



# SWITCHCONNECT

TECH MADE HUMAN

## SWITCH CONNECT

Standard Forms of Agreement

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## GENERAL TERMS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Definitions used in this SFOA can be found in clause 25.
- 1.2 Additional definitions relevant to each separate Part of this SFOA can be found in the relevant Part.

### 2. OUR AGREEMENT WITH YOU

- 2.1 Subject to clause 2.2, if you ("**you**") obtain or seek goods and services from Switch Connect Pty Ltd ACN 606 049 441 ("**us**", "**we**"), you do so in accordance with these standard terms and conditions (referred to as our Standard Form of Agreement ("**SFOA**")) and the other documents which comprise your Agreement with us.
- 2.2 Where you enter into a Master Services Agreement with us for the supply of goods or services, the Master Services Agreement will apply to that supply to the exclusion of this SFOA.
- 2.3 This SFOA is a standard form of agreement for the purposes of Part 23 of the Act.
- 2.4 An agreement is formed when you apply to acquire goods or services from us in the manner specified in clause 2.5 and we accept your application in the manner specified in clause 2.6.
- 2.5 You may request us to supply a Service or a Package to you by properly completing and providing to us an Application Form. If you complete a written Application Form, we may accept and rely on, and you will be bound by, a facsimile copy or an electronic copy (including an email) or a voice authorisation of your Application Form as if it were an original.
- 2.6 This SFOA is not legally binding on us unless and until we accept your Application Form, which we may do or refuse to do at our sole discretion. We will be deemed to have accepted your Application Form if (and only if):-
  - 2.6.1 we notify you in writing that we accept your Application Form;
  - 2.6.2 your Services are activated by us;
  - 2.6.3 any Purchase Equipment is ordered by us;
  - 2.6.4 any Data & Internet Services Related Equipment is ordered by us; or
  - 2.6.5 any Voice Services Related Equipment is ordered by us.
- 2.7 We may:-
  - 2.7.1 undertake credit checking on you;
  - 2.7.2 use information supplied by you in accordance with clauses 12 and 13;
  - 2.7.3 process your Application Form;
  - 2.7.4 prepare to:-
    - 2.7.4.1 activate the Services;
    - 2.7.4.2 order required Purchase Equipment (if any);
    - 2.7.4.3 order required Data & Internet Services Related Equipment (if any); and
    - 2.7.4.4 order required Voice Services Related Equipment.

Undertaking any of the activities referred to in this clause 2.7 will not constitute acceptance of your Application Form. If your Application Form is refused or cancelled, we may charge you for the costs we

incur in carrying out anything in this clause 2.7.

2.8 Your Agreement with us comprises:

2.8.1 your Application;

2.8.2 the Schedule of Fees and Charges;

2.8.3 this SFOA; and

2.8.4 our Policies.

2.9 Our Agreement contains the whole understanding between us, supersedes all prior representations, agreements, statements and undertakings whether verbal or in writing.

2.10 Unless expressly stated otherwise, to the extent of any inconsistency between any of the documents listed in clause 2.8, that inconsistency shall be resolved in the order in which each document appears in clause 2.8.

### **3. CUSTOMER ASSISTANCE**

3.1 If you require assistance reading or understanding any part of this SFOA or any other part of the Agreement, you may contact:

3.1.1 our customer assistance line on the number specified on the Application Form and on our website;

3.1.2 the National Relay Service (NRS) on 13 36 77; or

3.1.3 the Translating & Interpreting Service (TIS) on 13 14 50.

### **4. THE TERM**

4.1 The term of our Agreement commences on the first of those things specified in clause 2.6 to occur and continues until terminated in accordance with our Agreement.

4.2 The term of a particular supply of Services or a Package will be calculated in accordance with clause 10.

### **5. ADDITIONAL SERVICES AND EQUIPMENT**

5.1 You may apply for the provision of Services or a Package which are in addition to those set out in your original Application by submitting a further Application Form to us.

5.2 Where we agree to supply those additional Services and/or Package to you, that supply will be on the terms and conditions of our Agreement.

### **6. CHANGES TO OUR AGREEMENT**

6.1 From time to time, we may need to vary the terms of our Agreement due to circumstances beyond our control, including changes in law, security reasons and changes to the terms of supply or the functionality or nature of a supply by one of our Suppliers. We are therefore not always able to provide you with ongoing supply under our Agreement on the same terms and conditions that existed when we first commenced a supply to you.

6.2 In addition to changes we are required to make due to circumstances beyond our control, we may elect to make changes for our own purposes during the term of our Agreement.

6.3 We may vary the terms of our Agreement in accordance with the following:

6.3.1 where the variation is likely to benefit or have a neutral or minor detrimental impact on you, the variation will take effect upon us giving written notice to you;

- 6.3.2 where we acquire a carriage service from a third party for resale to you and variations to our Agreement are required because of an amendment made by our third party supplier to the contract between us and our third party supplier, we will provide you with prior written notice explaining the variation and its effect and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
  - 6.3.2.1 usage or network access charges incurred up to the date of termination; and
  - 6.3.2.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination; and
  - 6.3.2.3 any outstanding amounts that cover installation costs of any Purchase Equipment unless such Purchase Equipment is not compatible with other suppliers' services; or
- 6.3.3 where the variation has a more than minor detrimental impact on you, we will provide you with at least 21 days' notice and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
  - 6.3.3.1 usage or network access charges incurred up to the date of termination; and
  - 6.3.3.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination; and
  - 6.3.3.3 any outstanding amounts that cover installation costs for any Purchase Equipment unless such Purchase Equipment is not compatible with other suppliers' services.
- 6.4 If you require your account to be changed into the name of another person (transfer), you can apply to do so by contacting our customer service team. We may agree to or refuse to a transfer at our sole discretion. In the event of any agreed transfer of your account, you will remain liable for your obligations under our Agreement up to the date of transfer and the new account holder will be required to agree to be bound by the terms of our Agreement as a condition of the transfer.

## **7. FEES & PAYMENT**

- 7.1 You must pay the Fees during the term of our Agreement. You will be liable to pay all Fees arising out of the use of a Service or any part of Package, whether such use is by you or any other person, whether with or without your consent.
- 7.2 Fees will be calculated by reference to data recorded or logged by us. Records held by us will be conclusive evidence of your usage of the Services or Packages and Fees payable by you expect in the case of manifest error.
- 7.3 Before advancing any credit to you, we may require security for payment from you and/or prepayment of Fees at our discretion.
- 7.4 We will usually invoice you monthly for Fees. Our first invoice will be issued either in the month that we commence provisioning Services or a Package to you or, in our discretion, the following month.
- 7.5 We may:-
  - 7.5.1 vary invoice frequency at our discretion;
  - 7.5.2 issue interim invoices; and/or
  - 7.5.3 bill you more often if you exceed your Spend Limit.
- 7.6 Unless otherwise expressly stated in our Agreement, we will generally bill you:-
  - 7.6.1 in advance for periodic charges, connection and service fees (where applicable); and
  - 7.6.2 in arrears for usage charges,

although this may vary in certain cases. We will endeavor 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.

