purchase any Voice Services Related Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.
- 54.3 You must maintain: You are responsible for maintaining any Voice Services Related Equipment supplied by us or a Supplier. You indemnify us or the Supplier against any loss or damage to the Voice Services Related Equipment unless it is due to fair wear and tear.
- 54.4 Your obligations: You will ensure that any Voice Services Related Equipment supplied to you or facilities and connections used in providing the Voice Services, are not altered, maintained, repaired or connected to or disconnected from any power source or line except by a person approved by us.
- 54.5 Access to premises: We, or a person approved by us, or our Supplier may require access to your premises from time to time in connection with the provision, inspection and maintenance of Voice Services Related Equipment or Voice Services, including the installation, replacement or modification of necessary telecommunications connection, facilities, wiring or cabling in order for you to receive the Voice Services. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or any serviceman approved by us, and our Supplier against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, which must be during

Business Hours, we may limit, suspend or cancel the Voice Services. We may also charge you, at our standard rates, should we, or our Suppliers, not be able to access your premises at the agreed appointment time (regional services will attract an additional charge).

## **55. FAULT REPORTING**

55.1 Faults: We will provide a 24 hour per day fault reporting service. You should notify any faults regarding your Voice Services to our help desk, the contact number for which is located on your invoice and on our website.

55.2 Actions:

- (a) We are responsible for correcting faults in supplying the Voice Services. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
- (b) We are not responsible for any fault which is on your side of the network termination point, except in relation to Rental Equipment, Purchase Equipment, or Other Equipment that we are maintaining pursuant to Part C of this standard customer agreement.
- (c) We are not responsible for any fault which is within the network of a Supplier.
- (d) We will notify that Supplier of the fault and request that the fault be corrected promptly.

## **56. SERVICE LEVELS**

56.1 There may be service levels applicable to the Voice Services you have chosen in your Application. If service levels are applicable, then these are as referred to in your Application and are as provided to you after you sign your Application or otherwise as varied by us and notified to you from time to time. Details of such Service Levels are also provided on the Call Australia web site at [www.callaustralia.com.au](http://www.callaustralia.com.au)

## **57. TERMINATION**

57.1 We may terminate this standard customer agreement or suspend, limit or cancel the provision of any Voice Service:

- (a) by giving you 30 days prior written notice; or
- (b) in accordance with clause 11.1 of the General Terms.

You may terminate this standard customer agreement or cancel the provision of any Voice Service by giving us notice. If you are on a Minimum Term Contract then the provisions of clause 57.3 will apply. For the avoidance of doubt, you do not have this termination right if Part D is being applied in conjunction with Part A.

57.2 If either of us terminate this standard customer agreement under clause 57.1:

- (a) you must pay to us within 7 days of our demand, all outstanding charges payable to us under this standard customer agreement up to the date of termination and any duty payable; and
- (b) you must, if we request and at our option, either immediately:

- (i) return all of our or our Supplier's Voice Services Related Equipment (at your cost); or
- (ii) make such equipment available for our, or our Suppliers, collection.

57.3 If you are on a Minimum Term Contract and:

- (a) we terminate this standard customer agreement under clause 57.1(b); or
- (b) you terminate this standard customer agreement under clause 57.2, then in addition to clause 57.3(a), you must pay to us by way of liquidated damages and within seven days of our demand either:
  - (i) the amount of liquidated damages payable as specified in your Application; or
  - (ii) if no amount is specified in your Application, an amount equal to 7.5% of your actual spend on Voice Services as billed by us in the month immediately preceding the month in which termination occurred, multiplied by the number of months, or part thereof, between the date of termination and the expiry of the Minimum Term Contract.

For clarity, if you subscribe to Voice Services as part of a Package under Part A, then the Early Termination Charge payable will be calculated in accordance with clause 24.4. You agree that this charge is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early cancellation of this standard customer agreement.

## 58. DEFINITIONS

58.1 In this Part D, unless the context requires otherwise:

**Call Australia 13 Calls** means the relevant 13 inbound services provided to you by Call Australia.

**Call Australia 1300 Calls** means the relevant 1300 inbound services provided to you by Call Australia.

**Call Australia 1800 Calls** means the relevant 1800 inbound services provided to you by Call Australia.

**Data Calls** means a call enabling carriage of voice, data, text or image by means of digital data.

**Fixed to Mobile Calls** means calls made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.

**International Calls** means a call made from a PSTN or ISDN telephone service:

- (a) from Australia to another country;
- (b) from Australia (excluding Norfolk Island) to Norfolk Island;
- (c) from Norfolk Island to the rest of Australia; or
- (d) from Australia's bases in the Antarctic to Australia and other countries.

**Local Calls** means a call between a telephone service and a telephone service where:

- (a) the A-Party and the B-Party are in the same Standard Charging Zone;

- (b) the A-Party and the B-Party are in adjoining Standard Charging Zones; or
- (c) either the A-Party or the B-Party is located in a Charging Precinct and the other is in its designated Standard Charging Zone,

as defined in the Act, the Numbering Plan, and the Telstra PSTN SFOA.

**Long Distance Preselection Option** means that we will be your default provider for your International Calls, National Calls and Fixed to Mobile Calls.

**National Calls** means a call made within Australia from a PSTN or ISDN telephone service to a PSTN or ISDN telephone service, which is not a Local Call or a Fixed to Mobile Call.

## **PART E – DATA & INTERNET SERVICES**

### **59. APPLICATION OF THIS PART**

- 59.1 This Part E applies if you have requested in your Application that we supply you with Data & Internet Services and sets out the terms and conditions on which we will supply you with Data & Internet Services.
- 59.2 To the extent relevant, the General Terms apply to the Data & Internet Services as though specified in full in this Part E and such terms or part of such terms will be relevant except to the extent they relate to Mobile Services, Voice Services, Mobile Equipment, Rental Equipment, Purchase Equipment, Voice Services Related Equipment, Maintenance Software, Rental Equipment Charges, Maintenance Charges, charges for Software or Purchase Equipment Charges.

### **60. PROVISION OF DATA & INTERNET SERVICES**

- 60.1 We will provide the Data & Internet Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Data & Internet Services have been completed or when your account with us has been established.
- 60.2 We will provide the required Data & Internet Services subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Data & Internet Service is connected. There may also be times when maintenance being performed on the services limits availability. We are not obliged to provide you with Data & Internet Services where capacity, geography or technical capability, affect the application or installation of the service to your premises.
- 60.3 We do not warrant that the Data & Internet Services will be free of interruption, delays or faults.
- 60.4 We are not obliged to provide Data & Internet Services to you if the physical infrastructure or Site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.
- 60.5 You agree that we do not supply a 'standard telephone service' (for the purposes of the Act) under this Part E with the internet access component and as such the Data & Internet Services are not subject to the customer service guarantee standard administered by the ACA.
- 60.6 You acknowledge that, as notified to you from time to time, certain Data & Internet Services will be available to you for use for business purposes only.

### **61. PERIOD OF AGREEMENT**

- 61.1 You must take the Data & Internet Services for the Minimum Term specified in your Application, subject to your rights in clause 62.4.

- 61.2 The Minimum Term commences when:
- (a) if you are arranging for self installation of the required equipment and:
    - (i) you supply the required equipment yourself, on the date we activate your Data & Internet Services; or
    - (ii) if we supply you with the required equipment, on the date of delivery of the required equipment; or
  - (b) if we are installing equipment for you and:
    - (i) the equipment is being installed at a single Site, the date that we install the equipment at the Site; or
    - (ii) the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.
- 61.3 Unless you notify us in writing at least one month prior to the expiration of the Minimum Term that you wish to cease receiving the Data & Internet Services at the expiration of the Minimum Term, the Minimum Term of this standard customer agreement will be automatically extended from month to month ("**Holding Over Period**") at the same rate, including the same Monthly Recurring Service Charge, and on the same terms and conditions.

## **62. DATA & INTERNET SERVICES CHARGES**

- 62.1 The charges applicable to the Data & Internet Services are specified in the Call Australia Rate Sheets, applicable Schedule(s) to this Part E and your Application.
- 62.2 The Monthly Recurring Service Charge is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and the Call Australia Rate Sheets and for miscellaneous charges (if relevant) as specified in the relevant Schedule to this Part E. Your usage of the Data & Internet Services will be calculated based on the greater of the data uploaded or the data downloaded, unless your Application states otherwise.
- 62.3 The first and last month's Monthly Recurring Service Charges will be pro-rated based on the number of days of service supply in the relevant month.
- 62.4 We may increase or reduce any of the charges applicable to the Data & Internet Services at any time by giving you at least 30 days notice. Unless you notify us in writing that you wish to terminate this standard customer agreement within 14 days of the date of a notice specifying any such change in charges, then any such change in charges will apply on and from the date that is 30 days after the date of the relevant notice. If you elect to terminate this standard customer agreement in accordance with this clause then clause 72.2 will apply.

## **63. SHIFTS/ MOVES/ UPGRADES**

- 63.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule to this Part E or your Application. If Data & Internet Services cannot be provided at your new address, we may terminate this standard customer agreement by notice to you.

63.2 You may be able to change your Data & Internet Service if it is specified in the applicable Schedule to this Part E and/or in your Application. Changes to your plan involving a downgrade on the Data & Internet Service or value of the Monthly Recurring Service Charge, may require you to commit to a new Minimum Services Term on all or part of your Service, from the date of change, equivalent to your current Minimum Services Term and a fee may apply.

#### **64. INDEMNITY**

64.1 Without limiting the indemnity provisions in clause 13, you indemnify us from all liability (including third party) arising from the following:

- (a) disruption in PSTN services;
- (b) cancellation of any Data & Internet Service;
- (c) suspension of any Data & Internet Service, particularly IP addresses; and
- (d) cancellation of, or refusal to provide, all incompatible telephony services.

