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Standard Form of Agreement

Bendigo Telco Limited

ABN 88 089 782 203



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1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Acceptable Use Policy means our policy which applies to your use of the service, a copy of which is accessible on our website.

ACMA means the Australian Communications and Media Authority (www.acma.gov.au).

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

Affiliate in respect of an entity (the first entity), means another entity that Controls the first entity, that is Controlled by the first entity or that is under common Control with the first entity.

Application Form means an application, in a form approved by us, made by you for the provision of Services by us.

Approved Purposes means:

- a) Providing directory assistance services.
- b) Providing operator services or operator assistance services.
- c) Publishing and maintaining public number directories.
- d) Providing location dependent carriage services.
- e) The operation of emergency call services or assisting emergency services under Part 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
- f) Assisting enforcement agencies or safeguarding national security under the *Telecommunications Act 1997*, the *Telecommunications (Interception and Access) Act 1979* or any other applicable legal requirement.
- g) Verifying the accuracy of information provided by the data provider and held in the integrated Public Number Database (**IPND**) against the information the data provider holds.
- h) Undertaking research of a kind specific in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*.
- i) Assisting the ACMA, or its nominee, to verify the accuracy and completeness of information held in the IPND.
- j) Meeting our obligations to any Government Agency (for example, the Australian Tax Office).
- k) Any other activities specified by written notice of the Australian Communications and Media Authority.
- l) Any other purpose where permitted or required by the *Telecommunications Act 1997* or any other applicable laws.

Authorised Person has the meaning given to that term in **Clause 4.3(a)**.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Bendigo Telco means Bendigo Telco Limited ABN 88 089 782 203

Business Day means Monday to Friday, excluding days which are public holidays in the place where the services are to be provided.

Business Hours means 08:30am to 05:30pm AEST Monday to Friday, excluding days which are public holidays in the place where the services are to be provided.

Business or Enterprise customer means:

- a) A customer with a business ABN requiring quoted services set out under a separate contract of fixed term period; or
- b) Telecommunication Services with an annual spend greater than \$40,000 p.a.

Standard Form of Agreement (SFOA)

Bendigo Telco Ltd ABN 88 089 782 203 Trading as Bendigo Telco

Last Updated: 26/07/2024

Broadband means a high-capacity communications pipeline capable of delivering a simultaneous range of services at speeds greater than conventional dial-up.

Claim includes any debt, loss of profit, loss of revenue, loss of opportunity, loss of anticipated savings, loss of data, damage, cost or expense, cause of action, liability, claim, proceeding, suit or demand of any nature however arising under or in connection with this SFOA or its subject matter and whether present or future, fixed or unascertained, actual or contingent, arising under contract (including under any indemnity, tort (including negligence), under statute or otherwise.

Commercial credit has the meaning given in section 6 of the *Privacy Act 1988*.

Consumer means:

- a) An individual who acquires or may acquire a telecommunications Service for the primary purpose of personal or domestic use and not for resale; or
- b) A business or non-profit organisation which acquires or may acquire one or more telecommunications Services which are not for resale and which, at the time it enters into the service:
 - (i) does not have a genuine and reasonable opportunity to negotiate the terms of the Service; and
 - (ii) has or will have an annual spend with Bendigo Telco which is, or is estimated on reasonable grounds by Bendigo Telco to be, no greater than \$40,000 p.a.
- c) Non-telecommunications Services with an annual spend no greater than \$100,000 p.a. as defined under section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee referred to in **Clause 14.4**, as more fully described in the Australian Consumer Law.

Contact Person has the meaning given to that term in **Clause 4.3(b)**.

Control means possessing a 50% or greater interest in an entity or the right to direct the management of that entity.

Credit reporting agency has the meaning given in section 6 of the *Privacy Act 1988*.

Critical Information Summary (CIS) means the document forming part of the agreement describing the telecommunications service and setting out specific terms and conditions for that service for Consumers with a spend under \$40,000 p.a. as described in the current *Telecommunications Consumer Protections Code (TCP)*.

Customer Service Guarantee (CSG) has the meaning given in **Clause 4.4**.

Customer means general terms to describe both a Business, Enterprise or Consumer acquiring Services from Bendigo Telco.

Customer Equipment means any equipment or facility in the possession, ownership, or control of you other than Service Equipment.

Direct Debit Service Agreement means the terms and conditions under which we are authorised to debit funds from your bank (or other financial institution) account, a copy of which is accessible on our website.

Date Due means the date on which full payment is due as specified on the original invoice.

Early Termination Fee means the fee payable (if any) in accordance with **Clause 5.13**, calculated in accordance with your application, the relevant Critical Information Summary or Rate Card and the Payment Schedule.

End User means the meaning given in **Clause 18.4(d)**.

Equipment means Service Equipment or Purchased Equipment.

Facilities has the meaning given in the *Telecommunications Act 1997 (Cth)*.

Fee means a fee payable for a Service calculated in accordance with the application, the Critical Information Summary (CIS), Rate Card and any other amount payable by you in accordance with the terms of our Agreement.

Financial Hardship Policy means a policy described under the *Telecommunications (Financial Hardship) Industry Standard 2024* that may enable certain customers to enter a financial arrangement to avoid further credit management action and provide options with respect to repayment processes. Our policy is available on request.

Fixed Term has the meaning given in **Clause 4.2**.

Force Majeure Event means an event that is beyond our reasonable control, including acts of God or natural disasters, fire, lightning, explosions, flood, subsidence, insurrection, civil disorder or military operations, war, terrorism, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, strikes, lockouts or other industrial disputes of any kind, or an act or omission of any government agency or an act or omission of any third party (including any third party supplier) where the act or omission is caused by an event or circumstance outside that third party's reasonable control (including any of the things mentioned in this definition).

Government Agency means any Commonwealth, State or local or foreign government, government authority or semi-government authority (including a judicial body) that has legal power to require another person to act or not act in a particular way or to authorise a particular act, including a minister responsible for administering Part XIB or XIC of the *Competition and Consumer Act 2010* (Cth), the *Telecommunications Act 1997*, the ACMA or the Australian Competition and Consumer Commission.

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

IMEI means the International Mobile Equipment Identity.

Intellectual Property means any intellectual or industrial property anywhere in the world including, but not limited to, any registered or unregistered copyright, patent, trademark, design rights, trade secret or Confidential Information relating to the Services or any licence or other right to use, or to be the registered proprietor of, any of the above.

Interest means interest at the rate prescribed by the *Penalty Interest Rates Act 1983* (VIC) plus 2% calculated daily and compounded monthly.

Internet means the worldwide connection of computer networks which provides a number of services to users, including the transmission of electronic mail, provision of information on the world wide web and transfer of files.

Internet Access means being able to access the Internet such that data can be transferred to and from the user's computer.

Interruption means a delay in the supply of a service, a failure to supply or an error or defect in the supply of, that Service.

Law means Commonwealth, State, or local legislation, judicial, administrative, or regulatory decrees, judgements, awards or orders, binding industry codes and all common laws and equity.

MDF means the main distribution frame in the multi-occupancy building in which your Service Address is located.

MDP means a mobile device payment plan paid in 24 monthly instalments.

MMS means Multimedia Messaging Service.

Mobile Service means any of Bendigo Telco's mobile telephone services which access Optus' 5G, 4G and 3G networks.

Mobile Number Portability (MNP) means the ability to Port a mobile telephone number as described in **Clause 21.2**.

MSN means a Customer's mobile service number allocated pursuant to the *Telecommunications Numbering Plan 1997*.

Modern Slavery means the *Modern Slavery Act 2018* (Cth).

nbn means either:

- a) NBN Co and any nbn Sub-Wholesaler and their related bodies corporate and their respective officers, employees, agents, subcontractors, and consultants; or
- b) The national broadband network it directly or indirectly owns and/or operates and/or controls –

as the context requires.

nbn Boundary means the point where an nbn Service is provided, i.e.:

- a) In relation to an nbn FTTP Service, an nbn HFC Service and an nbn Fixed Wireless Service – your side of the user network interface on the nbn Connections Box;
- b) In relation to an nbn FTTB service – your side of the user network interface on the MDF;
- c) In relation to an nbn FTTC Service:
 - (i) if your premises have an MDF – your side of the user network interface on the MDF; or
 - (ii) otherwise – the first phone point on the line after the line enters your building or your side of the user network interface on the NCD;
- d) In relation to an nbn FTTN Service – your first phone point on the line after the line enters your building.