- 7.7 All Fees 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.
- 7.8 If an invoice is paid by cheque or direct debit from your bank account and that cheque or direct debit is dishonoured, cancelled or otherwise fails, we may charge and you must pay a dishonour fee which will be added to your next invoice.
- 7.9 Supplier charges:-
- 7.9.1 You must pay us all fees and charges which any Supplier or other person renders to us, including:
- 7.9.1.1 if you approach that Supplier or person directly, or otherwise than through us; or
- 7.9.1.2 for connection or initiation of any service or for cancellation of any service; or
- 7.9.1.3 or any other fees incurred from Supplier, for example, if you are not at your premises when scheduled support arrive.
- 7.9.2 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 7.9.
- 7.10 If you do not pay any monies due to us under our Agreement by the due date specified on an applicable invoice, we may impose a late payment charge or default interest calculated under our Schedule of Fees and Charges.
- 7.11 If we incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, legal costs, including service fees and search fees, we may recover these amounts from you in addition to the overdue amounts.
- 7.12 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.
- 7.13 Unless expressly stated otherwise, all fees, charges and other amounts payable (and all quotes given) under or in accordance with the terms of our Agreement (including charges for Services or the Package, repair fees, late payment charges, Early Termination Fees, reconnection fees, installation costs) are exclusive of GST and you must pay to us in addition to the fees, charges and other amounts 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 fees, charges and other amounts 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.
- 7.14 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.

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.

## **8. DISPUTES**

- 8.1 All disputes arising under our Agreement, including a dispute about an invoice, will be dealt with in accordance with our applicable Policy.

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

- 9.1 We may from time to time, at our sole discretion, set a dollar limit for the amount we will allow you to spend on the Services or the Package during a particular period.
- 9.2 The Spend Limit is only an internal guideline for our own credit management action, which may be varied by us from time to time for any reason and at our discretion.
- 9.3 If you exceed your Spend limit, we may (without limitation):
- 9.3.1 verbally or in writing (including transmitting the notice to your email address) advise you of total cumulative charges; and
  - 9.3.2 issue you with an interim invoice, upon which payment within the time specified in the invoice must be made by you, failing which we may suspend or terminate the supply of all Services and/or Packages (as applicable) in accordance with clause 17.
- 9.4 We may also monitor your Services for excessive or unusual usage or your level of liability for charges for such usage, but do not promise to do so. You acknowledge and agree that in addition to our rights under clause 17 we can suspend, cancel or Bar your Service upon reasonable verbal or written notice to you (including transmitting the notice to your email address) if we have reasonable grounds for believing that you represent a credit risk in relation to the Service, including where:-
- 9.4.1 the Services are being used in an excessive or unusual way or an unusually high volume or spend for the relevant Service when compared with previous account activity for that Service. For example, 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;
  - 9.4.2 you fail to respond to notices from us about unusually high volume or spend;
  - 9.4.3 you fail to pay a current bill in circumstances where your payment history indicates a series of late payments, dishonoured payments or failures to pay. 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. If you wish to Bar access to premium rate services from the Services we provide you, please contact us.
- 9.5 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.

## **10. PERIOD OF SUPPLY**

- 10.1 The provision of Services or a Package commences:
- 10.1.1 if you are transferring from another Supplier, when your accounts are transferred from that other Supplier to us and any other arrangements with another Supplier for the provision of the Services have been completed; or
  - 10.1.2 if you are not transferring from another Supplier, within a reasonable period of the commencement of our Agreement.
- 10.2 If the term of a particular supply of Services or a Package specified in the Application is a non-fixed length term, we will provide the relevant supply to you in accordance with the Agreement until it is cancelled in accordance with clause 17.
- 10.3 If the term of a particular supply of Services or a Package specified in the Application is a fixed-length term, this supply will continue:-
- 10.3.1 subject to clause 10.4, for the fixed term specified in the Application; or
  - 10.3.2 until it is terminated in accordance with clause 17.

- 10.4 If a supply is for a fixed-length term and neither you nor we cancel the supply at the end of the fixed term, the supply will become a non-fixed length term and we will continue to supply the Service or Package to you on a month to month basis in accordance with our Agreement. If you do not wish to continue to use the Service or Package on a month to month basis after the end of the fixed term, you must notify us by giving us 30 days' notice in writing before the end of the fixed term that you wish to cancel the supply at the end of the fixed term.

## 11. TRANSFER OF YOUR SERVICES TO US

- 11.1 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.
- 11.2 Transferring to us:-
- 11.2.1 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.
- 11.2.2 You agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request.
- 11.2.3 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.
- 11.3 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.
- 11.4 If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services, you must pay your previous Supplier that amount and you indemnify us in relation to any such claims and charges.

## 12. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER

- 12.1 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.
- 12.2 The provision of Services by us ceases on the date on which we transfer your Services to another Supplier.
- 12.3 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.
- 12.4 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.
- 12.5 We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer.

## 13. PERSONAL INFORMATION AND BUSINESS INFORMATION

- 13.1 This clause 13 applies where you are a natural person or a business or company. 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 or company customer, we may collect information about your business and company, including but not limited to your electronic contact details such as email ("**business information**").
- 13.2 You acknowledge and agree that:

- 13.2.1 if you do not supply the information we request on our Application Form, we may not be able to provide the Services or the Package to you;
- 13.2.2 we will use your Personal Information or business information:
  - 13.2.2.1 to assess any Application Form submitted by you for Services or the Package to be provided by us;
  - 13.2.2.2 to collect payments that are overdue in respect of any Services or the Package provided by us;
  - 13.2.2.3 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);
  - 13.2.2.4 we may use your Personal Information or business information to send commercial electronic messages, as defined under the *Spam Act 2003* (Cth); and
  - 13.2.2.5 in accordance with the *Privacy Act 1988* (Cth) and our applicable Policies relating to privacy;
- 13.2.3 we will also disclose or transfer your Personal Information or business information:
  - a) 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);
  - b) to other Suppliers about your account, including particulars of calls and call charges; and
  - c) to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and ACMA) 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.
- 13.3 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:
  - 13.3.1 disclosures to the operator of the Integrated Public Number Database ("IPND");
  - 13.3.2 disclosures to law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
  - 13.3.3 uses or disclosures to assist in the recovery of lost or stolen equipment;
  - 13.3.4 uses or disclosures in accordance with orders made by a court or if required or authorised by law;
  - 13.3.5 uses or disclosures to lessen or prevent serious threats to an individual's life, health or safety, or to public health or safety; or
  - 13.3.6 uses to assist in our internal investigations into suspected fraud or other unlawful activities.
  - 13.3.7 Unless you ask us not to, you acknowledge that any calls you make to our customer call centres, the content of those calls, and any emails that you send us, may be monitored and/or recorded for quality assessment, administration and/or customer information purposes.
- 13.4 Unless you ask us not to, we will use your Personal Information or business information to:
  - 13.4.1 provide information to you about other goods or services which we or any of our Related Body 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, franchisee(s), and agents may offer to you;