#### **65. SERVICE LEVELS**

65.1 Service Levels may apply to the Data & Internet Services that you have specified in your Application. If Service Levels apply, then they will be referred to in your Application. Details of such Service Levels are also provided on the Call Australia web site at [www.callaustralia.com.au](http://www.callaustralia.com.au).

#### **66. ACCEPTABLE USE POLICY**

66.1 If you are receiving Internet Services, you agree to comply with our Acceptable Use Policy as set out on the Call Australia website at [www.callaustralia.com.au](http://www.callaustralia.com.au), and specified in Schedule 3 to this Part E.

#### **67. SOFTWARE**

67.1 Except for Software provided as part of the Data & Internet Services Related Equipment, or Maintenance, we will not provide you with any Other Software in order to access and use the Data & Internet Services, Rental Equipment, or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Data & Internet Services, Rental Equipment, or Purchase Equipment, but you must first get our prior written permission.

67.2 We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

#### **68. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

68.1 In order to access the Data & Internet Services, we or our Suppliers may provide you with Data & Internet Services Related Equipment or you may use your own equipment, as nominated in your Application.

68.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

## **69. INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

- 69.1 We may either install your Data & Internet Services Related Equipment at the Site or you may install the Data & Internet Services Related Equipment yourself as specified in your Application.
- 69.2 You are responsible for all costs of delivery (as specified in the applicable Schedule to this Part E) and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.
- 69.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.
- 69.4 If we are installing your Data & Internet Service Related Equipment, you must provide us or our Suppliers with reasonable access to your premises during Business Hours unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule to this Part E, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.
- 69.5 You are responsible for all additional installation service charges where the work required on Site is greater than two hours unless otherwise stated in your Application. The installation charge is payable on commencement of the Service (pro rated where the network is delivered to you in stages).
- 69.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- 69.7 Changes to the configuration of the equipment not requiring a Site visit that are requested more than 10 days after the order is recognised as received by us will be subject to a configuration charge as specified in the relevant Schedule to this Part E. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule to this Part E.
- 69.8 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the Data & Internet Services will work in conjunction with your network, modem and/or router. Local network configuration remains your responsibility.
- 69.9 Telephone line configuration changes are only available for our supported modems and routers.
- 69.10 Changes made by you to the supplied configuration are at your risk and will not be supported by us.

## **70. YOUR OBLIGATIONS IN RELATION TO DATA & INTERNET SERVICE RELATED EQUIPMENT**

- 70.1 If you are supplied with Data & Internet Services Related Equipment by us or by our Suppliers on our behalf, other than where you purchase such equipment, then the whole of this clause 70 applies to you. If you purchase Data & Internet Related Equipment from us, then only clauses 70.4, 70.7, 70.8(a), 70.8(b), 70.8(c), 70.8(f), 70.8(g), 70.12(a), 70.12(c), and 70.12(d) apply to you.

- 70.2 We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of this standard customer agreement.
- 70.3 The Data & Internet Services Related Equipment is and remains our property (or the property of our Suppliers or of an entity related to us or our Suppliers) and you hold it for us or our Suppliers (as the case may be). We may change the Data & Services Related Equipment at any time by giving you three days notice.
- 70.4 Risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.
- 70.5 You must not do anything to give rise to an adverse claim to our rights (or the rights of our Suppliers or of an entity related to us or our Suppliers) in or ownership of the Data & Internet Services Related Equipment.
- 70.6 You have no right to buy the Data & Internet Services Related Equipment at the end of this standard customer agreement or at any other time.
- 70.7 The Data & Internet Services Related Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Data & Internet Services Related Equipment without our written permission.
- 70.8 You must:
- (a) arrange for the Data & Internet Services Related Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty;
  - (b) comply with the manufacturer's instructions relating to the Data & Internet Services Related Equipment and its use, including the supply of suitable power and environment;
  - (c) comply with all laws and regulations relating to the Data & Internet Services Related Equipment, the use or possession of it, or any premises on which it is situated;
  - (d) keep the Data & Internet Services Related Equipment at the Site address indicated in your Application, or at such other place as we approve in writing;
  - (e) produce the Data & Internet Services Related Equipment for inspection, testing, repair, modification, change, replacement and/ or removal by us, or a person approved by us, at our request, and for this purpose allow us access to any premises where the Data & Internet Services Related Equipment is kept. If you do not own the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or a person approved by us, against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, which must be during Business Hours, we may limit, suspend or cancel the Data & Internet Services. We may also charge you, in accordance with the relevant Schedule to this Part E, should we, or our Supplier not be able to obtain access to your premises at the agreed appointment time (regional services attract an additional charge which is also specified in the relevant Schedule to this Part E);

- (f) disconnect and remove the Data & Internet Services Related Equipment on the expiration or termination of this standard customer agreement, or the termination of the relevant agreement between us and our Suppliers or on the expiration or termination of any agreement necessary for us to provide the Data & Internet Services or the Data & Internet Services Related Equipment, whether or not we are a party to that agreement;
- (g) keep the Data & Internet Services Related Equipment under your control or the control of your employees;
- (h) notify us immediately in writing if the Data & Internet Services Related Equipment is lost, stolen or damaged or any person asserts any rights to the Data & Internet Services Related Equipment; and
- (i) notify us immediately of any power outage, loss or failure that may affect your Service with us.

70.9 You must not:

- (a) change the Data & Internet Services Related Equipment, make any addition to it or install anything with it without our written consent. You agree that the changed Data & Internet Services Related Equipment, including any other goods supplied with or attached to it, becomes our property and will comprise the Data & Internet Services Related Equipment for the purposes of this standard customer agreement;
- (b) use the Data & Internet Services Related Equipment for any purpose which is unlawful or might endanger the safety or condition of the Data & Internet Services Related Equipment or prejudice our interest in it;
- (c) alter or cover up any insignia, number or mark in or on the Data & Internet Services Related Equipment; or
- (d) alter the installation of the Data & Internet Services Related Equipment in a way that makes it a fixture.

70.10 Insurance: You must:

- (a) insure the Data & Internet Services Related Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- (b) take out and maintain an adequate level of public risk liability insurance in relation to the Data & Internet Services Related Equipment and its use;
- (c) take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
- (d) punctually pay all premiums on each insurance policy and not prejudice any policy;
- (e) if we request, provide us with adequate evidence of the insurance policies; and
- (f) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Data & Internet Services Related Equipment or any injury, death, damage or loss caused by the Data & Internet Services Related Equipment or its use.

70.11 You appoint us your attorney:

- (a) to make, recover and/or compromise in your name any claim under such insurance or against any person; and
- (b) to appropriate any insurance money or other amount received at our option towards repair or replacement of the Data & Internet Services Related Equipment or towards any money payable by you to us or to any third party.

70.12 Destruction:

- (a) If the Data & Internet Services Related Equipment is lost, stolen or substantially destroyed you must notify us immediately and we may terminate this standard customer agreement by notice to you.
- (b) We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you under clause 72.3.
- (c) Except as provided in 70.12(a), your obligations under this standard customer agreement continue even if the Data & Internet Services Related Equipment breaks down, is defective or damaged.
- (d) If the Data & Internet Services Related Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold rent or other money.

70.13 Our action:

- (a) If you fail to comply with any obligations under this standard customer agreement, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).
- (b) We may do anything which we consider desirable to protect or enforce our rights, or the rights of our Suppliers, in the Data & Internet Services Related Equipment.
- (c) You irrevocably authorise us or our Suppliers to act on your behalf in protecting or enforcing our rights in the Data & Internet Services Related Equipment, as we may reasonably require.

## **71. FAULT REPORTING AND MAINTENANCE**

71.1 If we have a Service Level agreement with you then the Service Level nominated in your Application applies and details of such Service Levels are available on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au) . You should notify any faults regarding your Data & Internet Services to our help desk, the contact number for which is located on your invoice and on our website.

71.2 Before reporting a fault to us, you should ensure that the fault is not due to hardware, software or networks that are not being managed by us. We reserve the right to charge you our standard on-site visit fee if no fault is found.

71.3 We are:

- (a) responsible for correcting faults in the Services and you must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility;

- (b) not responsible for any fault which is on your side of the network termination point; and
  - (c) not responsible for any fault which is within the network of a Supplier and we will notify that Supplier of the fault and request that the fault be corrected promptly.
- 71.4 If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays) or if Service Levels apply to your Data & Internet Service, at the times specified in the Service Levels.
- 71.5 We reserve the right to charge you in accordance with the relevant Schedule to this Part E, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time. Regional services attract an additional charge which is also specified in the relevant Schedule to this Part E. A charge may be due where line fault requires an on-site visit to rectify.
- 71.6 You are responsible for the supply and maintenance of any additional hardware required to make the Data & Internet Services operational as a result of incompatible services being used.

## **72. TERMINATION**

- 72.1 We may terminate this standard customer agreement or suspend, limit or cancel the provision of any Data & Internet Service:
- (a) by giving you 30 days prior written notice;
  - (b) if you cease receiving a standard telephony service that we rely upon to provide your service;
  - (c) under clause 11.1 of the General Terms;
  - (d) if Data & Internet Service cannot be provided at your new address in accordance with clause 63.1;
  - (e) if any of our or our Supplier's Data & Internet Services Related Equipment is lost, stolen or substantially destroyed in accordance with clause 70.12; or
  - (f) if the physical infrastructure for your service does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.
- 72.2 If we terminate this standard customer agreement under clause 72.1(a) or you terminate this standard customer agreement under clause 62.4 you must pay to us within seven days of our demand, an amount equal to the total of:
- (a) all outstanding charges payable to us under this standard customer agreement up to the date of termination and any duty payable; and
  - (b) either:
    - (i) any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and making repairs that we think necessary; or

- (ii) if we are not able to repossess such Data & Internet Services Related Equipment, an amount equivalent to:
  - (A) our then current installation fees for that equipment as specified in our Rate Sheets;
  - (B) any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment; and
  - (C) any interest payable.