NBN Co means NBN Co Ltd CAN 136 533 741.

nbn Connection Box means a network termination device supplied through nbn for use with an nbn Service including data and/or voice ports.

nbn Equipment means any equipment that is owned, operated, or controlled by nbn.

nbn Fair Use Policy means the document entitled Fair Use Policy published at www.nbnco.com.au/content/dam/nbnco2/documents/sfaa-wba2-product-catalogue-fair-use-policy_20160407.pdf (or another address chosen by nbn from time to time) as re-named, updated, or replaced from time to time.

nbn Fixed Wireless Network means the parts of the nbn where service is delivered by Fixed Wireless.

nbn Fixed Wireless Service means an nbn Service using network technology known as Fixed Wireless.

nbn FTTC Network means the parts of the nbn where service is delivered using FTTC.

nbn FTTN Network means the part of the nbn where service is delivered using FTTB, FTTN or FTTP.

nbn FTTB Service means an nbn Service using a Service Address, that the Service Address is connected to the nbn as far as the basement or another suitable distribution point within or adjacent to the Service Address.

nbn FTTC Service means an nbn Service using Fibre To The Curb network architecture.

nbn FTTN Service means an nbn Service using Fibre To The Node network architecture.

nbn FTTP Service means an nbn Service using Fibre To The Premises network architecture.

nbn HFC Network means the hybrid fibre coaxial cable parts of the nbn.

nbn HFC Service means an nbn Service supplied using the nbn HFC Network.

nbn Sub-Wholesaler means an entity that directly or indirectly acquires nbn Services from nbn or on a wholesale basis and directly or indirectly resupplies them to us on a wholesale basis, for resupply to you.

Network Connection Device or **NDC** means a network connection device supplied by NBN Co in connection with an nbn FTTC Service.

Numbering Plan means the *Telecommunications Numbering Plan 1997*.

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

Our network means the infrastructure used and/or maintained by us or our third-party suppliers to provide you with your service. Our network does not include the computer networks that make up the internet.

Personal information means any information or document referred to in section 276(1) of the *Telecommunications Act 1997* and any personal information within the meaning given in section 6 of the *Privacy Act 1988*.

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

Purchased Equipment has the meaning given in **Clause 12**.

Rate Card means Bendigo Telco's price for telecommunications Services as displayed on individual supply contracts directly with large Business's or Enterprise outside of services supplied as part of the *Telecommunications Consumer Protections Code (TCP)*.

Registrar means an entity accredited by the ICANN Registry to offer registration services for a particular domain space.

Registration Agreement means the agreement or agreements to be entered into between the registrant and the Registrar, the relevant Registry or other authority to register, renew or transfer a domain name.

Registrant means the applicant for, and on registration, the licence holder of a domain name.

Registry or **Naming Authority** means the entity authorised to administer the registry for a domain name.

Roaming means using your Mobile Service when you are in countries other than Australia.

Service means a product or service (and includes Equipment) which we have agreed to supply to you, including but not limited to (a) a Standard Telephone Service; or (b) a carriage service of a kind specified in the *Telecommunications Regulations 2001* (which includes Internet Services); or (c) ancillary goods or service of a kind specified in the *Telecommunications Regulations 2001* as stated in your Application Form or any other documents forming the SFOA.

Service Schedule means in respect of particular products and services:

- a) The products and service descriptions;
- b) Conditions imposed by suppliers; and
- c) Specific operational requirements or other terms and conditions relating to the products and services.

Service Equipment has the meaning given in **Clause 11**.

SIM means Subscriber Identity Module, a removable card or module which is used in the GSM authentication procedures and contains the international subscriber identity (IMSI) number and other subscriber data, any associated information and intellectual property.

SMS means Short Messaging Service.

Spam means unsolicited electronic messages with an "Australian Link", as per the *Spam Act 2003*.

Standard Form of Agreement, "SFOA" or 'Agreement' means the agreement between you and us for the Services, comprising the terms stated in your Application Form, the Critical Information Summary (CIS), this Standard Form of Agreement, the Rate Card, the Direct Debit summary, Acceptable Use Policy, and any schedules, attachments, or annexures.

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

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

TCP Code means Industry Code *Telecommunications Consumer Protections Code*.

Third-party Supplier means a supplier that under a contract with us, provides (a) access to Facilities they own, control, manage or maintain or (b) content or (c) a Service from whom we

acquire wholesale carriage services that form all or part of the service we provide to you, it includes nbn and any nbn-Sub-Wholesaler.

WAP means Wireless Application Protocol.

Website means: our website www.bendigotelco.com.au.

we, our or us means Bendigo Telco Limited, ABN 88 089 782 203

you or your means the current account holder for the service.

2 Introduction

2.1 Terms and Conditions

- a) Bendigo Telco (us or we), supplies Services on the terms and conditions in this SFOA. If you obtain or seek to obtain Services from us, you do so in accordance with these terms and conditions and the other documents which comprise your Agreement with us except when we agree in writing that different terms will apply.
- b) You must comply with our Acceptable Use Policy. For additional information regarding our Acceptable Use Policy, please visit our website or alternatively to obtain a copy of the applicable policy write to our Customer Information and Compliance listed under **Clause 2.5** below.

2.2 Our SFOA

This SFOA is formulated as per Part 23 of the *Telecommunications Act 1997* and:

- a) Does not prevent or limit the operation of a law of a State or Territory that is capable of operating concurrently with Part 23 of the *Telecommunications Act 1997*; and
- b) That this Part 23 of the *Telecommunications Act 1997* has no effect to the extent (if any) to which it is inconsistent with the *Competition and Consumer Act 2010*.

2.3 Structure of your Agreement with us

Your Agreement with us comprises:

- a) Your application;
- b) The Critical Information Summary (where applicable);
- c) This SFOA;
- d) The Rate Card (where applicable);
- e) Direct Debit Service Agreement;
- f) Our Acceptable Use Policy.

2.4 Order of precedence

Unless expressly stated otherwise, the order of precedence between the various parts of our SFOA will be resolved in favour of the document appearing earlier in the list stated in **Clause 2.3** above.

2.5 Customer assistance

If you require any assistance or further information, please contact our Customer Experience on 1300 228 123, use our SmartCentre online portal to lodge support requests or write to:

Bendigo Telco
Customer Information and Compliance
PO Box 1062
Bendigo VIC 3552

Alternatively, contact the National Relay Service (**NRS**) on 13 36 77 from anywhere in Australia. For language assistance, contact the Translating & Interpreting Services (**TIS**) on 13 14 50 from anywhere in Australia.

2.6 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply:

- a) A reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity;
- b) A reference to a document or instrument includes the document or instrument as novated, altered, supplemented, or replaced from time to time;

- c) The singular includes the plural and vice versa;
- d) A reference to any gender includes a reference to all other genders;
- e) A reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- f) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- g) An agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally;
- h) A reference to a recital, clause, paragraph, schedule, or annexure is to a recital, clause, or paragraph of, or schedule or annexure to, these SFOA Terms, and reference to these SFOA Terms includes any schedule or annexure;
- i) A reference to dollars and \$ is to Australian currency; and
- j) Specifying anything in the SFOA after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless we expressly say so.

3 Suppliers

3.1 Service providers

- a) You acknowledge and agree that Services may be provided to Bendigo Telco by certain third-party suppliers. Subject to your rights under the Australian Consumer Law, we may rely on service providers supplying the service to you and:
 - (i) cannot guarantee, a continuous service free of any interruptions.
 - (ii) that circumstances beyond our control may cause interruptions to the service from time to time.
 - (iii) our liability to you for any interruption to a service is limited in accordance with **Clause 14**.
- b) You will not contact any of our third-party suppliers for any reason in relation to the Service. You acknowledge that if you do contact one of our third-party suppliers, without our agreement, you will be liable for all costs imposed on us by our third-party supplier (unless those costs are caused by a breach of this Agreement by us or our negligence) in connection with you having contacted that third party supplier directly.

3.2 Rights of Suppliers

You acknowledge that any right in favour of Bendigo Telco under this SFOA may, where the context permits, be exercised by a third-party supplier.

4 Provision of Services

4.1 Commencement

- a) Our SFOA commences when we accept (at our sole discretion) your application form and continues until terminated in accordance with these terms.
- b) When you request us to supply the Service to you, we decide whether to accept your application and to supply the Service to you based on a variety of factors including:
 - (i) your eligibility for the Service;
 - (ii) its availability to you;
 - (iii) you meeting our credit requirements; and
 - (iv) your prior conduct or history with respect to any previous supply by us or a reseller of any goods or service to you.

- (v) all information you provide in connection with an application must be true, correct, complete and not misleading.
- c) Before we confirm that we can and will provide Service, if you take any step (e.g., terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.

4.2 Application Form

Where clauses 1 to 24 of this SFOA are inconsistent with the Application Form, the Application Form will override terms 1 to 24 of this SFOA. In particular, the Application form which you completed in order to receive the Service may require you to receive the Service from us on a month-to-month basis or for a minimum or fixed term which is greater than a month-to-month period (**Fixed Term**). In such cases, your Application Form will state the specific details of the term which applies.

4.3 Authorised Persons and communicating with us about your Service

- a) You may nominate another person to have the authority to exercise any of your rights under the SFOA (**Authorised Person**). Anything that the Authorised Person does in relation to your Service is deemed to be done by you.
- b) You may nominate another person to have the authority to communicate with us about your Service, without giving that person the authority to exercise any of your rights under the SFOA (**Contact Person**). If a Contact Person requests changes to your Service or otherwise attempts to exercise your rights under the SFOA, we may request that you or an Authorised Person contact us directly.