- 13.4.2 provide information to our Related Body 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, franchisee(s), and agents so that they can provide information to you about goods and services they offer; and
- 13.4.3 send commercial electronic messages as defined under the *Spam Act 2003* (Cth).
- 13.5 If you do not want us to use your Personal Information or business information in this way, you may ask us not to by contacting our privacy officer and/or customer service team.
- 13.6 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 and/or customer service team.
- 13.7 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.
- 13.8 Clause 14 contains further information on how we may also use your Personal Information and business information to perform credit checks.

#### **14. CONSENT TO CREDIT CHECK**

- 14.1 If you are a company, please note that we will be performing credit checks on you.
- 14.2 If you are a natural person you:
  - 14.2.1 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 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);
  - 14.2.2 agree 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
  - 14.2.3 agree 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;
  - 14.2.4 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:
    - 14.2.4.1 assessing your Application;
    - 14.2.4.2 notifying a default by you;
    - 14.2.4.3 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
    - 14.2.4.4 generally assessing your credit worthiness.

14.2.5 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.

## 15. YOUR OBLIGATIONS

- 15.1 You will ensure that you comply at all times with all laws and obligations, including license conditions, applicable to the Services or the Package, and their use.
- 15.2 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 ACMA 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.
- 15.3 You must not resupply the Services, Equipment and/or Software to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- 15.4 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.
- 15.5 If you change your address, phone number or other billing contact details, you must notify us before the end of your billing period. Please contact our customer service team if you do not know when the end of your billing period is.
- 15.6 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:
- 15.6.1 menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person;
  - 15.6.2 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;
  - 15.6.3 involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;
  - 15.6.4 damage our, or our Supplier's, network or systems or cause the quality of the Services to be impaired;
  - 15.6.5 infringe any person's intellectual property, personal (as set out in Privacy Act), or other rights; or
  - 15.6.6 be unlawful.
- 15.7 You agree to comply with the Acceptable Use Policy set out on our website
- 15.8 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.

## 16. SERVICE NUMBERS, CLI & IPND

- 16.1 You acknowledge that:-
- 16.1.1 The Government owns service numbers such as telephone numbers and mobile numbers ("**Service Numbers**");
  - 16.1.2 The Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan. Information about your rights of use of your Service Number may be obtained by calling us;

- 16.1.3 You do not own or have any legal interest or goodwill in any Service Number or PIN issued to you and;
  - 16.1.4 you are entitled to continue to use any Service Number we issue to you except in circumstances where the Number Plan allows us to recover the Service Number from you; and
  - 16.1.5 you can transfer a Service Number or PIN to another person if you get our consent first.
- 16.2 Caller Line Identification ("**CLI**"):-
- 16.2.1 If you do not Bar CLI in respect of calls made from your equipment then you agree that when a call is made or any text message sent from your equipment your Service Number may be sent automatically to the equipment of the called party.
  - 16.2.2 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.
- 16.3 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.

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

- 17.1 We may terminate our Agreement or suspend, limit or cancel the provision of any Service or Package by notice in writing to you if:
- 17.1.1 you fail to pay any amount due under our 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 the specified number of days after we give you that notice;
  - 17.1.2 you breach any material provision of our Agreement;
  - 17.1.3 you are declared bankrupt;
  - 17.1.4 a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;
  - 17.1.5 any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you do not function because we are unable to enter your premises in order to update or rectify such equipment;
  - 17.1.6 you cease receiving any service that we rely upon in providing the Service or Package through no fault of ours or our Suppliers;
  - 17.1.7 you are in breach of a license, permit or authorisation relating to the use of your telecommunications equipment, the Equipment, the Package, or the Services;
  - 17.1.8 you do not provide security as required by us;
  - 17.1.9 we reasonably suspect you of fraud or attempted fraud;
  - 17.1.10 you vacate the premises to which we had been supplying Services or a Package to you;
  - 17.1.11 you change your address or phone number; and

- 17.1.11.1 you do not notify us in accordance with clause 10.5; or
- 17.1.11.2 the Service may not be provided at your new address or phone number through no fault of ours or our Supplier;
- 17.1.12 we reasonably believe that your usage of the Services is unusually high (as referred to in clause 4.2);
- 17.1.13 we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;
- 17.1.14 we are permitted or required to do so by law;
- 17.1.15 you are in breach of the Acceptable Use Policy or the Fair Use Policy;
- 17.1.16 any of our or our Supplier's Data & Internet Services Related Equipment is lost, stolen or substantially destroyed;
- 17.1.17 any of the Purchase Equipment is lost, stolen or substantially destroyed;
- 17.1.18 the physical infrastructure and site conditions for your service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study; or
- 17.1.19 you die.
- 17.2 We may, without liability, suspend, limit or terminate the provision of any Service or Package if there is no Minimum Term in place, by giving 30 days' notice in writing to you.
- 17.3 You may terminate our Agreement or cancel the provision of any Service or Package by giving us 30 days' notice in writing.
- 17.4 On termination of our Agreement under clause 17.1 or clause 17.3:-
  - 17.4.1 You must
    - 17.4.1.1 pay all charges incurred by you under our Agreement up to the time of termination which will become immediately due and owing upon termination;
    - 17.4.1.2 pay all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination;
    - 17.4.1.3 if we request and at our option, either immediately return all of our or our Supplier's Voice Services Related Equipment (at your cost) or make such equipment available for our, or our Supplier's, collection;
    - 17.4.1.4 either pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and any costs of making repairs that we think necessary or if we are unable to repossess such Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Schedule of Fees and Charges and any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment;
    - 17.4.1.5 if we request and at our option, either immediately return all of our or our Supplier's Mobile Equipment (at your cost) or make such Mobile Equipment available for our, or our Supplier's, collection; and
    - 17.4.1.6 pay the applicable Early Termination Fee (if any) to us.
  - 17.4.2 If there is credit remaining on your account at the time of termination, we will, at our option, deduct the credit off any amount you owe us under clause 17.4.1 or pay you the credit or if the credit exceeds any amount you owe us, we will refund you by cheque or EFT.