72.3 If we terminate this standard customer agreement under clause 72.1(b), 72.1(c), 72.1(d), 72.1(e) or 72.1(f), you must pay to us by way of liquidated damages within seven days of our demand, an amount equal to the total of:

- (a) all outstanding charges payable to us under this standard customer agreement up to the date of termination and any duty payable;
- (b) the Monthly Recurring Service Charge that would have been payable during the period from the date of termination to the end of the Minimum Services Term;

For clarity, if you subscribe to Data & Internet Services as part of a Package under Part A, then the charge payable will be calculated in accordance with clause 24.4. You agree that the Services Early Termination Charge is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early cancellation of the Data & Internet Services;

- (c) any duty payable on the amounts payable in paragraphs (a) and **Error! Reference source not found.**; and
- (d) either:
  - (i) any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and making repairs that we think necessary; or
  - (ii) if we are not able to repossess such Data & Internet Services Related Equipment, an amount equivalent to:
    - (A) our then current installation fees for that equipment as specified in our Rate Sheets;
    - (B) any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment; and
    - (C) any interest payable.

72.4 We may terminate this standard customer agreement by written notice to you if you have not installed or enabled installation of the Data & Internet Services Related Equipment to take place within 30 days of the Proposed Installation Date in your Application. In that event you will pay us liquidated damages of an amount equivalent to 30% of the Monthly Recurring Service Charge for the remainder of the Minimum Services Term. You agree that this amount is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early cancellation of this standard customer agreement and covers our

storage, handling, re-scheduling and other administration costs, as well as contractual costs to our Suppliers.

- 72.5 On the termination of this standard customer agreement for any reason, you will, if we request and at our option, either immediately:
- (a) return all of our or our Supplier's Data & Internet Services Related Equipment (at your cost); or
  - (b) make such equipment available for our, or our Supplier's, collection.

### 73. DEFINITIONS

- 73.1 In this Part, unless the context requires otherwise:

**Acceptable Use Policy** means the policy relating to your use of the Internet Services which can be accessed on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au) .

**Internet Services** means that part of the Data & Internet Services which is accessible via the public internet. This includes internet access, email facilities, web-page facilities and any other related internet facility or services that we may provide from time to time. This specifically does not refer to wide area networking services that are not accessible via the public internet.

**Monthly Recurring Service Charge** means the total monthly recurring charge specified in the Rate Sheets or your Application for the Data & Internet Service.

**Service Levels** means the service levels applicable to the Data & Internet Service you have chosen in your Application and details of such Service Levels are available on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au) .

- 73.2 In this Part, any references to 'standard' or 'regional' coverage, is to such coverage as determined by us from time to time.

## SCHEDULE 1

### MISCELLANEOUS CHARGES FOR DATA & INTERNET SERVICES

This document describes the Miscellaneous Charges for Data & Internet Services.

#### Business Broadband

##### 1.1 Application

If you have chosen Business Broadband in your Application these miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

##### 1.2 Schedule of charges relating to Business Broadband only

1. Upgrade to DSL Elite plan – (approximate Lead Time - 21 business days)
  - (a) Not available in the first six months.
  - (b) Relevant installation fee.
  - (c) Relevant pricing plan.
2. Change of speed within Business Broadband – (approximate Lead Time - five Business Days)
  - (a) A once-off \$50 charge.
3. Service re-location – (approximate Lead Time - 21 Business Days)
  - (a) If you request the service to be moved to a new address at any time there is a charge of \$149, provided the service is available at your new address. On-site installation fees are in addition to the above charges.
4. Additional Data & Internet Services Related Equipment delivered after initial order taken.
  - (a) Next day delivery of additional Data & Internet Services Related Equipment or other additional equipment not specified at the time of order is \$30.
5. Urgent deliveries of Data & Internet Services Related Equipment
  - (a) Fees for the urgent delivery of Data & Internet Services Related Equipment, or other additional equipment, are as follows:
 

Same day NSW	\$50	(10.30am cut-off)
Same day VIC, QLD, ACT	\$330	(9.30am cut-off)
6. The terms and conditions in the Standard Charges Schedule also apply to you.

### 1.3 Approximate Lead Time

Lead Times in this Schedule are approximate only. For details of the service guarantees relating to Lead Times, refer to your Service Level agreement as specified in your Application and available on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au).

## DSL ELITE and Broadband VPN

---

### 1.4 Application

- (a) If you have chosen DSL Elite in your Application, these miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.
- (b) If you have chosen Broadband VPN in your Application, the terms and conditions and miscellaneous charges as notified by us from time to time apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

### 1.5 Schedule of charges relating to DSL Elite and Broadband VPN only

1. Change of speeds - (approximate Lead Time - three Business Days)
  - (a) For all DSL Elite services other than 1M/1Mbps and 2M/2Mbps a change of speed to a 1M/1Mbps or 2M/2Mbps symmetric service will be charged a 1M/1Mbps or 2M/2Mbps installation fee.
  - (b) For all DSL Elite services other than 1Mbps/1Mbps and 2M/2Mbps speeds - \$50 once-off charge.
2. Additional Data & Internet Services Related Equipment requested after initial order taken.

If you request a change of Data & Internet Services Related Equipment after the service has been installed, a new service installation fee is chargeable.
3. Regional Services

Regional services, as defined by us, are subject to a \$200 installation surcharge and a \$50 monthly surcharge.
4. Service re-location: (approximate Lead Time - 21 Business Days) to new metro/CBD site - \$250 once-off charge.

To new regional site - \$450 once-off charge.
5. The terms and conditions in the Standard Charges Schedule also apply to you.

### 1.6 Approximate Lead Time

Lead Times in this Schedule are approximate only. For details of the service guarantees relating to Lead Times refer to your Service Level agreement as specified in your Application and available on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au).

## Standard Charges Schedule

---

### 1.7 Application

If you have chosen Business Broadband, DSL Elite or Broadband VPN in your Application, the following miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E and the above Schedules relating to these Data & Internet Services.

1. On-site visit fee:

Whenever an on-site visit that is not part of the service you have purchased is requested by you, you will be charged an on-site visit fee of \$240. This fee covers two hours work including travel time to your location. Time on-site greater than two hours is charged at \$30 per 15 minutes thereafter.

2. Change of data plan (approximate Lead Time - three Business Days):

- (a) No charge to upgrade.
- (b) \$100 once-off charge for downgrades and contract term restarted.
- (c) Changes limited to one per month.

3. Telephone re-configuration of customer equipment after initial set-up:

A once-off \$75 re-configuration charge. Re-configuration changes are only available for supported Data & Internet Services Related Equipment. A list of supported Data & Internet Services Related Equipment is available from the website.

4. Fault visit where no fault is found:

A standard on-site visit installation charge is due where an engineer is called to site and no fault is found.

5. Non-return of Data & Internet Related Equipment:

If you do not return Data & Internet Services Related Equipment you will be charged the current list price or service installation fee, whichever is the greater, plus a \$50 handling fee.

6. Service reconnection (approximate Lead Time - three Business Days):

Reconnection of services suspended due to non-payment are subject to a reconnection fee of \$50. If you require an on-site visit to restore your service you will be charged on-site visit installation fees.

7. Unable to obtain access/Aborted on-site visit:

Should the engineer not be able to obtain access to your premises at the agreed appointment time a \$110 charge is due. Regional services attract a charge of \$310.

8. Non-return of Data & Internet Services Related Equipment:

Where Data & Internet Services Related Equipment is supplied and you are requested to return the equipment, if you do not return the equipment you will be charged a standard service installation fee for the relevant service.

### **Frame Relay**

---

If you have chosen Frame Relay in your Application, the terms and conditions and miscellaneous charges as notified by us from time to time apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

### **Permanent Internet**

---

If you have chosen Permanent Internet in your Application, the terms and conditions and miscellaneous charges as notified by us from time to time apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

## SCHEDULE 2

### CALL AUSTRALIA BROADBAND

#### 1.1 Application

If you have chosen Call Australia Broadband in your Application these miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

#### 1.2 Schedule of charges relating to Call Australia Broadband only

1. Upgrade to Call Australia Advantage plan (approximate Lead Time - 21 Business Days):
  - (a) Not available in the first six months.
  - (b) Relevant installation fee.
  - (c) Relevant pricing plan.
2. Change of speed within Call Australia Broadband (approximate Lead Time - five Business Days):
  - (a) a \$50 once-off charge.
3. Service re-location (approximate Lead Time - 21 Business Days):
 

If you request the service to be moved to a new address at any time there is a charge of \$149, provided the service is available at your new address. On-site installation fees are in addition to the above charges.
4. Additional Data & Internet Services Related Equipment delivered after initial order taken:
 

Next day delivery of additional Data & Internet Services Related Equipment or other additional equipment not specified at the time of order is \$30.
5. Urgent deliveries of Data & Internet Services Related Equipment:
 

Fees for the urgent delivery of Data & Internet Services Related Equipment, or other additional equipment, are as follows:

Same day NSW	\$50	(10.30 am cut-off)
Same day VIC, QLD, ACT	\$330	(9.30am cut-off)
6. The terms and conditions in the Standard Charges Schedule also apply to you.

#### 1.3 Approximate Lead Time

Lead Times in this Schedule are approximate only. For details of the service guarantees relating to Lead Times, refer to your Service Level agreement as specified in your Application and available on Call Australia's website at [www.callaustralia.com.au](http://www.callaustralia.com.au).

## Call Australia Advantage and Broadband IP VPN

---

### 1.4 Application

- (a) If you have chosen Call Australia Advantage in your Application, these miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.
- (b) If you have chosen Broadband IP VPN in your Application, the terms and conditions and miscellaneous charges as notified by us from time to time apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

### 1.5 Schedule of charges relating to Call Australia Advantage and Broadband IP VPN only

- 1. Change of speed:  
If you request a change of speed to your service additional fees as stated in the product rate sheet, or as included in your application, will apply.
- 2. Additional Data & Internet Services Related Equipment requested after initial order taken. If you request a change of Data & Internet Services Related Equipment after the service has been installed, a new service installation fee is chargeable.
- 3. Regional Services:  
Regional services, as defined by us, are subject to additional fees as stated in the product rate sheet, or as included in your application.
- 4. Service re-locations are subject to a re-location fee as stated in the product rate sheet, or as included in your application.
- 5. The terms and conditions in the Standard Charges Schedule also apply to you.