4.4 The Customer Service Guarantee

- a) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, our service must comply with the Consumer Service Guarantee Standard (**CSG**). The CSG sets out minimum performance standards in relation to service connection times, fault repair times and CSG does not apply to mobile phone services, customer equipment or to customers that have more than five telephone services. We will connect Services not covered by the CSG within a reasonable time.
- b) If we do not meet the CSG performance standards, you may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which we may be exempt from meeting those requirements, including where you unreasonably refuse us access to your premises or if you miss an appointment without giving us reasonable notice. For more information about the CSG, go to the Australian Communications and Media Authority website at www.acma.gov.au.

4.5 Maintenance and Fault restoration

Subject to your rights under the Australian Consumer Law and to the maximum extent permitted by law, we are not obliged to restore any fault with a service that is caused by:

- a) Damage due to causes external to the facilities used by us and/or our third-party suppliers to provide the service (e.g., damage to customer equipment, loss of power supply etc);
- b) Interference (e.g., electrical, or other external interference, customer or third parties tampering with equipment);
- c) A Force Majeure Event; or
- d) Planned outages

4.6 Training

We are not responsible for training you in the use of the service.

4.7 Technical Support

- a) We will provide technical support services as described on our website at www.bendigotelco.com.au

- b) We are not responsible for, and may not be able to provide support for, any fault caused by:
 - (i) any customer equipment;
 - (ii) the interaction of the service with third party software packages used by you;
 - (iii) the inability to gain wireless connectivity from your wireless access point/router to your computer; or
 - (iv) services provided by any third-party supplier or carrier (other than our third-party suppliers)

4.8 Fault reporting

We will provide a fault reporting service for the Service, accessible during Business Hours (or otherwise as notified by us from time to time). If you would like to report a fault, please call our Customer Experience on the relevant number listed on the first page of this document.

4.9 Changing our agreement

- a) During the term of our agreement, we may need to change the terms of our SFOA due to circumstances beyond our control, including changes in law, urgent changes required for security reasons, changes by one of our third-party Suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Service on the same terms and conditions that existed when we first commenced providing that Service to you.
- b) In addition to changes which 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. Any changes we elect to make will take effect for that Service in accordance with this Clause 4.9 and **Clause 4.10** below.
- c) You acknowledge and agree that in accordance with paragraphs (a) and (b), from time to time the nature of the Services and the terms on which we supply those Services to you may change and that if we elect to change those terms we will give you notice in accordance with this Clause 4.9 and **Clause 4.11** below.

4.10 Your rights if we change the agreement

- a) Subject to the exceptions permitted by **Clause 4.11**, we will give you notice of any changes we propose to make to our agreement, including the terms of this SFOA, at least 30 days prior to the date on which those changes are to take effect.
- b) Subject to the exceptions permitted by **Clause 4.11**, if the changes we propose to make will cause detriment to you, for example, the changes will result in a material increase in the Fees or unreasonably change the characteristics or functionality of the Service we initially supplied to you, then you may immediately cancel the affected Service without incurring any early termination fee or penalty. You may do so by giving us advice in writing to that effect within 42 days of receiving notice from us of the changes (referred to in paragraph (a) above).
- c) You acknowledge and agree that if you do not give notice to us within the 42-day period referred to in paragraph (b), you are deemed to have accepted our changes from the date those changes are to take effect and that our agreement, as amended by those changes, will govern the relationship between you and us from that date.

4.11 Exceptions

You acknowledge and agree that our obligation to give you 30 days' notice of our proposed changes and to afford you a right to terminate our agreement in accordance with **Clause 4.9** will not apply in relation to:

- a) Urgent changes we are required to make by law, for security reasons or technical reasons necessary to protect the integrity of our network;
- b) The introduction of a new fee or an increase in an existing Fee due to an additional tax or levy imposed by law;

- c) The introduction of a new fee or an increase in existing Administrative Fees for ancillary services such as credit card transactions fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original Fee);
- d) Increases in Fees due to increases imposed on us by other Suppliers for the following types of Services and charges:
 - (i) international carriage services (including for voice, data and international roaming and SMS services) the current rates for which are available on our website);
 - (ii) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party; and
 - (iii) line rental charges (however while we may give you a shorter notice period you still have the right to cancel within 42 days of the date of that notice without incurring an early termination fee or penalty if it is a material increase).
 - (iv) where practicable to do so, we will give you reasonable notice of the changes referred to in this Clause 4.11 in accordance with the notice provisions of **Clause 18.1**.

4.12 Exploitative Use

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

4.13 IP addresses, email addresses and domain names

- a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.
- b) You agree that the IP Address(es) issued to you for use in connection with a service are only issued to you for use during the term of your acquisition of the service. On termination of the service, your right to use the IP Address(es) ceases.
- c) These Internet identifiers are licensed, controlled, and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.
- d) We are not responsible for anything done, or required to be done, by these authorities.
- e) You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your application under our SFOA ends.
- f) An IP address allocated to you:
 - (i) may be managed using Network Address Translation (NAT);
 - (ii) may not be 'globally routable' i.e., directly reachable by all other Internet users; and
 - (iii) may therefore not support applications or services that require inbound connections to be established (e.g., a Virtual Private Network).
- g) We may allocate you with a globally routable IP address, if you request it or applicable Service Terms provide for it, subject to:

- (i) availability;
- (ii) Service Terms;
- (iii) our current allocation policy at the time of request; and
- (iv) payment of an additional Charge.

4.14 Dynamic IP addresses

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

4.15 Modern Slavery

You warrant:

- a) That Modern Slavery practices do not exist in your own businesses, or the businesses of your Affiliates;
- b) To the best of your knowledge, that Modern Slavery practices do not exist in the business of your suppliers; and
- c) That you will promptly disclose the existence of Modern Slavery practices in your business or supply chains.

4.16 Intellectual Property

- a) Any Intellectual Property owned by either party prior to entry into this SFOA, or developed independently of this SFOA by either party, will continue to be owned by that party;
- b) Bendigo Telco either owns the Intellectual Property in the Service provided to you or, where Bendigo Telco uses any Intellectual Property belonging to a third-party supplier, Bendigo Telco has a licence to do so.
- c) None of Bendigo Telco's Intellectual Property is transferred to you and, unless specifically authorised in writing, you cannot and will not use or reproduce such Intellectual Property for any purpose outside of this SFOA.
- d) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the term of this SFOA will belong to Bendigo Telco.

5 Fees for the Services

5.1 Fees

- a) You must pay all fees for the provision and use of the Services that we provide to you or by any other person listed as authorised under your account with or without your consent.
- b) If a service is used to access the facilities or services of another supplier, amounts charged by that other supplier are, unless our SFOA specifies otherwise, your responsibility, and you will indemnify us in relation to any such charges. If we are charged those amounts, we may include them in the fees.

5.2 Installation Charges

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

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

5.3 Discounts, credits, and rebates

Your application form will state any discounts or special rate for which you may be eligible. If you are eligible for a rebate, such as a promotional rebate, Bendigo Telco will inform you in writing of such an entitlement.

5.4 GST

Unless expressly stated otherwise, all amounts payable by you under or in connection with our SFOA are inclusive of GST. If GST is payable on a Taxable Supply made to you, the amount payable by you for that Taxable supply will be the amount expressed in our agreement or the relevant document connected with our SFOA.

5.5 Invoicing

- a) We will usually invoice you calendar monthly for the Services, plus any applicable GST. We may vary invoice frequency upon giving you reasonable notice. Pro-rata billing of services within the initial month of connection may apply for services charged in advance. Invoices issued via post / mail will incur a paper invoice fee as set out in the **Schedule of Charges**.
- b) We may issue an interim bill at any time in the following circumstances:
 - (i) you request a new service to be connected;
 - (ii) you change your existing plan;
 - (iii) you request to be invoiced for any 'unbilled' charges;
 - (iv) you relocate an existing service;
 - (v) we have reasonable grounds to believe that you may be a credit risk; or
 - (vi) as otherwise agreed with you.
- c) Depending on the relevant products' Critical Information Summary (**CIS**) or Rate Card, we may issue services based on different criteria, either in advance or arrears. Your CIS or Rate Card will provide details of the applicable recurring fee structure and you may have charges by both services criteria on the same invoice.
 - (i) payments in advance where applicable, we will invoice you in advance for connection, line rental, recurring charges, and other periodic service fees, and we will invoice you in arrears for call charges and other usage fees.
 - (ii) payments in arrears where applicable, we will invoice you in arrears for connection, line rental, recurring charges, and other periodic service fees, and we will invoice you in arrears for call charges and other usage fees.
- d) We will refund or credit any overpayment due to a variation in the Fees or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.
- e) If you have a direct debit in place, your credit card or bank account will be debited the invoiced amount as described **15 days** after the invoice issue date.

5.6 Time for Payment

All fees must be paid by the Due Date.

5.7 Standing authorisation

We reserve the right to require that you provide us a standing authorisation to debit Fees from your nominated credit card or bank account in the event that your Fees on account are, or are reasonably expected to be, above \$250 per month, or in the event that you are consistently late in making payment.

5.8 Method of Payment

You may pay invoices either by credit card standing authorisation, or on account, which may be paid by credit card, B-PAY, or money order.

Payments made by credit card standing authorisation with Visa, or Mastercard will not be subject to a surcharge to cover merchant fees. Payments made by credit card standing authorisation with AMEX or Diners Club will be subject to a surcharge of 1.5%.