- 17.5 On termination of our Agreement under clause 17.2:
- 17.5.1 You must pay all charges incurred by you under our Agreement up to the time of termination, which amounts will become immediately due and owing upon termination;
  - 17.5.2 If we request and at our option, either immediately return all of our or our Supplier's Voice Services Related Equipment (at our cost) or make such equipment available for our, or our Suppliers, collection;
  - 17.5.3 if we are unable to repossess any Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Schedule of Fees and Charges;
  - 17.5.4 if we request and at our option, either immediately return all of our or our Supplier's Mobile Equipment (at our cost) or make such Mobile Equipment available for our, or our Supplier's, collection; and
  - 17.5.5 If there is credit remaining on your account at the time of termination, we will refund you by cheque or EFT, or, with your prior agreement, deduct the credit off any amount you owe us under clause 17.5.1.
- 17.6 We may, without liability, suspend the provision of any Service or Package for a reasonable period for operational reasons.
- 17.7 We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.
- 17.8 If we suspend, limit or cancel the Services or Package for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (*except if our action resulted from our or a Supplier's mistake or manifest error*).
- 17.9 The termination or expiry of terms applicable any Purchase Equipment will not automatically terminate our Agreement for the supply of other Purchase Equipment or Services.
- 17.10 Any clause of our Agreement which by its nature is intended to survive or is capable of surviving termination or expiry of this Agreement (including without limitation any exclusion or limitation of liability or indemnity in this Agreement) will survive termination or expiry of this Agreement, and the expiry or termination of a Service or Package, for any reason.

## 18. OUR LIMITATION OF LIABILITY

- 18.1 Limitation of Liability where Consumer Guarantees apply:-

Where we are not permitted to exclude our liability for our breach of a Consumer Guarantee, but are permitted to limit our liability for such a breach and it is fair and reasonable for us to do so, then our liability to you is limited to:

- 18.1.1 repairing or replacing the Equipment, supplying equivalent Equipment or paying the cost of doing any one of those things; or
- 18.1.2 re-supplying the Service or paying the cost of doing so.

However, we are not permitted by law to limit our liability in certain circumstances, for example, where a breach of any Consumer Guarantee relates to Equipment or Services of a kind ordinarily acquired for personal, domestic or household use or consumption.

- 18.2 Limitation of Liability where Consumer Guarantees do not apply:-

- 18.2.1 The terms of this clause 18.2 apply if we are not required to supply the Service or any part of the Package to you in accordance with the Consumer Guarantees (for example, if we supply Equipment or a Service to you which costs more than a prescribed amount or which, regardless of cost is not of a kind ordinarily acquired for personal, domestic or household use or consumption).

18.2.2 To the extent lawfully permitted, the cumulative total liability of a party in respect of all Claims in connection with this Agreement (whether based in negligence or any other tort, in contract, under statute or otherwise) will be the total sum of all Fees paid or payable by you to us under this Agreement as at the date on which the event giving rise to the liability occurs.

18.3 The limitations of liability in clauses 18.2.2 and 18.4.1.1 do not apply to:

18.3.1 personal injury (including illness and disability) or death; and

18.3.2 the loss, destruction or damage to, or loss of use of tangible property.

18.4 Exclusion of Liability

18.4.1 To the extent permitted by law, we have no liability to you or to any other person for:

18.4.1.1 any Claim by you or any other person for loss of profits, economic loss, loss of data or any indirect or consequential loss or damage, 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, arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;

18.4.1.2 any loss or damage suffered by you in connection with our Agreement or the Service or Package to the extent that your or any third party's acts or omissions or any of your own or a third party's equipment, including any equipment or facility in your possession, ownership or control, cause or contribute to that loss or damage;

18.4.1.3 faults or defects that arise in services not provided under our Agreement (even if they are connected, with our consent, to Services which we have arranged under our Agreement), which are due to incompatibility with the Services, Software or Purchase Equipment, or any other equipment that we or our Suppliers provide to you;

18.4.1.4 any failure on our behalf to perform our obligations under our Agreement where that failure is due to an event occurring outside our reasonable control, including explosions, natural disasters, war or an act of God or an act of terrorism;

18.4.1.5 acts, omissions or defaults of any third party Supplier or any person who provides goods or services directly to you for use in connection with a Service or Package. However, we will use reasonable endeavours to ensure that any third party Supplier cooperates in order to deliver their service in a timely manner, provides and maintains their service in a responsible fashion and rectifies any faults in relation to their service in a timely manner.

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

## 19. YOUR INDEMNITY

19.1 You indemnify us and will keep us, and any of 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:

19.1.1 your breach of our Agreement;

19.1.2 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;

19.1.3 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;

- 19.1.4 any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property;
- 19.1.5 the access, reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
- 19.1.6 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.

## 20. CONFIDENTIALITY

- 20.1 We retain all rights, including 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**").
- 20.2 You will keep the Confidential Information confidential, and will not allow any written or electronically recorded material to be copied.
- 20.3 On the termination of our 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.
- 20.4 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.
- 20.5 You will not use information which you acquire from us for any purpose which is not authorised by us in writing, unless you are required by law, or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

## 21. FORCE MAJEURE

- 21.1 We are not liable for:
  - 21.1.1 any delay in installing any Service, any and all components of the Package, or any other equipment;
  - 21.1.2 any delay in correcting any fault in any Service, any and all components of the Package, or any other equipment;
  - 21.1.3 failure or incorrect operation of any Service, any and all components of the Package, or any other equipment;
  - 21.1.4 Service outages; or
  - 21.1.5 any other delay or default in complying with our Agreement,

if it is caused directly or indirectly by any event beyond our reasonable control. We are not liable for failure to perform our obligations if such failure is as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of telephone service. No party is entitled to terminate this Agreement in such circumstances.

## 22. ASSIGNMENT

- 22.1 You must not assign, transfer or otherwise deal with any of your rights or obligations under our Agreement, except with our prior written consent which will not be withheld unreasonably.

22.2 We may upon notice, assign, transfer, sell or otherwise deal with our rights under our Agreement and/or Equipment and/or any component of the Package, and your consent is not required.

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

23.1 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 our Agreement by notice to you.

### **24. GENERAL**

24.1 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 warrant to be authorised to provide consent on your behalf.

24.2 You warrant that you have provided full and accurate Personal Information and business information to us in connection with our Agreement and you have full power and authority to enter the Agreement.

24.3 Governing law:

24.3.1 Our Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you ordinarily reside or do business (as stated in your Application).

24.3.2 With respect to any applicable cooling-off period legislation, the governing law will be the law of the state or territory in which you state in your Application you reside in or do business in.

24.4 From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this SFOA and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.

24.5 The failure by either party to exercise any right or remedy under this SFOA 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.

24.6 If a provision of this SFOA is void or voidable or unenforceable or the invalid part severed, the remainder of this SFOA will not be affected.

24.7 You may complain in writing or orally by calling our Customer Service number or the contact number located at our website. We will comply with our customer complaints policy located at our website, 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 ACMA.