## Standard Charges Schedule

---

### 1.6 Application

If you have chosen Call Australia Broadband, Call Australia Advantage or Broadband IP VPN in your Application, the following miscellaneous charges apply to you in addition to the Data & Internet Services terms and conditions contained in Part E and the above Schedules relating to these Data & Internet Services.

- 1. Onsite visit fee:  
Whenever an onsite visit that is not part of the service you have purchased is requested by you, you will be charged an on-site visit fee of \$240. This fee covers two hours work including travel time to your location. Time onsite greater than two hours is charged at \$30 per 15 minutes thereafter.
- 2. Change of data plan:
  - (a) No charge to upgrade.

- (b) \$100 once-off for downgrades and contract term restarted.
- (c) Changes limited to one per month.
- 3. Telephone re-configuration of customer equipment after initial set-up:  
A once-off \$75 re-configuration charge. Re-configuration changes are only available for supported Data & Internet Services Related Equipment. A list of supported Data & Internet Services Related Equipment is available from the website.
- 4. Fault visit where no fault is found:  
A standard onsite visit installation charge is due where an engineer is called to site and no fault is found.
- 5. Non-return of Data & Internet Related Equipment:  
If you do not return Data & Internet Services Related Equipment you will be charged the current list price or service installation fee, whichever is the greater, plus a \$50 handling fee.
- 6. Service reconnection:  
Reconnection of service suspended due to non-payment is subject to a reconnection fee of \$50. If you require an onsite visit to restore your service you will be charged on-site visit installation fees.
- 7. Unable to obtain access/Aborted on-site visit:  
Should the engineer not be able to obtain access to your premises at the agreed appointment time a \$110 charge is due. Regional services attract a charge of \$310.

### **Call Australia Frame Relay and Private IP**

---

If you have chosen Frame Relay or Private IP in your Application, the terms and conditions and miscellaneous charges as notified by us from time to time apply to you in addition to the Data & Internet Services terms and conditions contained in Part E.

Your Application for miscellaneous services will contain a quotation and any variation to terms and conditions.

## SCHEDULE 3

---

### INTERNET SERVICES ACCEPTABLE USE POLICY

1. You are responsible for all content and information that you access using the Internet Services. We do not monitor content, and the content you access using our Internet Services is not our responsibility. You are also responsible for any content or material that you disseminate, place, access or host via any medium using the Internet Services. This includes but is not limited to content in or on emails, chat rooms, discussion groups, discussion forums, instant messaging and web pages. If you provide content using the Internet Services it is your responsibility to comply with the *Broadcasting Services Act 1992* (Cth), any applicable Internet Industry Association Codes and any other applicable laws.
2. You must not place or host, via any medium using the Internet Services, material that is classified, or would likely to be classified, as RC (Refused Classification) or X. You must not place or host, via any medium using the Internet Services, material that is classified, or would be likely to be classified, as R unless access to the content is subject to a restricted access system as determined by the Australian Broadcasting Authority (ABA). You must ensure that you clearly identify material that is unsuitable for minors and you must ensure that a restricted access system is in place to prevent minors from gaining access to material that is classified, or would be likely to be classified, as R.
3. You are responsible for and must pay the cost of all telecommunications and Internet access charges incurred when using the Internet Services, including usage by third parties without your consent.
4. You are responsible for all equipment and software necessary to access the Internet Services as well as for the security and integrity of your data, including accounts and passwords.
5. Your use of the Internet Services is your responsibility and entirely at your own risk.
6. You are responsible for your actions when using the Internet Services. You are responsible for complying with any usage policies, rules and regulations that apply to the Internet Services or any network you access using the Internet Services.
7. You must not use the Internet Services so excessively as to disadvantage other users. If we inform you that you have been using the Internet Services at what we consider is an excessive level and you continue to do so, we may suspend or remove any part of the Internet Services without notice to you.
8. You must check your system for viruses on a regular basis.
9. You are responsible for providing, configuring or maintaining any equipment or computer software which you need to access the Internet Services, as well as for the security and integrity of your data (in particular you are responsible for protecting your equipment and software from unauthorised third parties using your hardware or software) except where we have agreed in writing that it shall be responsible for providing and managing certain equipment and software.

10. You are also responsible for ensuring you have the appropriate mechanisms or procedures in place to protect your hardware and software from unauthorised usage.
11. You must take responsibility for distribution, publication and enforcement of this Acceptable Use Policy at your sites.
12. You indemnify and hold us harmless from all liabilities, damages, legal fees, claims, actions, proceedings and expenses arising out of or in any way connected to the use of the Internet Services by you or any other person using your membership identification and password, including, but without limitation, our failure to remove, whether at your request or otherwise, any Internet content on your personal web-pages.
13. You must notify us immediately of any change to your e-mail address.
14. You must not permit any other person, other than adult members of your household or others with your express permission and under your personal supervision, to use your username and password to access the Internet Services. You accept responsibility for all aspects of use of the Internet Services by all persons using your username and password.
15. You must not use or authorise the use of the Internet Services for any activities which breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority including activities which will require us to take remedial action under any applicable industry code. You must not use or authorise the use of the Internet Services for illegal activities or fraudulent activities. You must not use or authorise the use of the Internet Services for any activities that contravene any laws, including the Crimes Act (NSW), the Telecommunications Act 1997 (Cth) or any other state, territory or Commonwealth law that may apply.
16. You must not use the Internet Services or any computer system or network accessed using the Internet Services in any way that interferes with other users or defames, harasses, menaces, restricts or inhibits any other user from using or enjoying the Internet Services including, without limitation:
  - (a) creating or transmitting information or software of any kind which contains viruses or other malicious elements including Trojan horses, computer worms or spy software of any kind;
  - (b) monitoring data or traffic on any network or system if you do not have the authorisation of the owner of the network or system to do so;
  - (c) forging any TCP-IP packet header, any part of the header information or an e-mail source address in an email or newsgroup posting;
  - (d) providing false user information to us or other users;
  - (e) gaining access to a person's private information (or attempting to do so);
  - (f) disobeying the rules of any newsgroup, forum, e-mail mailing list, or other similar group;
  - (g) using another site's mail server to mail without the express permission of the site;
  - (h) forwarding or propagating chain letters or malicious e-mail;

- (i) inappropriate posting of the same or similar messages to one or more newsgroups (including by excessive cross-posting or multiple-posting);
  - (j) sending large amounts of unsolicited or unwanted e-mail to individuals or individual business accounts;
  - (k) soliciting e-mail for any other address other than that of the user, except with the full consent of the owner of the referred address;
  - (l) making lewd, obscene, threatening, abusing or defamatory remarks or inciting hatred to any other person or group; or
  - (m) in general, breaching generally accepted standards of Internet etiquette.
17. You must not store, post or transmit or cause to be stored, posted or transmitted any material of any kind which violates or infringes upon the rights of any other person, including material which is an invasion of any privacy or publicity rights or which is protected by copyright, trademark or any other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or relevant right holder.
18. You must not use the Internet Services to obtain unauthorised access to or make unauthorised modifications to any computer, system, network or information, including, without limitation:
- (a) accessing or using any data, systems or networks;
  - (b) probing, scanning or testing the vulnerability of a system or network;
  - (c) breaching any security or authentication measures for a system or network; or
  - (d) attempting to gain access to the account of any other user.
19. You must not use the Internet Services in a manner that may interfere with the technical operation of the Internet Services or any other computer, system or network. You must not attempt to interfere with the regular workings of our systems or network connections. We may override any attempt by you to specify a particular traffic routing pattern.
20. You must not impair the ability of other people to use our systems or the Internet.
21. You must not use the Internet Services as a staging ground to disable other systems.
22. You are responsible for obtaining advice about whether your use of the Internet Services involves activities which breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority, including the Internet Industry Association Code of Conduct.
23. You must not on-sell any of the Internet Services to any person unless the Internet Services are provided by us for that purpose and the specific terms and conditions relating to that service provide in writing for the on-sale of the Internet Service.
24. You acknowledge that:
- (a) we are not responsible for the content of the Internet Services;
  - (b) the Internet is not necessarily a secure and confidential method of communication and you transmit data at your own risk;

- (c) the Internet contains viruses, Trojan programs and other computer programs that may destroy or corrupt data on your own system and that we have no control over such programs or viruses and that we are not liable for any damage to, or loss of data caused by a virus or other similar program. You are solely liable for any unauthorised usage as a result of viruses, Trojan programs, or other computer programs;
  - (d) use of the Internet Services including any content you may obtain through or on the Internet Services is at your sole risk;
  - (e) the Internet Services are provided without warranties of any kind, either express or implied, unless such warranties are legally incapable of exclusion;
  - (f) you have not relied on our skill, judgment or any representation by us whatsoever in deciding whether the Internet Services are fit for any particular purpose;
  - (g) we are not responsible for any unsolicited or unwelcome information disseminated via the Internet to you or the consequences of you receiving such information; and
  - (h) except as specified in writing by us, we do not warrant that the Internet Services will be available continuously or free of faults.
25. We reserve the right to modify, suspend or remove any part of the Internet Services at its sole discretion, without notice to you, at any time, including without limitation where it is necessary to do so for the efficient operation of our network or where the Internet Services are or have been used in an unreasonable manner (at our sole discretion).
26. We reserve the right to automatically log you off without notice and at any time, including where it is necessary to do so for the efficient operation of our network.
27. You acknowledge that we do not check the content of information available from the Internet Services and that we are not liable for loss or damage that you or anyone else suffers as a result of using this information including, but not limited to, any damage to, or loss of, data caused by a virus or similar program.
28. To the maximum extent permitted by law, we will not be liable in any way for any loss or damage suffered by you through use of the Internet Services, or our failure to provide the Services. Our liability for negligence, breach of contract or contravention of any law as a result of our failure to provide the Internet Services or for any problems with the Internet Services, which cannot be lawfully excluded, is limited, at our option and to the maximum extent permitted by law, to resupplying the Internet Services or any part of it to you, or to paying for resupply of the Internet Services or any part of it to you. We must comply with any Industry Code to which it subscribes.
29. To detect and deal with breaches of this Acceptable Use Policy, we may take the following actions:
- (a) cooperate with other Internet service providers to control unacceptable user behaviour;
  - (b) give details of users who are suspected of breaking any laws in connection with the Internet Services to the police and to other law enforcement agencies;