5.9 Interest

We reserve the right to charge interest on the unpaid amount of any invoice which is not paid to us by the Due Date in accordance with the *Penalty Interest Rates Act 1983* (VIC) plus 2% calculated daily and compounded monthly as set out in the **Schedule of Charges**.

5.10 Administrative fee

If any amount remains unpaid after the Due Date you may be liable to pay an Administrative Fee as set out in the **Schedule of Charges** which would be added to your next invoice.

5.11 Dishonoured cheques

If an invoice is paid by cheque and that cheque is dishonoured, a dishonoured cheque fee as set out in the **Schedule of Charges** will be added to your next invoice.

5.12 Direct Debit transactions

- a) If an invoice is paid by Direct Debit and there are insufficient funds available in the account from which the Direct Debit is connected, a direct debit insufficient funds fee as set out in the **Schedule of Charges** will be added to your next invoice, subject to us notifying you in accordance with the TCP Code.
- b) If you reverse a transaction without our approval, a direct debit reversal fee as set out in the **Schedule of Charges** will be added to your next invoice where we consider it is reasonable, subject to us notifying you in accordance with the TCP Code.

5.13 Early Termination fee

If your Application Form states that you have agreed to receive a Service from us for a Fixed Term, then:

- a) The total amount payable for the whole of the Fixed Term (comprising any equipment charges, monthly service fees or other periodic fees as stated) is a debt owing to us as at the time we accepted your application form for that Service; and
- b) If you cancel the Service before the expiry of the Fixed Term, except as expressly provided otherwise in this Agreement or at law, you will be liable to pay the balance of the stated fees which are payable for the unexpired portion of Fixed Term, in the form of an Early Termination fee (calculated in accordance with the CIS or Rate Card for the relevant Service) as set out in the **Schedule of Charges**.

5.14 Removal of discount

If any fees remain unpaid for 30 days or more, we reserve the right to vary or remove any discount previously provided to you and to charge you at our standard rates rather than any special rate which we have previously allowed you.

5.15 Suspension for non-payment

We reserve the right to suspend, restrict or cancel provision of Services to you if:

- a) Fees or any other amount payable by you remains unpaid 21 days after the Due Date as it appears on the original invoice, (unless we have received written notice from you of a bona fide dispute of those Fees or other amount prior to the Due Date); and
- b) You fail to pay the outstanding amount in full within 7 days after we give you a notice demanding payment. Note that we have a Financial Hardship Policy that may be applicable in these circumstances (but will not necessarily stop suspension or cancellation where you do not comply with the terms set out in the financial hardship agreement).
- c) If we suspend or restrict the service for non-payment, it will continue to accrue regular monthly charges, therefore you will be liable for all fees and liabilities incurred before the date of restriction, as well as ongoing charges and fees whilst the service is suspended or restricted until the service is either paid up to date, cancelled or disconnected.

5.16 Refunds and credits

- a) In the event that your account for a Service is terminated and monies are owed to you by us (for example, for the unexpired portion of any Fee paid in advance by you), you agree that we may deduct any outstanding Fees on final settlement of your account and state on your final invoice (as applicable) the amount credited to you or the amount you must pay to us.
- b) You may elect to claim a refund for an amount credited on your final invoice or apply the credited amount to another Service we may supply to you by notifying us within 90 days of your receipt of the final invoice. If you fail to notify us within that period, you may be liable to pay a Refund and Credit Fee as set out in the **Schedule of Charges** for our costs of activating your account for processing of the refund or the crediting of that amount to another Service after that 90-day period has expired.

5.17 Prepayment

- a) At the time of application, we may request that you pay in advance the estimated cost of using your Service for an invoiced period.
- b) You must disclose to us if you are bankrupt or insolvent at the time of your application or become bankrupt at any time whilst you are accessing a service from us.
- c) We may cancel, suspend, or disconnect a Service if you do not provide the prepayment in advance when requested to do so in accordance with paragraph (a) above.
- d) If we cancel or disconnect all of the Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Fees.

5.18 Disputed invoices

If you dispute an invoice or claim a refund for overpayment of any Fees under our SFOA you must do so within 6 months of the Due Date of the invoice to which the disputed amount or alleged overpayment relates.

5.19 Cancellation or disconnection

If we cancel or disconnect any Service for non-payment, you remain liable for all Fees and other liabilities incurred prior to the date of cancellation or disconnection of the relevant Service, in addition to:

- a) Ongoing equipment charges (where applicable) if temporarily suspended or disconnected; and
- b) If you have acquired a Service from us for a Fixed Term and the Service is cancelled, any early termination fees.

5.20 Disconnection or reconnection

We may charge you a fee for the disconnection or reconnection of any Service as set out in the Schedule of Charges, except where the disconnection was caused by our failure to perform our obligations under this SFOA.

5.21 Set-off

Unless we agree in writing, you must pay the Fees without any set-off, counterclaim or deduction.

5.22 Requesting bill information

You may request access to some historical billing information as permitted under the TCP Code.

- a) For billing information up to 24 months prior to the date the billing information request is received will be free of charge as per the TCP Code.
- b) For information requested which is older than 24 months and up to six years from the date the request is received will incur an Administration Fee (hourly rate charge) as set out in the **Schedule of Charges** based on the provision of this information as per the TCP Code.

6 Transfer of your services to us

6.1 Changing your current arrangements

If in providing the Services, we need to change your arrangements with your current Supplier, then we will do so in accordance with this Clause 6.

6.2 Transfer to us

- a) You authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name;
- b) You agree to give written instructions to your current Supplier to transfer your telecommunications services from them to us if we so request; and
- c) You will immediately pay your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to us.

6.3 Existing credits

If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.

6.4 Existing debts

If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services, we will advise you accordingly and you must pay your previous Supplier that amount.

6.5 Indemnity

We will not accept any liability for any amounts owing by you to your previous Supplier for services which your previous Supplier provided to you prior to the commencement of the Services. You must indemnify us against any Claim made by your previous Supplier against us in relation to any such amounts.

7 Transfer of your Services from us to another Supplier

7.1 Transfer

If you 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.

7.2 Termination of Services on Transfer

The provision of Services ceases on the date on which we transfer your services to another Supplier.

7.3 Invoicing

We will endeavour to invoice you for Fees incurred in relation to Services which you transfer to another Supplier within the next normal billing period. If, after that time, we become aware of other Fees or amounts (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 and payable by you, then you will pay us all such amounts within 7 days of your receipt of our invoice for them.

7.4 Indemnity

We will not accept liability for any amounts owing by you to a supplier or other person. You must indemnify us against any Claim made by a Supplier or other person against us in relation to any such amounts.

8 Personal Information

8.1 Consent to collection and use

You consent to us obtaining, using, and disclosing your personal information for any of the purposes specified in this Clause 8.

8.2 Use of personal information

- a) You authorise us to collect, use and disclose personal information (including details of your account and information relating to the use of your service) which you provide to us in connection with the supply to you of the Services (including for direct marketing purposes in accordance with this Clause 8.2(e) below), to other suppliers, our agents, credit reporting agencies and our contractors and use that information for the purpose of managing your account or as otherwise necessary to fulfil our obligations under our SFOA.
- b) In particular, you acknowledge and agree that we will use your personal information:
 - (i) to identify you and to assess your application form;
 - (ii) to supply the Services and Equipment to you (including for investigation or resolution of disputes relating to any Services and Equipment provided to you);
 - (iii) to issue you with invoices and to collect Fees and any other debts you owe to us in connection with our SFOA;
 - (iv) for the purposes of preventing fraud or any other illegal activity; and
 - (v) for all other purposes reasonably required to provide the Services to you.
- c) You agree that we may disclose your personal information:
 - (i) to other Suppliers for the purpose of enabling us to provide the Services and Equipment to you (including for the purpose of provisioning Services or Equipment and providing particulars of calls and call charges to those suppliers for interconnection and invoicing purposes);
 - (ii) to any other person who provides services to us in connection with the Services and Equipment we supply to you (including to our resellers, outsourced installation and repair service companies, outsourced billing companies and debt-recovery agencies);
 - (iii) to credit reporting agencies for the purposes referred to in **Clause 8.3** and **Clause 8.4**;
 - (iv) if you elect to participate in a loyalty program with us, to other persons with whom we have established or will establish the loyalty program to enable you to participate in it;
 - (v) to anyone to whom we are permitted to assign or transfer this Agreement in accordance with **Clause 17.2**;
 - (vi) to government agencies, law enforcement authorities and other persons as required by law, including disclosures to the manager of the Integrated Public Number Database (as noted in Clause 8.2(d)) below; and
 - (vii) to any other person, where you have consented for us to do so.
- d) We are required by law to provide your name, address, telephone service number and other public number customer details to the manager of the Integrated Public Number Database (**IPND**) for the Approved Purposes. Unless you specify otherwise in your Application Form:
 - (i) your telephone service number for a fixed landline or SIP Service will be recorded as “listed number”; and
 - (ii) your telephone service number for a mobile service will be recorded as an “unlisted number”.