24.8 Any notice, demand, consent or other communication required to be given to either of us must be delivered personally or sent by prepaid mail, email or by facsimile to the address of the other last notified.

24.9 You authorise us to complete any blank spaces or incomplete information 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.

24.10 We may engage an agent, dealer, contractor or franchisee to conduct any aspect of service or equipment provision and maintenance under our Agreement. You acknowledge that we may enter into the Agreement as principal or as agent. Where we enter into the Agreement as an agent, all references to our rights are to be read as references to us and our principal. Our performance of the Agreement may, at our discretion, be carried out by a Related Body Corporate of ours or any other party arranged by us or a Related Body Corporate (and your obligations under our Agreement will be owed to us or that Related Body Corporate or that other party, as applicable).

24.11 No reliance: You acknowledge that you enter into this 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 set out in this Agreement

- 24.12 **Release:** You accordingly release us and each of our officers, agents and advisers from all Claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it.

## 25. INTERPRETATION & DEFINITIONS

25.1 The following definitions apply unless the context requires otherwise:

25.1.1 **ACMA** means the Australian Communications and Media Authority.

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

25.1.3 **Agreement** or **our Agreement** means the agreement between you and us for the Services or Package, comprising the terms set out in your Application, the SFOA and our Policies.

25.1.4 **Application** means an Application Form or such other application submitted by you and accepted by us in accordance with this SFOA.

25.1.5 **Application Form** means an order for service, or other service application form, in our approved standard form.

25.1.6 **Bar** or **Barred** means restricting the supply of one or more (where possible) or all eligible Services on a Service so that the customer is unable to acquire the restricted eligible Services.

25.1.7 **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.

25.1.8 **Claim** includes a claim, action, loss, damage, cost or expense.

25.1.9 **Consumer Guarantees** means the guarantees set out in Schedule 2, Part 3-2, Division 1 of the *Competition and Consumer Act 2010 (Cth)*, as amended and replaced from time to time.

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

25.1.11 **CSG** means the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* as amended from time to time.

25.1.12 **Data & Internet Equipment** means equipment which is to be 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.

25.1.13 **Data & Internet Services** means 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 under Part B (if applicable).

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

25.1.15 **Early Termination Fee** means a fee payable if any supply under our Agreement is terminated before its Minimum Term has expired, the calculation of which is to be determined in accordance with the Schedule of Fees and Charges.

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

- 25.1.17 **Fee(s)** means a fee payable for a Service, a Package or any part of the Package as set out in the Application or the Schedule of Fees and Charges, as applicable, and any other amount payable by you in accordance with the terms of our Agreement.
- 25.1.18 **GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 25.1.19 **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.
- 25.1.20 **LNP Authorisation** means the LNP Customer Authorisation in your Application on the terms of this SFOA.
- 25.1.21 **Minimum Monthly Spend** means the minimum amount you will be required to spend on Services or the Package, if any, as specified in your Application and as varied from time to time in accordance with this SFOA.
- 25.1.22 **Minimum Term or Minimum Term Contract** means the minimum term of a supply, if any, specified in your Application.
- 25.1.23 **Mobile Equipment** means equipment which is to be or is provided to you by us or our supplier for use in connection with the provision of Mobile Services and as specified in your Application.
- 25.1.24 **Mobile Services Related Equipment** means any equipment relating to Mobile Services as specified in your Application and that is not Equipment, Data & Internet Services Related Equipment, Voice Services Related Equipment or SIM cards, but may include handsets, accessories and equipment supplied by us.
- 25.1.25 **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 C and as specified in your Application.
- 25.1.26 **Numbering Plan** means the *Telecommunications Numbering Plan (1997)* as amended from time to time.
- 25.1.27 **Other Equipment** means equipment provided by us that is not Equipment.
- 25.1.28 **Other Software** means software that is not Software provided by us.
- 25.1.29 **Package** means a bundled offering of any or all Services, Equipment and/or Software and as described in your Application.
- 25.1.30 **Part** refers to any section of this SFOA so described.
- 25.1.31 **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.
- 25.1.32 **Policies** means each of our policies, as amended from time to time, including our:-
- (a) Privacy Policy;
  - (b) Acceptable Use Policy;

- (c) Fair Use Policy;
- (d) Financial Hardship Policy;
- (e) CSG Policy, if applicable; and
- (f) Customer Complaints Policy.

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

25.1.34 **Purchase Equipment** means the equipment specified in your Application and which is to be or is supplied to you in accordance with Part C, of which ownership in that equipment is intended to transfer to you on the expiry of the Minimum Term.

25.1.35 **Purchase Equipment Charge** means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA, including any residual amounts owing to us at the expiry of the Minimum Term.

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

25.1.37 **Schedule of Fees and Charges** means our standard schedule of fees and charges applicable to our products and services, including the Services and any and all components of the Package, as amended from time to time, copies of which are available on our website or by contacting our customer service team.

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

25.1.39 **Service Levels** means the minimum service levels applicable to the Services, if any, as set out in or attached to your Application and as varied from time to time;

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

25.1.41 **Software** means the software we provide or which is to be provided to you as specified in your Application, excluding Other Software.

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

25.1.43 **Spend Limit** means a spend limit applicable to a supply under our Agreement in accordance with clause 9.

25.1.44 **SFOA** mean the General Terms and each Part set out in this document.

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

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

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

25.1.48 **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 A.

25.1.49 **we, us** means Switch Connect Pty Ltd ACN 606 049 441.

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

25.2 Interpretation:

- 25.2.1 The following rules apply unless the context requires otherwise.
- 25.2.2 Headings are for convenience only and do not affect interpretation.
- 25.2.3 The singular includes the plural and conversely.
- 25.2.4 A gender includes all genders.
- 25.2.5 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 25.2.6 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- 25.2.7 A reference to a clause or schedule is a reference to a clause of or a schedule to this SFOA.
- 25.2.8 A reference to an agreement or document (including a reference to this SFOA) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this SFOA or that other agreement or document.
- 25.2.9 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.
- 25.2.10 A reference to dollars and \$ is to Australian currency.
- 25.2.11 Where anything is required to be done or falls due on a day which is not a Business Day, that thing shall be deemed due on the immediately following Business Day.
- 25.2.12 The meaning of general words is not limited by specific examples introduced by the use of “including”, “for example” or similar expressions.

## PART A – VOICE SERVICES

### 26. APPLICATION OF THIS PART

- 26.1 This Part A applies in addition to the General Terms 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.
- 26.2 Voice Services consist of telecommunications services specified in your Application, including Local Calls, National Calls, International Calls, Fixed to Mobile Calls, Data Calls, 13 Calls, 1300 Calls and 1800 Calls, ToIP, VoIP, and other call types specified from time to time.