- (c) implement technical mechanisms to prevent behaviour that breaches this Policy (for example, which block multiple postings before they are forwarded to their intended recipients); and
  - (d) exercise any rights we have under our agreement with you or whose account is being used in breach of this Acceptable Use Policy. Such rights include the right to suspend or terminate your use of the Internet Services.
- 30. We may take any other action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.
- 31. We may monitor your use of the Internet Services to ensure your compliance with this Policy. In conjunction with relevant law enforcement agencies we may investigate any misuse of the Internet Services by you. If your use of the Internet Services results in loss to us or other users, we may require you to pay compensation.
- 32. We may remove any Internet content from any site that it hosts or using the Internet Services, whether it originates from you or not, at any time without prior notice.
- 33. You can report a suspected breach of this Acceptable Use Policy by sending an email to [customerservice@callaustralia.com.au](mailto:customerservice@callaustralia.com.au).

## **PART F – MOBILE SERVICES AND MOBILE EQUIPMENT**

### **74. APPLICATION OF THIS PART**

- 74.1 This Part F applies if you have requested in your Application that we supply you with Mobile Services, and if specified in your Application, Mobile Equipment. This Part F sets out the terms and conditions on which we will supply you with Mobile Services and if applicable Mobile Equipment.
- 74.2 To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part F and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Voice Services, Rental Equipment, or Purchase Equipment.
- 74.3 The Minimum Term, the Minimum Monthly Spend, the Mobile Equipment, Value Added Features and the Eligible Calls will be specified in your Application, as varied in accordance with this Part F.
- 74.4 We will provide the Mobile Services to you, for the Minimum Term specified in your Application, when your accounts are transferred from your current Supplier to us in accordance with the MNP process and any other arrangements with another Supplier for the provision of the Mobile Services have been completed or when your account with us has been established.
- 74.5 We will provide the Mobile Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.
- 74.6 We will provide the required Mobile Services subject to availability, geographical and technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, CDMA Network or GPRS Network is connected. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Mobile Services where capacity, geography or technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, CDMA Network or GPRS Network is connected affect the Mobile Services or Mobile Equipment. If you require a coverage map or further information you may send an email to [customerservice@callaustralia.com.au](mailto:customerservice@callaustralia.com.au).
- 74.7 We do not warrant that the Mobile Services or Mobile Equipment will be free of interruption, delays or faults. The Mobile Service is only available (as the case may be):
- (a) within the limitations of the GSM Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable;
  - (b) within the limitations of the CDMA Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable; and

- (c) within the limitations of the GPRS Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.

74.8 You acknowledge and agree:

- (a) that the Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
- (b) that you are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative telecommunications services suitable for such purposes.

#### **75. APPROVED EQUIPMENT**

75.1 You may only access the Mobile Service and the Value Added Feature with equipment, SIM cards and other devices approved by us. You may only use the Mobile Service and the Value Added Feature with a handset or other device as being compatible with the Value Added Feature. However, you agree that:

- (a) we do not represent or guarantee the extent to which a handset, Mobile Equipment or other device we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature; and
- (b) your ability to use a Value Added Feature and each of its features will depend upon the features and functionality of your handset or Mobile Equipment.

#### **76. MINIMUM TERM**

76.1 If you are on a Minimum Term contract the fixed minimum term specified in your Application commences on the earlier of the provision of the Mobile Services or the SIM is delivered or the Mobile Equipment is delivered to you.

76.2 The reference in this Part F to a Minimum Term contract relates to one SIM only and (where applicable) one handset and/or other Mobile Equipment.

76.3 At the end of the Minimum Term we will continue providing the Mobile Service to you until you notify us that you no longer require the Mobile Service. After we receive your notice we will stop providing the Mobile Service at the end of the billing month. If you wish to cancel the Mobile Service before the end of the Minimum Term you must give us notice and pay all Charges under this standard customer agreement. Subject to you having paid all Charges and complying with all other obligations under the standard customer agreement with you, this standard customer agreement will terminate.

#### **77. MINIMUM MONTHLY SPEND**

77.1 Charges: Each monthly payment will comprise:

- (a) the amount of the minimum monthly spend for Eligible Calls (Mobile Services), Mobile Equipment as specified in your Application (the "**Minimum Monthly Spend**"); and
- (b) charges for Mobile Services relating to non-Eligible Calls and calls above the Eligible Call spend.

- 77.2 There may also be charges which are identified in your Application and any other charges which we can charge under this standard customer agreement. We will invoice you in arrears for the Minimum Monthly Spend.
- 77.3 Minimum Monthly Spend:
- (a) You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.
  - (b) You agree to pay the Minimum Monthly Spend even if your actual spend on Eligible Calls, which is a component of this Minimum Monthly Spend, is less than the Minimum Monthly Spend specified in your Application.
  - (c) If you do not reach your Eligible Call spend in a month, this amount will not accrue and will not roll-over into the following month, unless we agree in your Application to roll-over.
  - (d) Your Eligible Call spend is calculated based on all Eligible Calls made by you using the Mobile Services which are captured and recognised by us within a billing period, regardless of when the Eligible Call was actually made.
  - (e) You agree to pay, if any, the charges for Mobile Services used in excess of the Eligible Call spend and charges relating to non-Eligible Calls each month throughout the Minimum Term.
  - (f) In calculating the charges for Mobile Services included in your Minimum Monthly Spend, we may include other charges which are additional to the Minimum Monthly Spend.
  - (g) The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of Service supply in the relevant month.
- 77.4 Calculation of your plan: Your plan will be calculated by us based on your Minimum Monthly Spend and your Eligible Call spend.
- 77.5 Your right to vary the Minimum Monthly Spend:
- (a) At any time during the Minimum Term you can choose to increase the Minimum Monthly Spend, with our agreement.
  - (b) If the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the Minimum Monthly Spend based on our then current Call Australia Rate Sheets.
  - (c) You cannot vary your Minimum Monthly Spend below the Mobile Equipment Charges.
- 78. SIM**
- 78.1 You will receive only one SIM card for one handset or Mobile Equipment.
- 78.2 We retain ownership in the SIM card. You must return the SIM card to us upon disconnection of the Mobile Service.
- 78.3 We may charge you a SIM card replacement fee if you fail to return the SIM card within 30 days from disconnection.

- 78.4 You must inform us immediately if the SIM card is lost, stolen or damaged by calling Customer Service on 1300 761 488. We will then disconnect or Bar your connection (you will be responsible for all charges up to this time) until the SIM card is replaced or repaired. We may charge you a SIM replacement fee unless we were at fault.

**79. VALUE ADDED FEATURES**

- 79.1 The Mobile Service has the Value Added Features specified in your Application. You agree that we may at any time, and without your consent:
- (a) modify or replace one or all of the Value Added Features of the Mobile Service; or
  - (b) provide additional Value Added Features to those specified in your Application.

**80. MOBILE SERVICES CHARGES**

- 80.1 The charges applicable to the Mobile Services are specified in the Call Australia Rate Sheets and your Application. Our miscellaneous charges for any changes to your Mobile Services are available from us on request.

**81. MOBILE NUMBER PORTABILITY**

- 81.1 Provided that your Service Number is capable of being Ported, you may Port it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACA.
- 81.2 If in providing the Mobile Services to you, we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause. By signing the Mobile Number Portability Customer Authorisation ("Authorisation") which forms part of your Application, you acknowledge and agree:
- (a) to your current Supplier transferring to us your Service Number;
  - (b) for us to disclose information in the Authorisation and Application to other Suppliers in the event of dispute over Porting to us;
  - (c) that we are only transferring your Service Number not your mobile service. This means you may lose value added services and/or Value Added Features provided by your current Supplier. When you are connected to the Mobile Services you will use the Mobile Services and Value Added Features specified in your Application, which may be different to the features that you had with your current Supplier;
  - (d) that by transferring your Service Number, the Mobile Service and/or any Value Added Features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
  - (e) that there may be costs and obligations associated with Porting your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you Port to us;
  - (f) that your current Supplier may or may not disconnect your existing service and/or value added services;
  - (g) if you are Porting between GSM and CDMA or any other mobile platform, you may need to purchase new handset and/or Mobile Equipment;

- (h) if you intend to use your existing handset and/or Mobile Equipment, you may need to get it unlocked or reprogrammed prior to Porting. You may also need to get new Mobile Equipment;
- (i) that you authorise us to provide other Suppliers with details of your Service Number, account details, current network type and your intention to transfer to us to enable ongoing call and message routing to your Service Number and for fault management;
- (j) the information provided by you and recorded in your Application is true and correct. You have provided us with correct Service Numbers to be transferred as well as your existing account number, personal identification details or reference number;
- (k) that you may need to purchase approved Mobile Equipment to access the Mobile Service;
- (l) that you may not have cancelled your existing mobile service with your current Supplier;
- (m) that you can only withdraw your authority to Port prior to the Port Cutover Notification being received by us from your current Supplier. Withdrawing your authority to Port does not change your contractual obligations to us under your Application and this standard customer agreement;
- (n) that we do not warrant that we can Port your Service Number from your current Supplier. Your current Supplier may reject the request to Port, if the information you provide is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to Port or dispute the rejection with your current Supplier;
- (o) that in accordance with the MNP Code, a request to Port may be rejected if:
  - (i) the request is for a non-portable Service Number;
  - (ii) MNP Code requires the request to be rejected; or
  - (iii) we cannot otherwise provide Porting for your Service Number in the circumstances;
- (p) that if your Service Number cannot be Ported then you may accept a new Service Number from us;
- (q) that your authorisation to transfer your Service Number to the Mobile Services is valid for 30 days from the date of the Mobile Number Portability Authorisation Form;
- (r) that in the event of a withdrawal or reversal to your current Supplier, we:
  - (i) are not responsible for any period of outage of Mobile Service or Value Added Features or your current service or any value added service provided by your current Supplier;
  - (ii) do not warrant that your Service Number will be Ported to us within any specified timeframe; and