Unlisted service information is marked and controlled by the manager of the IPND to ensure that it is only used for the relevant Approved Purposes (unlisted numbers or suppressed address listings recorded in the IPND are not available to the general public via public number directories or directory assistance services). You must notify us of any change to your IPND data and you may request changes to the listing status of your Service by contacting us on 1300 228 123.

- e) Unless you ask us not to use your personal information for direct marketing purposes, we will use, and disclose your personal information to our related bodies corporate, agents, affiliates, franchisees, resellers, equipment suppliers and any other suppliers of products or services with whom we have engaged in a joint initiative, for the purposes of informing you of other products and services offered by us and by any of these other entities. If we are permitted to use your personal information for direct marketing purposes, you consent to us sending direct marketing information to you:
- (i) by post to (your address as listed in our records);
 - (ii) by email to your email address (as listed in our records);
 - (iii) on or with the invoices we issue to you for Services; and
 - (iv) by calling you (including by leaving a recorded message) on the telephone number applicable to your Service or other contact number which you have specified on your application form.

If you do not wish to receive direct marketing in accordance with this Clause 8.2(e), please call 1300 228 123.

8.3 Consent to credit check

- a) Your personal information in our possession, whether collected by us from you or obtained from a third party, may be disclosed by us to a credit reporting agency for the purpose of providing the Services to you.
- b) For the purposes of Clause 8.3(a), personal information which may be disclosed by us to a credit reporting agency consists of:
- (i) identity particulars such as your name, sex, address (and previous two addresses), date of birth, name of employer, and drivers' licence number;
 - (ii) your application for commercial credit (including the amount requested);
 - (iii) the fact that we are a current credit provider to you;
 - (iv) loan repayments which are overdue by more than 60 days and for which debt collection action has commenced;
 - (v) advice that your loan repayments are no longer overdue in respect of any default that has been listed;
 - (vi) information that, in our opinion, you have committed a serious credit infringement; and
 - (vii) dishonoured cheques.
- c) The information specified in paragraph (b) may be given before, during or after the provision of credit to you.

8.4 Use of credit report

- a) You agree that a credit report which contains personal information concerning you may be given to us by any credit reporting agency for the purpose of either assisting us to assess your creditworthiness or in collecting payments that are overdue.
- b) You agree that we may disclose a credit report or other report relating to you and any personal information derived from that report to any other credit provider for any of the following purposes, namely:
- (i) the assessment by us or the other credit provider of your creditworthiness;
 - (ii) the collection by us or the other credit provider of payments that are overdue; or

- (iii) the exchange of information between us and the other credit provider for the purposes referred to in subparagraphs (i) and (ii).
- c) The information which may be exchanged pursuant to paragraph (b) can include anything about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.
- d) You agree that a trade insurer may obtain a credit report about you for the purpose of assessing whether to provide trade insurance to us in relation to your application for commercial credit.

8.5 Access to personal information

Where we hold any personal information about you, you may request access to that information. We will provide you with access to most personal information that we have about you but in some cases that will not be possible, in which case we will tell you why.

8.6 Compliance

To the extent that you provide us with personal information which you have collected or accessed for the purposes of receiving the Services you must:

- a) Comply with the *Privacy Act 1988*;
- b) Comply with any reasonable direction which we may give regarding how to comply with any such legislation;
- c) Obtain the informed consent of any individual whose personal information you intend to provide to us so as to allow us to collect, use, disclose and store that information for the purposes of providing you with the Services or as otherwise contemplated by our SFOA;
- d) Notify us of any changes to that personal information of which you become aware; notify us of any complaint made by an individual in respect of their personal information; and
- e) Cooperate with us in the resolution of any complaint alleging a breach of the *Privacy Act 1988*, a privacy policy, or an approved privacy code.

8.7 Records

You must keep sufficient records in respect of personal information that you collect, store, use and disclose pursuant to our SFOA to enable us to determine whether you are complying with your privacy obligations under our Agreement, and must provide us with access to such records at our request.

8.8 Indemnity

You warrant that any such personal information that you provide to us is complete and accurate and agree to indemnify us against any Claim that may be incurred by us relating to any personal information which you provide to us not being treated in accordance with your obligations under **Clause 8.6** and **Clause 8.7**.

9 Your compliance

9.1 Compliance

You will ensure that you comply at all times with our SFOA including our fair use policy, all laws, and obligations applicable to the Services and their use.

9.2 Information

You warrant that the information supplied by you in relation to our Agreement is true and correct.

9.3 Obligations

- a) In providing the services to you, you agree that we, or a third-party supplier, may take any steps deemed necessary in order to comply with the law, industry codes of practice or under direction from a relevant regulatory authority or court order, including:
 - (i) intercepting communications made using a service; and

- (ii) monitoring and retaining data accessed or transmitted by you while using the service.
- b) Except to the extent that we have specifically agreed otherwise, you agree not to resell the service, nor to establish, maintain or permit multiple concurrent connections to the service, nor to connect the service to a local area network, except if the service is designated by us as one which supports use of a local area network.
 Except to the extent that we have specifically agreed otherwise, you are solely responsible at your own expense for providing and maintaining the modem and all other customer equipment necessary for the service.
- c) If we or a third-party supplier provide you with any software, you will only use it in accordance with its licence terms as notified to you from time to time.
- d) You must not do or allow to be done, in relation to a service, any of the following:
 - (i) obtain or attempt to obtain unauthorised access to or control of any other computer or network;
 - (ii) engage in denial-of-service attacks, or allow a computer under your authority to be used as part of one;
 - (iii) scan ports on other computers or otherwise probe them for means of access or vulnerabilities;
 - (iv) spread (either deliberately or through want of reasonable care) any virus, trojan horse or other harmful action;
 - (v) send spam;
 - (vi) breach any Law regarding content on the internet or email; or
 - (vii) contravene the Privacy Act, the National Privacy Principles, or any guidelines made under them.
- e) To the extent permitted by law, you acknowledge and agree that:
 - (i) continuity and speed of access to the internet depend on a wide range of factors, many of which are beyond our control;
 - (ii) we are not responsible for any software or data available on the internet;
 - (iii) we have no control over the accuracy or appropriateness of any information on the internet;
 - (iv) if we provide to you technical or other support or advice in relation to any matter which is outside our direct responsibility under this SFOA, we do so only in an attempt to assist you and without incurring any liability other than any which cannot lawfully be excluded.

9.4 Internet security

You acknowledge and accept that any access to the internet involves security risks and that new threats to Internet security are continually evolving. You accept responsibility for maintaining your own security and acknowledge that we have recommended that you should at least:

- a) Maintain and protect your user identity, email address, IP address and password (keeping the password secure, including not disclosing it, avoiding the use of dictionary words, names, or dates, changing it regularly, not keeping it in writing or storing it on a computer);
- b) Not accept emails or files from unknown sources;
- c) Use and keep current anti-virus software and firewall;
- d) Restrict access to equipment;
- e) Protect users from unsuitable internet content;
- f) Keep up to date on Internet security issues; and
- g) Avoid unexpected data fees or shaping by regularly monitoring your data usage

9.5 Assistance

For the duration of our Agreement, you will provide us free of charge with all assistance, information, access, facilities, and services reasonably required by us to enable us to perform our obligations under our SFOA, including use of Customer Equipment (including PABX and key system equipment) and any other telecommunications facilities which you own or control, if required.

9.6 Insurance

You are responsible for insuring and maintaining equipment or facilities which we provide to you.

9.7 Changes to personal information

You will promptly inform us of any changes to your billing or address details.

9.8 Indemnity

You will not use a Service or transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us against any Claim we suffer as a result of your use of the Service in breach of this clause.

10 Use of Services

10.1 Installation and programming of equipment

You will assist us in ensuring that any equipment necessary for you to receive the Services is installed and programmed so that calls to destinations nominated by us from time to time are, so far as possible, carried by facilities preferred by us.

10.2 Interference

If inadequate capacity in your equipment or your use of the Service interferes, or in our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, you must follow our directions or the directions of the relevant network operator on how to end or avoid that interference.

10.3 Power supply

You must ensure a suitable power supply is available for the use of the Services.

10.4 Use of Services

You must:

- a) Ensure the Services are used solely for their intended purpose;
- b) Notify us immediately of any security breach (suspected or otherwise) regarding the Service or of your confidential password or customer login;
- c) Not permit any other person to resell or purport to resell this Service.

10.5 Unauthorised use of Services

You are solely responsible for maintaining the confidentiality of your password and customer login. You agree to pay all charges incurred on your account whether or not you authorised such use of the Service, until such time as you notify us of any security breach regarding the Service or of your confidential password or customer login.

10.6 Technical regulation

You must not connect or maintain a connection to a facility used in connection with the supply of Services to you or other parties which does not comply with technical codes, standards or regulations made under the *Telecommunications Act 1997*, with any declaration or other requirement of the Australian Communications and Media Authority (**ACMA**) or with any code, standard or guideline published by Communications Alliance Limited.

10.7 Illegal use

You must not use or allow another person to use a Service to commit an offence, to transmit or publish any material that is defamatory towards any person, or in breach of copyright, any obligations of confidentiality or otherwise breach of any law. If you breach this clause, we may suspend, restrict, or cancel the service in accordance with **Clause 13.4(e)**. You will indemnify us against any claim that we suffer as a result of your use of the service to commit an offence or otherwise breach this Clause 10.7.