### 27. SERVICE NUMBER PORTABILITY

- 27.1 Subject to clause 11, provided that Your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if Your Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.
- 27.2 Subject to clause 11, by signing the Service Number Portability Customer Authorisation ("**LNP Authorisation**") which forms part of your Application, you acknowledge and agree:
- 27.2.1 to your current Supplier transferring to us Your Service Number;
- 27.2.2 that we are only transferring Your Service Number not your existing voice service - this means you may lose value added services and other features provided by your current Supplier;
- 27.2.3 when you are connected to the Voice Services you will use the Voice Services specified in your Application, which may be different to the service and features that you had with your current Supplier;
- 27.2.4 that by transferring Your Service Number, the service and/or any features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
- 27.2.5 that there may be costs and obligations associated with transferring 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 transfer to us;
- 27.2.6 that your current Supplier may or may not disconnect your existing service and/or value added services;
- 27.2.7 if you are transferring between different voice service platforms, you may need to purchase certain software, modems, new handset and/or Voice Equipment;
- 27.2.8 that you may need to purchase approved Voice Equipment to access the Voice Service;
- 27.2.9 that you can only withdraw your authority to transfer prior to the port cutover notification being received by us from your current Supplier. Withdrawing your LNP Authorisation does not change your contractual obligations to us under our Agreement;
- 27.2.10 that we do not warrant that we can transfer Your Service Number from your current Supplier. Your current Supplier may reject the request to transfer Your Service Number, including 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 transfer Your Service Number or dispute the rejection with your current Supplier;
- 27.2.11 that if Your Service Number cannot be transferred to us then you will accept a new service number from us;
- 27.2.12 that your authorisation to transfer Your Service Number to the Voice Services is valid for 90

days from the date of the LNP Authorisation;

27.2.13 that in the event of a withdrawal or reversal of Your Service Number to your current Supplier, we:

27.2.13.1 are not responsible for any period of outage of the service or features or your current service or any value added service provided by your current Supplier;

27.2.13.2 do not warrant that Your Service Number will be transferred to us within any specified timeframe; and

27.2.13.3 to the extent permitted by law, 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 transfer of Your Service Number(s), withdrawal or reversal, including a negligent act or omission by us;

27.2.14 that if you wish to transfer Your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and

27.2.15 that we reserve the right to charge for transferring Your Service Number to and from us.

## **28. PROVISION OF VOICE SERVICES**

28.1 We will provide the Voice Services to you, as specified in your Application, upon the later of:-

28.1.1 when your accounts have been transferred from your current Supplier to us;

28.1.2 completion of installation of any necessary equipment;

28.1.3 completion of any other arrangements with another Supplier for the provision of the Voice Services; and

28.1.4 when your account with us has been established.

28.2 If you fail to nominate the required Voice Services option in your Application, we will assume you wish to select us as your full service telecommunications provider.

28.3 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.

28.4 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.

28.5 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.

28.6 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 Site or other premises.

28.7 We do not warrant that the Voice Services will be free of interruption, delays, or fault.

28.8 You acknowledge that we reserve the right to Bar access to 1900 numbers, data calls, internet service providers and any other calls as set out in clause 4.2 or in a fair use policy or as we deem necessary from time to time. If you wish to Bar access to premium rate services from your Voice Service, please contact us.

## **29. MINIMUM TERM CONTRACTS**

29.1 If you are on a Minimum Term Contract:

29.1.1 the fixed minimum term of your Minimum Term Contract specified in your Application commences on the date that we accept your Application;

29.1.2 for the fixed term of your Minimum Term Contract you agree:

29.1.2.1 to maintain us as your carrier for, as a minimum, the Voice Services; and

29.1.2.2 to maintain the same level of business (or more) with us than as at the date that you sign your Application;

29.1.3 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

29.1.4 you acknowledge that the pricing available to you under the SFOA is subject to you maintaining us as your carrier for, as a minimum, the Voice Services.

### **30. CUSTOMER SERVICE GUARANTEE**

30.1 To the extent we provide you with a standard telephone service, as defined in the **CSG**, including certain specified enhanced call handling features, we may be obliged to comply with the CSG. In such case, you acknowledge and agree that:

30.1.1 the CSG sets performance standards for service connection times, fault repair times and keeping appointments to provide you with these services;

30.1.2 the CSG does not apply to customer equipment (including Equipment) or to customers who have more than five telephone lines;

30.1.3 that where you have nominated in your Application to waive (where applicable to the Voice Services nominated in your Application), in whole or part, your CSG rights in relation to certain Voice Services, we are not obliged to provide you with or comply with the CSG;

30.1.4 where applicable, if we fail to meet CSG performance standards you may be entitled to specified monetary compensation; and

30.1.5 our CSG policy is available on our website.

### **31. VOICE SERVICES CHARGES**

31.1 The charges applicable to the Voice Services are will be as specified in the Schedule of Fees and Charges and your Application.

31.2 You acknowledge that we may vary any of the charges applicable to the Voice Services in accordance with the General Terms.

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

32.1 For the avoidance of doubt, this clause applies to any equipment provided by us that is Purchase Equipment, Mobile Equipment, Mobile Services Related Equipment (but is not Data & Internet Services Related Equipment) and may include equipment supplied by a Supplier.

32.2 If you purchase any Voice Services Related Equipment from us, risk in the equipment passes to you on delivery to the delivery address you nominate in your Application.

32.3 You are responsible for maintaining any Voice Services Related Equipment supplied by us or a Supplier. You indemnify us and any applicable Supplier against any loss or damage to the Voice Services Related Equipment unless it is due to fair wear and tear.

32.4 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.

32.5 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 contractor, agent or representative 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 reserve the right to 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).

### 33. FAULT REPORTING

- 33.1 You should notify any faults regarding your Voice Services to our faults team. Their contact details are located on our invoices and on our website.
- 33.2 Actions:
  - 33.2.1 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.
  - 33.2.2 We are not responsible for any fault which is on your side of the network termination point, except in relation to Purchase Equipment, or Other Equipment that we are maintaining.
  - 33.2.3 We are not responsible for any fault which is within the network of a Supplier. However, we will notify that Supplier of the fault and request that the fault be corrected promptly.

### 34. SERVICE LEVELS

- 34.1 We agree to use reasonable endeavours to meet any Service Levels applicable to the Voice Services.
- 34.2 We may vary Service Levels by notice in writing to you from time to time.
- 34.3 We may publish details of Service Levels on our website.