- (iii) to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the Port, withdrawal or reversal, including a negligent act or omission by us;
  - (s) that if you wish to Port your Service Number from us to another Supplier then you must contact that other Supplier to implement the Port; and
  - (t) that we reserve the right to charge for Porting your Service Number to and from us.
- 81.3 We will not accept any liability for any amounts owing by you to another Supplier for services which the other Supplier provided to you prior to the commencement of the Mobile Services. You agree to indemnify us against any claims made on us by your previous Supplier in relation to such amounts.
- 82. MOBILE EQUIPMENT AND MOBILE PLANS**
- 82.1 Application: For the avoidance of doubt, this clause only applies to Mobile Equipment.
- 82.2 Eligibility for Mobile Equipment: To be eligible to receive Mobile Equipment you must:
  - (a) apply for Mobile Services in your Application;
  - (b) apply for Mobile Equipment in your Application;
  - (c) agree to our Minimum Term and Minimum Monthly Spend requirements;
  - (d) use the Mobile Services and Mobile Equipment for business purposes only; and
  - (e) meet our minimum credit requirements.
- 82.3 When risk passes: If you purchase outright any Mobile Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery. We will retain ownership in all Mobile Equipment purchased from us until you have paid for them in full. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Mobile Equipment will not pass to you until this residual amount is paid in accordance with your Application.
- 82.4 Part G will apply if ownership of the Mobile Equipment has not passed to you, and you must not do anything to give rise to an adverse claim to our rights in or ownership of the Mobile Equipment. You cannot sell or use the Mobile Equipment for a loan or deal with it in any way until you own the Mobile Equipment. If you damage or lose any Mobile Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Mobile Equipment. You are responsible for arranging your own insurance for any Mobile Equipment.
- 82.5 You must maintain your Mobile Equipment: You are responsible for maintaining and repairing any Mobile Equipment supplied by us or our Supplier and complying with the manufacturer's instructions relating to the Mobile Equipment and SIM (where applicable) and its use. You indemnify us and our Supplier against any loss, damage, malfunction or failure resulting from misuse, neglect, abuse, use for a purpose for which the Mobile Equipment was not designed or is not suited, in connection with the Mobile Equipment.

82.6 Lost or stolen Mobile Equipment: If:

- (a) your Mobile Equipment is lost or stolen you must contact Customer Service on 1300 761 488 (or dial +61 2 9030 1857 if you are calling from overseas) to request that your SIM card and/or Mobile Equipment be blocked. This will prevent the Mobile Equipment being used on the GSM Network or CDMA Network;
- (b) you obtain a handset that is lost or stolen, we or our Supplier may block your handset without your consent even if you are not aware it is stolen; and
- (c) you obtain the Mobile Equipment and Mobile Service under false pretences, we or our Supplier may block the handset without your consent.

**83. CHANGING PLANS**

83.1 We may allow you to change your original Minimum Monthly Spend or move to another plan during your Minimum Term if it is specified in your Application or if agreed by us in writing. We may require you to commit to a new Minimum Term from the date of change, and a fee may apply.

**84. ACCEPTABLE USE**

- 84.1 You warrant that while using the Mobile Services, Value Added Features or the Mobile Equipment you or anyone else will not engage in Spamming or similar conduct which affects the GSM Network or CDMA Network or another person's network.
- 84.2 You warrant that you will at all times comply with the SMS Code of Conduct irrespective of whether the SMS Code of Conduct has been registered by the ACA under Part 6 of the Act.
- 84.3 While we will exercise due care and skill in providing the Mobile Service, you agree that your ability to use the Mobile Service to access, use, download and upload Content; or send data in any form including voice, SMS and Content will depend upon the features and functionality of your handset and the nature and quality of the Content being accessed or sent.
- 84.4 While receiving Mobile Services, you agree to comply with our Mobile Acceptable Use Policy specified in Schedule 1 to this Part F.
- 84.5 You acknowledge that the ability to access, view or otherwise receive Wireless Packet Data is dependent upon external factors outside our control and the control of our Suppliers, including:
- (a) the media contained in MMS Messages;
  - (b) WAP Data and Packet Data media limitations; and
  - (c) Wireless Device type, software version and capabilities.

**85. LOST AND STOLEN AND FAULT REPORTING**

85.1 We will provide a 24 hour per day seven days a week lost and stolen reporting service. You should notify our help desk on 1300 761 488 (or dial +61 2 9030 1857 if you are calling from overseas). Alternatively, you can dial the contact number located on our website at [www.callaustralia.com.au/mobile](http://www.callaustralia.com.au/mobile).

85.2 We will provide a fault reporting service via our help desk on 1300 761 488 (or dial +61 2 9030 1857 if you are calling from overseas) or by sending an email to customerservice@callaustralia.com.au during Business Hours.

85.3 Actions:

- (a) We are responsible for correcting faults in the Mobile Service. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
- (b) We are not responsible for any fault which is within the network of a Supplier.
- (c) We will notify that Supplier of the fault and request that the fault be corrected promptly.

## **86. TERMINATION**

86.1 We may terminate this standard customer agreement or suspend, limit or cancel the provision of any Mobile Service:

- (a) by giving you 30 days prior written notice; or
- (b) in accordance with clause 11.1 of the General Terms.

86.2 You may terminate this standard customer agreement or cancel the provision of any Mobile Service by giving us notice. If you are on a Minimum Term Contract then clause 86.4 will apply. For the avoidance of doubt, you do not have this termination right if Part F is being applied in conjunction with Part A.

86.3 If either of us terminate this standard customer agreement under clauses 86.1 or 86.2:

- (a) you must pay to us within seven days of our demand, all unpaid amounts payable to us under this standard customer agreement up to the date of termination; and
- (b) you must, if we request and at our option, either immediately:
  - (i) return all of our or our Supplier's Mobile Equipment (at your cost); or
  - (ii) make such Mobile Equipment available for our, or our Suppliers, collection.

86.4 If you are on a Minimum Term Contract and:

- (a) we terminate this standard customer agreement under clause 86.1(b); or
- (b) you terminate this standard customer agreement under clause 86.2,  
then in addition to clause 86.3(a), you must pay to us by way of liquidated damages and within seven days of our demand either:
  - (c) the amount of liquidated damages payable as specified in your Application; or
  - (d) if no amount specified in your Application, then
    - (i) where your Minimum Term contract is for Mobile Services (SIM Only) then the Mobile Services Early Termination Charge means an amount equal to 40% of the Minimum Monthly Spend as specified in your Application, multiplied by the number of months, or part thereof, between the date of termination and the expiry of the Minimum Term contract; or

- (ii) where your Minimum Term contract is for Mobile Services and Mobile Equipment then the Early Termination Charge means an amount equal to 50% of the Minimum Monthly Spend as specified in your Application, multiplied by the number of months, or part thereof, between the date of termination and the expiry of the Minimum Term contract.

You agree that this charge is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early cancellation of the Mobile Services, Mobile Equipment and this standard customer agreement.

## 87. DEFINITIONS

87.1 In this Part F, unless the context requires otherwise:

**Barring or Bar** means restricting the supply of one or more Services.

**CDMA** means code division multiple access, which is a standard for cellular telephony which uses unique digital codes rather than separate frequencies or channels to differentiate subscribers and all users share the same range of radio frequencies.

**CDMA Network** means the Telstra CDMA mobile telephone network in the 800 MHz spectrum range.

**Content** means any data, information, image or downloadable file provided by us or a Content Provider and that can be accessed using the Mobile Services.

**Eligible Calls** for Mobile Services are any call type specifically identified as being an Eligible Call under a Call Australia Rate Sheet and may include SMS; MMS; voicemail (while in Australia); circuit fax and circuit data (while in Australia); mobile calls while in Australia to Local Calls, National Calls, International (IDD) Calls and Australian mobile network numbers, 13, 1300 and 1800 numbers. For clarity, they do not include mobile calls to 12 prefixes, 19 prefixes, satellite services, global services, international roaming (including but not limited to access and use of your Mobile Service for SMS, MMS, internet, WAP, circuit fax, data calls, voicemail and any calls while outside of Australia) or any other call type not specifically identified as being an Eligible Call (including where so identified under a Call Australia Rate Sheet).

**GSM** means Global System for Mobiles as defined by ETSI and the GSM Memorandum of Understanding and as applied in Australia.

**GSM Network** means the Telstra GSM mobile telephone network in the 900 MHz and 1800 MHz spectrum range.

**GPRS** means general packet radio service and as specified in your Application.

**GPRS Network** means the Telstra general packet radio service.

**Internet** means the International network of data networks utilising the TCP/IP protocol suite of which the SMS Network forms part.

**International Calls** means a call from a cellular public mobile telecommunications service from Australia to another country.

**Mobile to Local Calls** means calls made from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN number which if made from a PSTN or ISDN number would be a Local Call.

**MNP Code** means the code entitled ACIF C570:2003 Mobile Number Portability registered by the ACA under section 117 of the Act, as at 1 February 2003 or as otherwise agreed in writing between the parties.

**Mobile Equipment** means any equipment purchased from us as specified in your Application that is not Data & Internet Equipment, or Data & Internet Services Related Equipment, and may include handsets, accessories, and equipment supplied by us but does not include the SIM.