11 Equipment we supply to you

11.1 Title

If we provide a facility or any item of equipment (**Service Equipment**) to you either for use in the provision of the Services to you or otherwise, and we do not sell that Service Equipment to you, then:

- a) That Service Equipment always remains our property;
- b) Risk in the service equipment passes to you on delivery;
- c) You will allow us to and, where applicable, will ensure that the landlord allows us to remove the Service Equipment from the premises where it is installed upon expiry or termination of the supply of the Services;
- d) You must not register any interest in the service equipment under the PPSA and agree that we or our third-party supplier may register an interest in the equipment under the PPSA.
- e) You will not part with possession of the Service Equipment except to us;
- f) If we are unable to recover the Service Equipment, we may recover the value of it as a debt due by you, including offsetting the value of the Service Equipment against any monies owed to you by us;
- g) To the extent permitted by law, you indemnify us against any loss or damage of the Service Equipment, unless that loss or damage arises from our negligence or wilful misconduct; and
- h) You must not remove or obscure any identification marks on the Service Equipment and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Service Equipment.

11.2 Changes to Service Equipment

We may at any time and from time to time replace any of our Service Equipment as we think fit. If we have agreed to provide a Service to you for a Fixed Term, replacement of Service Equipment will be subject to our obligations under **Clause 4.9**, **Clause 4.10** and **Clause 4.11**.

11.3 Access

- a) You will allow us access to the Service Equipment during your normal business hours (or at such other times as we arrange with you), and this right of access will not end until all Service Equipment is returned to us, even if the Services have been cancelled.
- b) We (or a Supplier) may need access to your premises from time to time in connection with the provision and maintenance of the Service Equipment or a Service. If you do not provide such access as we, or a relevant Supplier, reasonably require, we may limit, suspend, cancel, or disconnect your Services.
- c) If you want us to provide a Service and that Service requires the installation of any facility, equipment, or cabling on your premises whether by us or a Supplier, you must allow us or any relevant supplier to:
 - (i) have access to your premises to install the facility, equipment, or cabling; and
 - (ii) install the facility, equipment, or cabling on your premises.

- d) If you do not own the premises referred to in paragraph (c) you must have the owner's permission and you warrant to us that you do have that permission.
- e) If we need access to your premises, you must provide us with safe access and indemnify us against any Claim by the owner or occupier of the premises in relation to our entry onto the premises.

11.4 Maintenance of Service Equipment

We may suspend Services for a reasonable period of time to perform maintenance on the Service Equipment, provided that in each case, we will use our reasonable endeavours to:

- a) Give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Services; and
- b) Minimise any interruption to the Services.

11.5 Maintenance of your equipment

If we use any of your facilities or equipment to provide the Services to you, you are responsible for the maintenance of your facilities and equipment unless we otherwise agree in writing.

11.6 Interference

You will ensure that the Service Equipment, and any other equipment, facilities or connections used in providing Services, are not altered, maintained, repaired, or connected, or disconnected from, any power source online except by service personnel approved by us.

11.7 Electricity

You will make available and be responsible for payment of, an adequate power supply for the operation of any equipment used in the provision of Services. If provision of the Service is dependent on the supply of electricity, we do not guarantee the supply of the Service where the supply of electricity is either disrupted or discontinued.

11.8 Insurance

If we request you to, you must insure any Service Equipment for an amount and on terms reasonably required by us.

11.9 Return

On the termination of supply of the Services for any reason you will immediately return all Service Equipment to us or make it available for collection by us. If you do not return the Service Equipment, you must pay to us on demand the full retail price of the Service Equipment (including the cost of acquiring or renewing any necessary software licences).

12 Equipment you acquire from us

12.1 Title

If we sell to you a facility or any item of equipment (Purchased Equipment), other than a mobile handset under a Mobile Device Payment (MDP) either for use in the provision of the Services to you or otherwise, then:

- a) That Purchased Equipment remains our property until we receive full payment from you;
- b) Until we receive full payment from you, you will not part with possession of the Purchased Equipment except to us;
- c) If you do part with the Purchased Equipment before making full payment to us, we may recover the value of it as a debt due, including offsetting the value of the Purchased Equipment against any monies owed to you by us;
- d) Until full payment of the Purchased Equipment is received, you indemnify us against any loss or damage to it, unless that loss or damage arises from fair wear and tear; and
- e) Until we receive full payment for the Purchased Equipment, you must not remove or obscure any identification marks on it and must comply with our reasonable instructions to

protect our ownership and not do anything which might detrimentally affect our ownership of the Purchased Equipment.

12.2 Risk

Risk of loss or damage to the Purchased Equipment will pass to you upon delivery.

12.3 Installation

Subject to agreement between us as to which Service and/or Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you. We may charge you our current rates (including travel and accommodation expenses) for installing the Purchased Equipment and/or Service. We will use reasonable endeavours to install the Purchased Equipment and/or a Service on or around the installation date requested by you but will not be liable for any loss or damage for failure to do so.

12.4 Installation site

You will prepare the installation site in accordance with the site preparation requirements reasonably required by us. We may refuse to install Purchased Equipment and/or a Service if the installation site has not been prepared in accordance with our reasonable requirements. We may agree from time to time to change the installation site; in which case we will be entitled to impose an additional charge for our costs.

12.5 Purchase price

You agree to acquire, and we agree to supply, the Purchased Equipment in consideration for the price set out in the Application Form or as otherwise notified by us to you.

12.6 Returns and refunds

Subject to any rights you have in respect of our breach of a Consumer Guarantee:

We do not refund purchased equipment where you have had a change of mind. If you require a different model, we allow 7 Business Days from the date you receive the Purchased Equipment to return to us at your own cost any purchased equipment from us. Your account will be credited with the purchase price less a 15% restock fee.

No credit will be applicable on any purchased equipment returned after the 7 Business Days period referred to above.

12.7 Mobile Device Payment

- a) The Mobile Device Payment (MDP) plan enables you to purchase of a mobile handset from Bendigo Telco as part of an eligible Mobile Service Number (MSN) Postpaid Mobile plan, up to a maximum MDP value of \$1,200 with monthly instalments over 24 months.
- b) You can have only one active MDP plan assigned to an eligible Postpaid Mobile plan.
- c) Under the MDP plan, you own the mobile Handset. You will be responsible for damage to or loss of the mobile handset. You must make your MDP plan payments even if you lose, damage or your mobile handset is stolen.
- d) The instalment payment term is your MDP term, as specified on your Mobile Device Payment plan application.
- e) Direct debit is a compulsory requirement of MDP.
- f) If you disconnect or port your MSN Postpaid Mobile plan to another service provider, the remainder of your MDP instalments will be payable on your next billing period as set out in our **Schedule of Charges**.

13 Suspension, restriction, and cancellation of Services

13.1 Your rights to cancel or terminate

- a) You may cancel a Service by giving us 30 days' notice in writing provided that you may be liable to pay an early termination fee in accordance with **Clause 5.13** if you do so during a fixed term.

- b) You may otherwise cancel a Service at any time by giving us notice in writing if:
- (i) you are entitled to do so in accordance with **Clause 4.9**;
 - (ii) you are entitled to do so in accordance with **Clause 16.2**;
 - (iii) we are in material breach of this Agreement, which we have failed to remedy within 30 days after you telling us in writing of that breach.
 - (iv) you are entitled to do so under the Australian Consumer Law; or
 - (v) we are in material breach of our Agreement, and it is something which cannot be remedied. This clause does not apply to interruptions which occur because of:
 - a. a cancellation, suspension, or restriction to the supply of the service in any of the circumstances listed in **Clause 13.4**.
 - b. a system or network outage for an insignificant period;
 - c. scheduled maintenance of our network or of service equipment in accordance with **Clause 11.4**.
 - d. a fault or other event which may reasonably be attributed directly or indirectly to your equipment; or
 - e. your acts or omissions.
- c) If you cancel a Service for any of the reasons set out in this paragraph (b), you will not be liable to pay an early termination fee (provided that we can recover any outstanding fees incurred up to the date on which our agreement ends) and you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance for the Service in accordance with **Clause 5.16**.

13.2 Preparation costs

If you request a Service from us and cancel that request before we provide the Service, you may be liable to pay us the Service Cancellation Fee for our costs incurred in preparing to provide the Service. Any cancellation fees imposed by a third-party supplier will be passed directly on to you.

13.3 Our suspension, restriction, and cancellation rights

We may suspend, restrict, or cancel a Service if:

- a) You notify us in accordance with **Clause 13.1**;
- b) We are required to do so by law;
- c) There is an emergency;
- d) If a third-party supplier withdraws or suspends a service which means we cannot provide your service;
- e) There are reasonable grounds for believing a threat or risk exists to the security or integrity of our network or that provision of the Service may cause death, personal injury, or damage to property;
- f) During any technical failure, modification or maintenance involved in the service provided that we will use reasonable endeavours to procure the resumption of the services as soon as practicable;
- g) We reasonably determine that such action is necessary to repair, maintain or restore any part or our network;
- h) The provision of the Services by us is or may be unlawful or we have reasonable grounds to believe that it may become so; or
- i) An force majeure event occurs outside of our reasonable control preventing us from providing the Service for 30 days, including explosions, natural disasters, was or an act of God; or
- j) If your service has not been used or accessed for a continuous period of 24 months.