### 35. DEFINITIONS

- 35.1 In this Part A, unless the context requires otherwise:
  - 35.1.1 **13 Calls** means the relevant 13 inbound services provided to you by us.
  - 35.1.2 **1300 Calls** means the relevant 1300 inbound services provided to you by us.
  - 35.1.3 **1800 Calls** means the relevant 1800 inbound services provided to you by us.
  - 35.1.4 **Data Calls** means a call enabling carriage of voice, data, text or image by means of digital data.
  - 35.1.5 **Fixed to Mobile Calls** means calls made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.
  - 35.1.6 **International Calls** means a call made from a PSTN or ISDN telephone service from Australia to another country; from Australia (excluding Norfolk Island) to Norfolk Island; from Norfolk Island to the rest of Australia; or from Australia's bases in the Antarctic to Australia and other countries.
  - 35.1.7 **Local Calls** means a call between a telephone service and a telephone service where: the A- Party and the B-Party are in the same Standard Charging Zone; the A-Party and the B-Party are in adjoining Standard Charging Zones; or 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.
  - 35.1.8 **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.

35.1.9 **ToIP** means Telephony over internet protocol as specified in your Application.

35.1.10 **VoIP** means Voice over internet protocol as specified in your Application.

35.1.1 **Your Service Number** means the number specified in your Application to be transferred to us as part of the Services.

**PART B – DATA & INTERNET SERVICES**

**36. APPLICATION OF THIS PART**

36.1 This Part B applies in addition to the General Terms 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.

**37. PROVISION OF DATA & INTERNET SERVICES**

37.1 We will provide the Data & Internet Services to you, as specified in your Application, on the later of:-

37.1.1 when your accounts are transferred from your current Supplier to us;

37.1.2 upon completion of installation of any necessary equipment;

37.1.3 upon completion of any other arrangements with another Supplier for the provision of the Data & Internet Services; and

37.1.4 when your account with us has been established.

37.2 We will provide the required Data & Internet Services and its coverage 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. For certain Data & Internet Services, coverage may only be available in selected metropolitan and regional areas.

37.3 We do not warrant that the Data & Internet Services will be free of interruption, delays or faults.

37.4 You acknowledge and agree that:

37.4.1 certain Data & Internet Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and

37.4.2 you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

37.5 We are not obliged to provide Data & Internet Services to you if the physical infrastructure of your premises 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.

**38. CSG DOES NOT APPLY**

38.1 You acknowledge and agree that the Data & Internet Services are not subject to the CSG and do not constitute a 'standard telephone service' for the purposes of the Act.

**39. PERIOD OF SUPPLY**

39.1 You must take the Data & Internet Services for the term specified in your Application, which may be a Minimum Term, subject to your rights.

39.2 The Minimum Term commences when:

39.2.1 if you are arranging for self-installation of the required equipment and:-

39.2.1.1 you supply the required equipment yourself, on the date we activate your Data & Internet Services; or

39.2.1.2 if we supply you with the required equipment, on the date of delivery of the required equipment; or

39.2.2 if we are installing equipment for you and:

39.2.2.1 the equipment is being installed at a single Site, the date that we install the equipment at the Site; or

39.2.2.2 the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.

#### **40. SUPPLIER TERMS**

40.1 Where any part of the Services are supplied by or with the assistance of a Supplier, those Services may be subject to additional terms, conditions, fees and charges which are specified or otherwise determined by the relevant Supplier.

40.2 All Supplier Terms apply to the supply of the Services under this Part in addition to our Agreement.

40.3 You acknowledge that Supplier Terms may be varied by Suppliers from time to time.

40.4 Where any inconsistency between the terms of our Agreement and applicable Supplier Terms arises, we shall determine how to resolve that inconsistency at our discretion.

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

41.1 The charges applicable to the Data & Internet Services are as specified in:-

41.1.1 your Application;

41.1.2 the Schedule of Fees and Charges; and

41.1.3 applicable Supplier Terms.

41.2 The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.

41.3 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.

41.4 We may vary any charges for the Data & Internet Services in accordance with the General Terms.

#### **42. SHIFTS/ MOVES/ UPGRADES**

42.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable, including pursuant to Supplier Terms.

42.2 If Data & Internet Services cannot reasonably be provided at your new address, we may terminate the supply by notice to you.

42.3 You may be able to change your Data & Internet Service if it is specified in the applicable Supplier Terms. Changes to your plan involving a downgrade on the Data & Internet Service or value of the Minimum Monthly Spend, may require you to commit to a new minimum term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

#### **43. SERVICE LEVELS**

43.1 We agree to use reasonable endeavours to meet any Service Levels applicable to the Data and Internet Services.

43.2 We may vary Service Levels by notice in writing to you from time to time.

43.3 We may publish details of Service Levels on our website.

#### **44. ACCEPTABLE USE POLICY**

- 44.1 If you are receiving Internet Services, you specifically agree to comply with our Acceptable Use Policy.

**45. SOFTWARE**

- 45.1 Except for Software provided as part of the Data & Internet Services Related Equipment, we will not provide you with any Other Software in order to access and use the Data & Internet Services or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Data & Internet Services or Purchase Equipment, but you must first get our prior written permission.
- 45.2 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).

**46. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

- 46.1 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 and approved by us.
- 46.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then 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.

**47. INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT**

- 47.1 We may 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.
- 47.2 You are responsible for all costs of delivery (as specified in the applicable Supplier Terms) and fees for installation and for preparing the Site for installation. Our fees for installation may vary from the quotation price once we have physically inspected the Site.
- 47.3 If requested by us, you will execute an acknowledgment of delivery for the Data & Internet Services Related Equipment.
- 47.4 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 or such other times agreed by you and us. We reserve the right to charge you in accordance with the applicable Supplier Terms and our Schedule of Fees and Charges if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.
- 47.5 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).
- 47.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- 47.7 Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Supplier Terms and/r our Schedule of Fees and Charges. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application.
- 47.8 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, router and/or site conditions. Local network configuration remains your responsibility.

- 47.9 Telephone line configuration changes are only available for our supported modems and routers.
- 47.10 Changes made by you or on your behalf to the configuration supplied by us are at your risk and will not be supported by us.

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

- 48.1 We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of our Agreement.
- 48.2 The Data & Internet Services Related Equipment is and remains our property unless specified by us (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 & Internet Services Related Equipment at any time by giving you three days' notice.
- 48.3 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.
- 48.4 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.
- 48.5 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.

**49. FAULT REPORTING AND MAINTENANCE**

- 49.1 You should notify any faults regarding your Data & Internet Services to our help desk, the contact number for which is located on our invoices and on our website.
- 49.2 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 and for any costs we incur in investigating faults if no fault in our Services or Equipment is found.
- 49.3 We are:
  - 49.3.1 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;
  - 49.3.2 not responsible for any fault which is on your side of the network termination point; and
  - 49.3.3 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.
- 49.4 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).
- 49.5 We reserve the right to charge you in accordance with the Supplier Terms and our Schedule of Fees and Charges, including:-
  - 49.5.1 if we or our Supplier are unable to obtain access to your premises at the agreed appointment time;
  - 49.5.2 where a line fault requires an on-site visit to rectify; and
  - 49.5.3 where we investigate faults and no fault in our Services or Equipment is found.
- 49.6 You are responsible for the supply and maintenance of any additional hardware and software required to make the Data & Internet Services operational as a result of incompatible services being used.