**Mobile Number Portability** or **MNP** has the meaning given to it by the Industry Code: Mobile Number Portability registered by the ACA under Part 6 of the Act.

**Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you on the terms and conditions of this standard customer agreement and as specified in your Application.

**National Calls** means a call made within Australia from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN telephone service that is not a Mobile to Local Call.

**Port** means the movement of Service Numbers between Suppliers using MNP processes.

**Short Message Service (SMS)** is the ability to send Short Messages and receive Short Messages in relation to GSM and in relation to CDMA.

**SMS Code of Conduct** means the SMS Code of Conduct developed by the Australian Communications Industry Forum and registered or published by the ACA under Part 6 of the Act.

**SIM** means the subscriber identity module owned by us and we issue to you which enables you to access the Mobile Service.

**Spamming** means the marketing of goods and services, the provision of information or the promotion of ideas to multiple recipients using a Short Message where the recipients of the Short Message have not consented to, or requested, the Short Message.

**WAP** means Wireless Application Protocol which is a protocol that enables internet services to be delivered to small-screen mobile devices.

**Wireless Packet Data** means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded using the Mobile Service.

## SCHEDULE 1

---

### MOBILE SERVICES ACCEPTABLE USE POLICY

1. You are responsible for all content and information that you access using the Mobile Services. We do not monitor Content, and the Content you access using our Mobile Services is not our responsibility. You are also responsible for any Content or material that you disseminate, place, access or host via any medium using the Mobile Services. This includes but is not limited to Content in or on emails, chat rooms, discussion groups, discussion forums, instant messaging, SMS and web pages. If you provide Content using the Internet Services it is your responsibility to comply with the *Broadcasting Services Act 1992* (Cth), any applicable Mobile Services Industry Association Codes and any other applicable laws.
2. You must not place or host, via any medium using the Mobile Services, material that is classified, or would likely to be classified, as RC (Refused Classification) or X. You must not place or host, via any medium using the Mobile Services, material that is classified, or would be likely to be classified, as R unless access to the content is subject to a restricted access system as determined by the Australian Broadcasting Authority (ABA). You must ensure that you clearly identify material that is unsuitable for minors and you must ensure that a restricted access system is in place to prevent minors from gaining access to material that is classified, or would be likely to be classified as R.
3. You are responsible for and must pay the cost of all telecommunications and Internet access charges incurred when using the Mobile Services, including usage by third parties without your consent.
4. You are responsible for all equipment and software necessary to access the Mobile Services as well as for the security and integrity of your data, including accounts and passwords.
5. Your use of the Mobile Services is your responsibility and entirely at your own risk.
6. You are responsible for your actions when using the Mobile Services. You are responsible for complying with any usage policies, rules and regulations that apply to the Mobile Services or any network you access using the Mobile Services.
7. You must not use the Mobile Services so excessively as to disadvantage other users. If we inform you that you have been using the Mobile Services at what we consider is an excessive level and you continue to do so, we may suspend or remove any part of the Mobile Services without notice to you.
8. You are responsible for providing, configuring or maintaining any equipment or computer software which you need to access the Mobile Services, as well as for the security and integrity of your data (in particular you are responsible for protecting your Mobile Equipment from unauthorised third parties using your hardware or software) except where we have agreed in writing that it shall be responsible for providing and managing certain equipment.

9. You are also responsible for ensuring you have the appropriate mechanisms or procedures in place to protect your Mobile Service and Mobile Equipment from unauthorised usage.
10. You must take responsibility for distribution, publication and enforcement of this Acceptable Use Policy at your sites.
11. You indemnify and hold us harmless from all liabilities, damages, legal fees, claims, actions, proceedings and expenses arising out of or in any way connected to the use of the Mobile Services and Mobile Equipment by you or any other person using your membership identification and password.
12. You must notify us immediately of any change to your e-mail address provided and other contact details.
13. You must not permit any other person, other than adult members of your household or others with your express permission and under your personal supervision, to use your username and password to access the Mobile Services and Mobile Equipment. You accept responsibility for all aspects of use of the Mobile Services and Mobile Equipment by all persons using your username and password.
14. You must not use or authorise the use of the Mobile Services and Mobile Equipment for any activities which breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority including activities which will require us to take remedial action under any applicable industry code. You must not use or authorise the use of the Mobile Services for illegal activities or fraudulent activities. You must not use or authorise the use of the Mobile Services and Mobile Equipment for any activities that contravene any laws, including the *Crimes Act 1900* (NSW), the Act (Cth) or any other State, Territory or Commonwealth law that may apply.
15. You must not use the Mobile Services or any computer system or network accessed using the Mobile Services in any way that interferes with other users or defames, harasses, menaces, restricts or inhibits any other user from using or enjoying the Internet Services including, without limitation:
  - (a) creating or transmitting information, data or software of any kind which contains viruses or other malicious elements including Trojan horses, computer worms or spy software of any kind;
  - (b) monitoring data or traffic on any network or system if you do not have the authorisation of the owner of the network or system to do so;
  - (c) forging any TCP-IP packet header, any part of the header information or an e-mail source address in an email or newsgroup posting;
  - (d) providing false user information to us or other users;
  - (e) gaining access to a person's private information (or attempting to do so);
  - (f) disobeying the rules of any newsgroup, forum, e-mail mailing list or other similar group;
  - (g) using another site's mail server to mail without the express permission of the site;

- (h) forwarding or propagating chain letters or malicious e-mail;
  - (i) inappropriate posting of the same or similar messages to one or more newsgroups (including by excessive cross-posting or multiple-posting);
  - (j) sending unsolicited or unwanted e-mail, SMS or other electronic communications to individuals or individual business accounts;
  - (k) soliciting e-mail for any other address other than that of the user, except with the full consent of the owner of the referred address;
  - (l) making lewd, obscene, threatening, abusing or defamatory remarks or inciting hatred to any other person or group; or
  - (m) in general, breaching generally accepted standards of Internet and mobile service etiquette.
16. You must not store, post or transmit or cause to be stored, posted or transmitted any material of any kind which violates or infringes upon the rights of any other person, including material which is an invasion of any privacy or publicity rights or which is protected by copyright, trademark or any other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or relevant right holder.
17. You must not use the Mobile Services to obtain unauthorised access to or make unauthorised modifications to any computer, system, network or information, including, without limitation:
- (a) accessing or using any data, systems or networks;
  - (b) probing, scanning or testing the vulnerability of a system or network;
  - (c) breaching any security or authentication measures for a system or network; or
  - (d) attempting to gain access to the account of any other user.
18. You must not use the Mobile Services in a manner that may interfere with the technical operation of the Mobile Services or any other computer, system or network. You must not attempt to interfere with the regular workings of our systems or network connections. We may override any attempt by you to specify a particular traffic routing pattern.
19. You must not impair the ability of other people to use our systems or the Mobile Service.
20. You must not use the Mobile Services as a staging ground to disable other systems.
21. You are responsible for obtaining advice about whether your use of the Mobile Services involves activities which breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority, including the Internet Industry Association Code of Conduct.
22. You acknowledge that:
- (a) we are not responsible for the content of the Mobile Services;
  - (b) Mobile Services are not necessarily a secure and confidential method of communication and you transmit data at your own risk;
  - (c) use of the Mobile Services including any content you may obtain through or on the Mobile Services is at your sole risk;

- (d) the Mobile Services are provided without warranties of any kind, either express or implied, unless such warranties are legally incapable of exclusion;
  - (e) you have not relied on our skill, judgment or any representation by us whatsoever in deciding whether the Mobile Services are fit for any particular purpose;
  - (f) we are not responsible for any unsolicited or unwelcome information disseminated via the Mobile Services to you or the consequences of you receiving such information; and
  - (g) except as specified in writing, we do not warrant that the Mobile Services will be available continuously or free of faults.
23. We reserve the right to modify, suspend or remove any part of the Mobile Services at its sole discretion, without notice to you, at any time, including without limitation where it is necessary to do so for the efficient operation of the network or where the Mobile Services are or have been used in an unreasonable manner (at our sole discretion).
24. We reserve the right to automatically disconnect you without notice and at any time, including where it is necessary to do so for the efficient operation of the network.
25. You acknowledge that we do not check the content of information available from the Mobile Services and that we are not liable for loss or damage that you or anyone else suffers as a result of using this information including, but not limited to, any damage to, or loss of, data caused by a virus or similar program.
26. To the maximum extent permitted by law, we will not be liable in any way for any loss or damage suffered by you through use of the Mobile Services, or our failure to provide the Services. Our liability for negligence, breach of contract or contravention of any law as a result of our failure to provide the Mobile Services or for any problems with the Mobile Services, which cannot be lawfully excluded, is limited, at our option and to the maximum extent permitted by law, to resupplying the Mobile Services or any part of it to you, or to paying for resupply of the Mobile Services or any part of it to you. We must comply with any Industry Code to which we subscribe or by which we are bound.
27. To detect and deal with breaches of this Acceptable Use Policy, we may take the following actions:
- (a) cooperate with other mobile service providers to control unacceptable user behaviour;
  - (b) give details of users who are suspected of breaking any laws in connection with the Mobile Services to the police and to other law enforcement agencies;
  - (c) implement technical mechanisms to prevent behaviour that breaches this Policy (for example, which block multiple postings before they are forwarded to their intended recipients); and
  - (d) exercise any rights we have under our agreement with you or whose account is being used in breach of this Acceptable Use Policy. Such rights include the right to suspend or terminate your use of the Mobile Services.
28. We may take any other action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.

29. We may monitor your use of the Mobile Services to ensure your compliance with this Policy. In conjunction with relevant law enforcement agencies we may investigate any misuse of the Mobile Services by you. If your use of the Mobile Services results in loss to us or other users, we may require you to pay compensation.
30. We may remove any content from any site that it hosts or using the Mobile Services, whether it originates from you or not, at any time without prior notice.
31. You can report a suspected breach of this Acceptable Use Policy by sending an email to [customerservice@callaustralia.com.au](mailto:customerservice@callaustralia.com.au).