You remain liable for all fees payable in respect of services provided to you that are suspended or restricted right up to the time of cancellation. To the maximum extent available at law, you are not entitled to any compensation for suspension, restriction, or cancellation of a Service under this Clause 13.3.

13.4 Other suspension, restriction, or cancellation events

We may suspend, restrict, or cancel a Service if:

- a) You vacate the premises to which we have been supplying a Service to you;
- b) We are unable to enter the premises to inspect, repair or maintain any equipment or cabling connected with a Service provided to you;
- c) We have the right to do so in accordance with **Clause 5.15** for your failure to pay Fees or other amounts;
- d) You do not provide prepayment as required by us in accordance with **Clause 5.17**;
- e) We have reasonable grounds to suspect fraud or other illegal conduct by you or any person using your Service;
- f) You fail to comply with our Acceptable Use Policy (if applicable to your Service);
- g) You fail to rectify any defect or inadequacy in any equipment or cabling not owned or maintained by us within 30 days of being requested to do so by us;
- h) Your use of the Services interferes with the efficiency of our network or a third-party supplier's network we will manage your service in accordance with our Acceptable Use Policy;
- i) You become a carrier or carriage service provider within the meaning of the *Telecommunications Act 1997*;
- j) You become bankrupt, insolvent or have a receiver, manager, administrator, or liquidator appointed over you or any of your assets;
- k) We have reasonable grounds for believing you are a credit risk, including the following grounds:
 - (i) your usage of the Service is unusually high when compared to previous account activity and you fail to respond to notices from us about that usage (but you acknowledge that we are not obliged to monitor usage of a Service, or to suspend, restrict or cancel a Service if there is unusual usage, and you remain liable to us for usage of that Service);
 - (ii) you fail to pay an invoice by the Due Date and have a payment history indicating late payments, dishonoured payments, or failures to pay; or
 - (iii) we become aware of public notices of your pending bankruptcy, winding-up or other insolvency events, and we have taken reasonable steps to notify you of the suspension, restriction, or cancellation of the Service; or
- l) You are in material breach of any of the terms of conditions of our Agreement, including the terms of this SFOA.
- m) We may immediately cancel your service if you abuse or harass our staff or our contractors in the conduct of their duties, or if you threaten to harm, attempt to harm, or cause actual harm to Bendigo Telco staff, our contractors or property.

You remain liable for all fees payable in respect of services provided to you that are suspended or restricted right up to the time of cancellation.

If we cancel, restrict or suspend the Service for any of these reasons under this Clause 13.4, you will be liable to pay a disconnection fee and (if we agree to reconnect the Service) a reconnection fee, as set out in the **Schedule of Charges**, in addition to your liability to pay all other Fees incurred up to the time of cancellation of the Service in addition to any other rights we may have under the SFOA or at law.

13.5 Cancellation for convenience

We reserve the right to cancel any service:

- a) If there is no fixed term specified in your application, at any time by giving you at least 30 days' notice;
- b) If a fixed term is specified in your application,
 - (i) at any time after the end of the fixed term by giving you at least 30 days' notice; or
 - (ii) during the fixed term, if we have your consent; or
 - (iii) during the fixed term, if we offer to migrate you to an alternative service, that leaves you no worse off for the remainder of the fixed term and take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled service and the alternative service we offer.
- c) You may terminate this Agreement for convenience, in the event that we seek to cancel any service and are unable to provide a service as described in clause 13.5(b)(iii). You must not be in breach of this Agreement and must pay us all fees incurred and outstanding prior to being able to terminate under this clause.

13.6 Consequences of suspension, restriction, cancellation, or termination

- a) Subject to our rights under **Clause 13.1(a)**, if we cancel, restrict or suspend the Service for any of the reasons listed in **Clause 13.3**, we will not charge you any disconnection or reconnection fee. If your account is terminated as a result of any of these events, you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with **Clause 5.16**.
- b) Without limiting any of our rights under the SFOA or at law, if we cancel, restrict or suspend the services for any of the reasons listed in **Clause 13.4**, you will be liable to pay a disconnection fee and, if we agree to reconnect the service, a reconnection fee in addition to your liability to pay all other fees incurred up to the time of cancellation of the service as described in the **Schedule of Charges**. We also reserve the right in these circumstances to require before reconnection of the Service that you pay a security bond that will be based upon the value of any equipment in your possession that you have not fully paid for and our reasonable estimate of the amount necessary to secure your performance under this Agreement.
- c) We may utilise your security bond to recover any amounts payable by you to us or to compensate ourselves for any loss, liability or expense suffered or incurred by us as result of any breach of the SFOA by you. If we utilise any of the security bond you must replenish the security bond within 7 days of our request. You are not eligible to earn or accrue interest on the security bond. Unused portions of the security bond will be reimbursed to you within a reasonable time after termination of all services that you have with us.
- d) If we advise you that we are cancelling your service in accordance with **Clause 13.5**, you will not be liable to pay a disconnection fee, but will be liable to pay all other fees incurred up to the time we cancel your service.
- e) If we suspend or restrict a service in accordance with the SFOA as a result of a breach of the agreement by you, you will have to pay all charges arising in respect of the service during the suspension or restriction (excluding usage-based charges).
- f) On termination of a service for any reason, you must immediately:
 - (i) stop using the service and any equipment owned by us or any third-party supplier; and
 - (ii) allow us to remove any equipment owned by us or any third-party supplier or any purchased equipment that you have not paid for in full.
- g) You remain liable for all fees payable in respect of services provided to you up to the time of cancellation.
- h) Once the service has been cancelled for any reason, we may delete all of your data from any storage media. You are solely responsible for backing up your data.

13.7 Expiration of a Fixed Term or other period

If we have agreed to provide a Service to you for a Fixed Term or any other agreed period, and that Fixed Term or other period expires and neither you nor Bendigo Telco cancel the Service, we will continue to supply the Service to you on a month-to-month basis.

13.8 Connection fees

We may charge you a fee for the disconnection or reconnection of any Service as set out in the **Schedule of Charges**, except where the disconnection was caused by our error or our failure to perform our obligations under this Agreement or was the result of any of the events specified in **Clause 13.3**.

14 Liability

14.1 Our liability for property damage, personal injury, and death

We are liable to you for:

- a) Any loss, destruction, or damage to your tangible property during installation, repair, or maintenance of equipment; and
- b) Personal injury (including illness and disability) or death, which is caused by our fault, negligence, or fraud.

14.2 Performance

To the extent permitted by law, we do not warrant that Services will be free of interruption, delays, or faults of any kind.

14.3 Our liability for interruptions to the service

- a) Subject to paragraph (b) below and **Clause 14.6(c)**, we accept liability to you for interruptions to the service longer than 48 hours from the time of reporting, to the extent of providing you with a pro-rata refund of service charges payable for the duration of the interruption.
- b) The refund in paragraph (a) does not apply:
 - (i) to Interruptions which occur because of:
 - a. a system or network outage for an insignificant period;
 - b. scheduled maintenance to our network, a third-party supplier's network, our equipment or purchased equipment;
 - c. a cancellation, suspension, or restriction to the supply of the service in accordance with **Clause 13.4**;
 - d. a Force Majeure event;
 - e. a fault in your equipment, power supply or premises;
 - f. your act or omission that causes the interruption;
 - g. where we have been unable to gain prompt access to your premises; or
 - (ii) if you are separately entitled to receive compensation in respect of the same Interruption in accordance with **Clause 14.4** or **Clause 14.5**.
- c) To receive the refund set out in paragraph (a), you must contact us on 1300 228 123 and request an assessment for compensation.

14.4 Terms implied by law

We agree to provide Services to you subject only to the terms, conditions and warranties contained in this SFOA and those which are implied by law and cannot be excluded under the Australian Consumer Law.

14.5 Our liability under the Customer Service Guarantee

- a) This Clause 14.5 applies subject to any waiver of your entitlements under the Customer Service Guarantee Standard (the **CSG**) that you have provided to us. It may be a condition of some services that you waive your entitlements under the CSG.
- b) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, our service must comply with the CSG. The CSG sets out minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with a Service. The CSG does not apply to customers equipment or to customers that have more than five telephone services. We will connect services not covered by the CSG within a reasonable time.
- c) If we do not meet the CSG performance standards, you may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which we may be exempt from meeting those requirements, including if you have agreed to a CSG waiver under the terms of the relevant Critical Information Summary (CIS) in accordance with Part 5 of the *Telecommunications (Customer Service Guarantee) Standard 2011*, where you unreasonably refuse us access to your premises or if you miss an appointment without giving us reasonable notice. For more information about the CSG, go to the ACMA website at www.acma.gov.au.

14.6 Limitation of liability

Nothing in this SFOA excludes or limits, or has the effect of excluding or limiting, the operation of the Australian Consumer Law or any right you may have under the Australian Consumer Law.