**50. DEFINITIONS**

50.1 In this Part, unless the context requires otherwise:

50.1.1 **Acceptable Use Policy** means our policy relating to your use of the Internet Services which can be accessed on our website.

50.1.2 **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.

50.1.3 **Supplier Terms** means additional terms, conditions, fees and charges imposed by a Supplier and applicable to Services provided under our Agreement, as contemplated by clause 40.1.

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

## **PART C – PURCHASE EQUIPMENT**

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

51.1 This Part C applies if you have requested in your Application that we supply you with Purchase Equipment and applies in addition to the General Terms.

### **52. CREDITS FOR PURCHASING EQUIPMENT**

52.1 We may offer you a credit towards the purchase price of equipment (including Mobile Equipment). Any such credit offer will be on the terms specified in your Application, if any.

52.2 If the conditions of a credit offer are not satisfied in full, we may refuse to provide you or may withdraw any such credit in which case, you will be responsible for payment to us of the full price for the Purchase Equipment.

### **53. SUPPLY AND INSTALLATION**

53.1 Subject to you meeting all conditions of supply, we will supply you with the Purchase Equipment to the Site or such other place nominated in your Application.

53.2 You acknowledge that the Purchase Equipment may be either new or refurbished.

53.3 You are responsible for all costs of delivery, installation and for preparing the Site for installation. We will charge you in accordance with our Schedule of Fees and Charges and any applicable Supplier Terms, or to the extent applicable, the amounts specified in the Application

53.4 Where a quotation has been provided to you for installation, we may vary the installation fees and charges once we have physically inspected the Site.

53.5 If requested by us, you will execute an acknowledgment of delivery for the Purchase Equipment.

### **54. OWNERSHIP**

54.1 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.

54.2 Ownership of the Purchase Equipment will not pass to you until you have paid the all amounts payable in relation to the Purchase Equipment in accordance with your Application.

54.3 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.

54.4 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.

54.5 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.

54.6 We will use reasonable efforts to transfer to you any manufacturer's warranty in the Purchase Equipment, from the time title passes to you.

54.7 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.

54.8 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.

54.9 Unless nominated in your Application, we will not provide you with any maintenance or software as

part of the Purchase Equipment.

**55. SECURITY INTEREST**

- 55.1 Our Agreement constitutes a security agreement and you grant a security interest in all of your present and future acquired personal property in favour of us.
- 55.2 In accordance with section 115 of the PPSA, for the purposes of our Agreement:
- 55.2.1 you hereby agree with us to contract out of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA; and
- 55.2.2 you waive any rights you may have to:
- 55.2.1.1 receive any notices you may be entitled to receive under sections 95, 118, 121, 130, 132 or 135 of the PPSA;
- 55.2.1.2 receive a copy of any financing statement or any financing change statement registered by us, or any verification statement confirming such registration, in respect of any security interest we may have in your personal property;
- 55.2.1.3 apply to a court for an order concerning the removal of an accession under section 97 of the PPSA;
- 55.2.1.4 object to a proposal by us to dispose or retain any collateral under sections 130 and 135.
- 55.3 For the purposes of this clause: "PPSA" means the *Personal Property Securities Act 2009*, and expressions used in this clause and defined in the PPSA have the meanings given to them by the PPSA.

**56. THINGS YOU MUST DO**

- 56.1 Whilst ever you are in possession or control of Purchase Equipment but have not yet become the owner of it (e.g. you have not paid for it in full), without limitation, you must:
- 56.1.1 insure the Purchase Equipment in accordance with clause 58;
- 56.1.2 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;
- 56.1.3 comply with the manufacturer's instructions relating to the Purchase Equipment and its use;
- 56.1.4 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;
- 56.1.5 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;
- 56.1.6 keep the Purchase Equipment under your control or the control of your employees; and
- 56.1.7 notify us immediately in writing if the Purchase Equipment is lost, stolen or damaged or any person asserts any rights to the Purchase Equipment.
- 56.2 Despite clause 56.1.5, we are not obliged to inspect or test the Purchase Equipment unless we otherwise agreed in writing to do so.

**57. THINGS YOU MUST NOT DO**

- 57.1 Whilst ever you are in possession or control of Purchase Equipment but have not yet become the

owner of it (e.g. you have not paid for it in full), you must not:-

- 57.1.1 change or alter the Purchase Equipment, make any addition to it or install anything with it without our written consent and you agree that if you make any changes to the Purchase Equipment, including by attaching any other items to it, will comprise the Purchase Equipment for the purposes of this SFOA and becomes our property;
- 57.1.2 use the Purchase Equipment for any purpose which is unlawful or might endanger the safety or condition of the Purchase Equipment, any person or property or prejudice our interest in the Purchase Equipment;
- 57.1.3 alter or cover up any insignia, number or mark in or on the Purchase Equipment; or
- 57.1.4 alter the installation of the Purchase Equipment in a way that makes it a fixture.

## **58. INSURANCE**

- 58.1 Unless otherwise agreed by us in writing, until the Purchase Equipment has been paid for by you in full, you must:
  - 58.1.1 insure the Purchase Equipment and keep it insured for its full insurable value under an all risks insurance policy;
  - 58.1.2 take out and maintain an appropriate level of public risk liability insurance in relation to the Purchase Equipment and its use;
  - 58.1.3 take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
  - 58.1.4 punctually pay all premiums on each insurance policy and not prejudice any policy;
  - 58.1.5 if we request, provide us with reasonable evidence of the insurance policies being in place and in compliance with this clause;
  - 58.1.6 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
  - 58.1.7 appoint us your attorney:
    - 59.1.7.1 to make, recover and/or compromise in your name any claim under such insurance or against any person; and
    - 59.1.7.2 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.

## **59. DESTRUCTION**

- 59.1 If the Purchase Equipment is lost, stolen or substantially destroyed before it has been paid for in full, we may terminate the supply under our Agreement by notice to you.
- 59.2 Your obligations under our Agreement continue even if the Purchase Equipment breaks down, is defective or damaged.
- 59.3 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.
- 59.4 We will credit you any insurance money or proceeds of salvage received by us from your insurer if and when received up to the amount payable by you.

## **60. OUR ACTION**

- 60.1 If you fail to comply with any of your obligations under this Part, 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).
- 60.2 We may do anything which we consider desirable to protect or enforce our rights in the Purchase Equipment.
- 60.3 You irrevocably authorise us to act on your behalf in protecting or enforcing our rights in the Purchase Equipment, as we may reasonably require.

**61. SOFTWARE**

- 61.1 We will only provide you with Software 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.
- 61.2 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).

# SWITCHCONNECT

TECH MADE HUMAN

**Contact**

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