## **PART G – PURCHASE EQUIPMENT**

### **88. APPLICATION OF THIS PART**

88.1 This Part G applies if you have requested in your Application that we supply you with Purchase Equipment and sets out the terms and conditions on which we will supply you with the Purchase Equipment. You are only eligible to purchase Equipment if you also purchase Voice Services, Data & Internet Services, Mobile Services, or any other Services specified in your Application that are required to be purchased with that Equipment. In addition, as stated in your Application:

- (a) we may provide you with Maintenance and Software in accordance with Part C; and/or
- (b) we may offer you a credit towards the purchase price of equipment (including Mobile Equipment), on the terms specified in your Application.

88.2 To the extent relevant, the General Terms apply to the Purchase Equipment and the Purchase Equipment Charge as though specified in full in this Part G and such terms or part of such terms will be relevant except to the extent they relate to Rental Equipment, Voice Services and Data & Internet Services, and Mobile Services, and charges for Rental Equipment, Voice Services, Mobile Services, and Data & Internet Services.

88.3 For the avoidance of doubt all your rights and obligations in relation to the Purchase Equipment and payment of the Purchase Equipment Charges are contained in this Part G.

### **89. INSTALLATION**

89.1 We will provide the Purchase Equipment nominated by you in your Application. You acknowledge that the Purchase Equipment may be either new or refurbished.

89.2 You are responsible for all costs of delivery and installation and for preparing the Site for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.

89.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.

89.4 Where nominated in your Application that we will install the Purchase Equipment at the Site, we may terminate this standard customer agreement by written notice to you if you have not enabled installation of the Purchase Equipment to take place within 60 days of the Proposed Installation Date in your Application. In that event you will pay us liquidated damages for our storage, handling, re-scheduling and other administration costs of an amount equivalent to 30% of the Purchase Equipment Charges for the remainder of the Minimum Term. You agree that this amount is a genuine pre-estimate of the actual loss which would be experienced by us as a result of early termination of this standard customer agreement.

### **90. PERIOD OF AGREEMENT**

90.1 You agree to the Minimum Term described in your Application, commencing on the date we deliver the relevant Purchase Equipment, or otherwise in accordance with these terms and conditions.

## **91. PAYMENT**

- 91.1 You agree to pay the Purchase Equipment Charges (which may be included as part of the Minimum Monthly Spend) stated in your Application each month throughout the Minimum Term. The amount of Purchase Equipment Charges can be varied in accordance with this standard customer agreement.
- 91.2 You agree that we may (subject to your rights under this Part G) sell, transfer or assign our rights under this Part G and/ or to the Purchase Equipment and that your consent to such dealing is not required.
- 91.3 Termination of any other part of the standard customer agreement does not constitute or effect a termination of this Purchase Equipment Agreement.
- 91.4 If the Services Agreement is terminated in accordance with clause 24 or clause 86, you must continue paying the Purchase Equipment Charge (which may be included as part of the Minimum Monthly Spend), at the same charges specified in your Application, in accordance with the terms of this Part G, for the remainder of the Minimum Term.
- 91.5 You acknowledge that in respect of any amounts we receive from you in relation to the Minimum Monthly Spend, we will attribute them to charges for Services initially and then to any charges for Purchase Equipment.

## **92. OWNERSHIP**

- 92.1 The Purchase Equipment is and remains our property (or the property of an entity related to us) and you hold it for us until you have paid for it in full in cleared funds. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Purchase Equipment will not pass to you until this residual amount is paid in accordance with your Application. If you damage or lose any Purchase Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Purchase Equipment.
- 92.2 The Purchase Equipment is at your risk from the time of delivery to the address you nominate in your Application for the purposes of delivery.
- 92.3 The warranty period (if any) for each item of the Purchase Equipment and installation workmanship (if installed by us) is detailed in your Application. Any warranty we provide you only covers the Purchase Equipment and not anything else, including but not limited to, things attached to the Purchase Equipment or the wiring already at the Site.
- 92.4 We will use reasonable efforts to transfer to you any manufacturer's warranty in the Purchase Equipment, from the time title passes to you.
- 92.5 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Purchase Equipment. You cannot sell or use the Purchase Equipment for a loan or deal with it in any way until you own the Purchase Equipment.
- 92.6 Manuals provided to you are subject to copyright. The Purchase Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Purchase Equipment without our written permission.
- 92.7 Unless nominated in your Application, we will not provide you with any maintenance or software as part of the Purchase Equipment.

### **93. THINGS YOU MUST DO**

93.1 You must:

- (a) arrange for the Purchase Equipment to be properly serviced so that it is at all times in good working condition and remains subject to any applicable warranty;
- (b) comply with the manufacturer's instructions relating to the Purchase Equipment and its use;
- (c) comply with all laws and regulations relating to the Purchase Equipment, the use or possession of it, or any premises on which it is situated;
- (d) keep the Purchase Equipment at the Site address indicated in your Application, or at such other place as we approve in writing;
- (e) produce the Purchase Equipment for inspection or testing by us, or a person approved by us, at our request, and for this purpose allow us access to any place where the Purchase Equipment is kept;
- (f) keep the Purchase Equipment under your control or the control of your employees; and
- (g) notify us immediately in writing if the Purchase Equipment is lost, stolen or damaged or any person asserts any rights to the Purchase Equipment.

### **94. THINGS YOU MUST NOT DO**

94.1 You must not.

- (a) change the Purchase Equipment, make any addition to it or install anything with it without our written consent. You agree that the changed Purchase Equipment, including any other goods supplied with or attached to it, becomes our property and will comprise the Purchase Equipment for the purposes of this standard customer agreement;
- (b) use the Purchase Equipment for any purpose which is unlawful or might endanger the safety or condition of the Purchase Equipment or prejudice our interest in it;
- (c) alter or cover up any insignia, number or mark in or on the Purchase Equipment; or
- (d) alter the installation of the Purchase Equipment in a way that makes it a fixture.

### **95. INSURANCE**

95.1 Unless agreed otherwise in writing, you must:

- (a) insure the Purchase Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- (b) take out and maintain an adequate level of public risk liability insurance in relation to the Purchase Equipment and its use;
- (c) take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
- (d) punctually pay all premiums on each insurance policy and not prejudice any policy;
- (e) if we request, provide us with adequate evidence of the insurance policies;

- (f) irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Purchase Equipment or any injury, death, damage or loss caused by the Purchase Equipment or its use; and
- (g) appoint us your attorney:
  - (i) to make, recover and/or compromise in your name any claim under such insurance or against any person; and
  - (ii) to appropriate any insurance money or other amount received at our option towards repair or replacement of the Purchase Equipment or towards any money payable by you to us or to any third party.

#### **96. DESTRUCTION**

- 96.1 If the Purchase Equipment is lost, stolen or substantially destroyed we may terminate this standard customer agreement by notice to you.
- 96.2 We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you.
- 96.3 Your obligations under this standard customer agreement continue even if the Purchase Equipment breaks down, is defective or damaged.
- 96.4 If the Purchase Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold the Purchase Equipment Charges or other money.

#### **97. OUR ACTION**

- 97.1 If you fail to comply with any obligations under this standard customer agreement, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).
- 97.2 We may do anything which we consider desirable to protect or enforce our rights in the Purchase Equipment.
- 97.3 You irrevocably authorise us to act on your behalf in protecting or enforcing our rights in the Purchase Equipment, as we may reasonably require.

#### **98. UPGRADES TO PURCHASE EQUIPMENT**

- 98.1 You may request us to upgrade the Purchase Equipment during the Minimum Term and we will provide these upgrades if they are available. If you elect to accept the upgrade you will enter into a new standard customer agreement on our then current terms and at the applicable charge for that upgrade. This standard customer agreement will then terminate.
- 98.2 We may permit you to add on additional Purchase Equipment to the standard customer agreement based on our then current Call Australia Rate Sheets, which addition can be documented by way of an acknowledgement issued by us and we may also permit you to vary your Minimum Monthly Spend if your Purchase Equipment forms part of a Package.

#### **99. TERMINATION**

- 99.1 Termination: We may terminate this standard customer agreement:
  - (a) under clause 11.1 of the General Terms; or

- (b) if the Purchase Equipment is lost, stolen or substantially destroyed in accordance with clause 96.1.

99.2 If we terminate this standard customer agreement under clause 99.1, you must pay us by way of liquidated damages within seven days of our demand, an amount equal to the total of:

- (a) all unpaid amounts payable to us under this standard customer agreement up to the date of termination;
- (b) the present value of payments that would have been payable during the period from the date of termination to the end of the Minimum Term, using the discount rate to discount each such payment over the period by which the date for payment is brought forward by this clause ("discount rate" means the rate determined by us equal to not less than 70% of the implicit interest rate used by us to calculate the charges under this standard customer agreement);
- (c) any duty payable on the amounts payable in (a) and (b);
- (d) either:
  - (i) any costs incurred by us in repossessing the Purchase Equipment and making repairs that we think necessary; or
  - (ii) if we are not able to repossess the Purchase Equipment, an amount equivalent to three months' Purchase Equipment Charges, plus any costs incurred by us in attempting to repossess the Purchase Equipment; and
- (e) any interest payable.

For clarity, if you nominate Mobile Services and Mobile Equipment in your Application, then the Early Termination Charge payable will be calculated in accordance with clause 86.4(b).

## **100. SOFTWARE**

100.1 We will only provide you with Software on the terms specified in Part C and which you have selected on your Application Form. We will not provide you with any Other Software in order to access and use the Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Purchase Equipment, but you must first get our prior written permission.

100.2 We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

## **101. DEFINITIONS**

In this Part G, unless the context requires otherwise:

**Proposed Installation Date** means the nominal date stated in your Application for the installation of Purchase Equipment.