- a) Where we are allowed to by law, our liability to you is limited:
 - (i) if the breach relates to the supply of Equipment, the repair or replacement of the Equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent equipment; or
 - (ii) if the breach relates to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied.
- b) The limitations of liability in Clause 14.6(a) above do not apply to:
 - (i) a breach of the consumer guarantees relating to clear title, undisclosed securities, and undisturbed possession under sections 51 to 53 of the Schedule 2 to the *Competition and Consumer Act 2010* (Cth); or
 - (ii) a breach of any consumer guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption.
- c) If a Service or Plan includes a Service Level Agreement (SLA):
 - (i) we are liable for any remedy or rebate specified by the SLA; and
 - (ii) subject to Clause 14.6(a) above and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

All conditions, terms and warranties which would otherwise be implied into our SFOA are expressly excluded except to the extent such exclusion is prohibited by law.

14.7 Exclusion of liability

To the extent permitted by law, you, we, and our third-party suppliers have no liability to each other for any Consequential Loss (other than loss resulting from our breach of a consumer guarantee).

To the extent permitted by law, we and our third-party suppliers have no liability to you or to any other person for:

- a) 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 arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;

- b) Faults or defects in any facility or Equipment we provide to you or the Services which are caused by or contributed to by your omission, conduct or misuse;
- c) Any loss to the extent that it results from your failure to take reasonable steps to avoid or minimise your loss;
- d) Any failure on our behalf to perform our obligations under this SFOA where that failure is due to an event occurring outside our reasonable control, including explosions, natural disasters, war, or an act of God; and
- e) Acts, omissions or defaults or any supplier or any person who provides goods or services directly to you for use in connection with a Service.

However, we will use reasonable endeavours to ensure that any supplier cooperates in order to deliver the Service in a timely manner, provides and maintains the Service in a responsible fashion and rectifies any faults in relation to the Service in a timely manner.

14.8 Cancellation of a Service

Cancellation of a Service or termination or expiry does not affect the provisions of this SFOA concerning limitation of liability and indemnity.

15 Confidentiality

15.1 Confidential Information

We retain all rights (including intellectual property) in any information we provide to you relating to the Equipment, the Services or to the provision of the Services which, by its nature, or the circumstances of its disclosure to a recipient, is or could reasonably be expected to be regarded as confidential (**Confidential Information**).

15.2 Protecting confidentiality

You will keep the Confidential Information confidential and will not allow any written or electronically recorded confidential Information to be copied or disclosed to a third party without our consent, unless you are required to do so by law, or the information has entered the public domain other than through a breach of confidence. You may also disclose Confidential Information to your professional advisers on condition that they also agree to keep the information confidential.

15.3 Obligations on termination

On the termination of the Services for any reason, you will return the Confidential Information and all copies of it to us or as we otherwise reasonably direct. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand following termination of the Services.

15.4 Restrictions on use

You will not use information which you acquire from us for any purpose unauthorised by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

15.5 Data Breach

- a) If a party becomes aware of a Data Breach, that party will immediately inform the other party and disclose to it all information relating to the Data Breach.
- b) After notification of a Data Breach, you will provide all reasonable assistance to Bendigo Telco to:
 - (i) remedy the Data Breach and prevent further Data Breaches;
 - (ii) determine whether the Data Breach is an “eligible data breach” for the purposes of the Privacy Laws; and
 - (iii) in the event the parties agree that there has been an eligible data breach, prepare any statements and/or notifications within the applicable timeframes required under the Privacy Laws.

- c) Bendigo Telco will provide you with any notices it prepares under Clause 15.5(b)(iii) for final approval, which must not be unreasonably withheld or delayed. Each party will not publicly use or mention the other's name without that party's prior written approval.

16 Force majeure

16.1 We are not liable for

Subject to our obligations under the CSG as described in **Clause 14.5** and any non-excludable rights you have under the Australian Consumer Law, we are not liable for, and will not be deemed to be in breach of this SFOA in the event of:

- a) Any delay in installing a Service;
- b) Any delay in correcting any fault in a Service;
- c) Failure to provide or incorrect operation of any Service;
- d) Service outages; or
- e) Any default by us in compliance with this SFOA,

if it is caused directly or indirectly by any event beyond our reasonable control.

16.2 Termination for Force Majeure

In any delay, interruption, or failure to deliver under **Clause 16.1** continues for more than 30 days after the commencement of the delay, Interruption, or failure to deliver, then either party may terminate the affected service(s) by notice in writing to the other party.

17 Assignment

17.1 Your right to assign

- a) You may not assign or transfer (where those rights are assignable) any of your rights under our Agreement without prior written consent.
- b) You may transfer your obligations under this agreement with our prior written consent and if:
 - (i) the person to whom you are transferring the obligations:
 - a. provides satisfactory proof of identification;
 - b. meets the eligibility criteria for the service;
 - c. has an appropriate credit rating; and
 - (ii) the service is available at the location where they wish to acquire the service.

17.2 Our right to assign

- a) To the extent that we provide services to you in accordance with section 9 of the *Telecommunications Consumer Protection Code* or Services provided outside of this code, you agree that at any time we may assign, transfer, or otherwise novate any of our rights under our SFOA to:
 - (i) a related body corporate (being a company in our corporate group);
 - (ii) a third-party supplier for the purposes of outsourcing or resupplying a Service to you; or
 - (iii) a purchaser of our business,

on condition that the assignee agrees to assume our liabilities and obligations and provide the Service to you on materially the same terms and conditions of our Agreement. Otherwise, we may assign, transfer or deal with our rights under our Agreement on terms to which you consent.

- b) We, or the assignee, will notify you if a transfer occurs in accordance with this Clause 17.2(a). We and you agree that, with effect from the date of the notice, this agreement is

cancelled, and a new agreement is created on the same terms as this agreement except that:

- (i) the assignee replaces us in any capacity under this agreement as if the assignee was an original party to this agreement instead of us; and
 - (ii) the assignee has no obligations or liability under this agreement before the date of the notice.
- c) In addition to our other rights in this Clause 17.2, we may assign, transfer or deal with our rights and obligations under this agreement on terms to which you consent.

18 General

18.1 Giving notice to you

We may satisfy any obligation to give you notice by:

- a) Delivering the information to you in person;
- b) Sending the information by pre-paid post to the address listed in our records for you;
- c) Transmitting the information to your email address if you:
 - (i) have an email address; and
 - (ii) have given us your consent to send information to that address;
- d) Including the information on, in or with an invoice, including by an invoice made available to you online via our website, provided you have consented to receiving the invoice in that format;
- e) In the case of pre-paid telecommunications Services, any of the above means or by making the information available to you by means such as through our website, or at a retail outlet, and informing you how you can obtain the information by means of a recorded message or text message or in writing; or
- f) To the extent permitted by the terms of this SFOA and any other applicable law or regulatory code, by publishing a notice in a daily newspaper circulating generally in the region or capital city of the State or Territory in which you ordinarily reside or carry on business.

18.2 Disputes

We will seek to resolve any dispute by agreement or consultation with you and request that you contact us on 1300 228 123 in the first instance as per the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*. If a dispute arises under our Agreement, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme. For further information go to www.tio.com.au or call the TIO on 1800 062 058 or (TTY) 1800 675 692.

18.3 Intellectual property

You do not own or have any legal interest in any of our intellectual property or in any IP address, personal identification number or other locator or identifier issued directly by us to you.

18.4 Authority

- a) Subject to the *Telecommunications Service Provider (Customer Identity Authentication) Determination 2022*, **Clause 4.3(a)** and our rights and obligations in **Clause 7**, we will not let another person access your account unless we have received your authority to do so.
- b) Subject to paragraph (a) above and **Clause 4.3(b)**, If you use the services wholly or predominantly for business or Enterprise purposes you agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon authority of any of your employees, who tells us that they are authorised to provide that consent on your behalf.
- c) For residential services, you must inform us if you want another person to have authority to access or make changes to your service or account as stated in **Clause 4.3**.

- d) In addition to paragraph (a) & (b) above and subject to best practice as set out in the ACCC: *Consumer vulnerability: A business guide to the Australian Consumer Law, Telecommunications Consumer Protections Code (TCP Code)* and the *Communications Alliance Assisting Customers Experiencing Domestic and Family Violence Guideline*, Bendigo Telco under the *Telecommunications Consumer Protections Code clause 3.4 Disadvantaged and vulnerable Consumers*, will, where an End User approaches Bendigo Telco with a claim of domestic and/or family violence and Bendigo Telco is satisfied there is sufficient evidence, allow for the termination of the end user's mobile number without the Customers consent.

18.5 General Terms

This SFOA contains the general terms of agreement between the parties and supersedes all prior SFOA agreements and understandings between the parties in connection with it.

18.6 Governing law

This SFOA is governed by the laws of the State of Victoria. You and we submit to the exclusive jurisdiction of the courts of the state of Victoria.

18.7 Subcontractors

We may subcontract any of our obligations under this SFOA.

18.8 No waiver

No failure to exercise nor any delay in exercising, any right, power, or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power, or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

18.9 Survival

Any provision of this SFOA which by its nature is intended to survive termination or expiry of this SFOA (including without limitation any exclusion or limitation or liability or indemnity in this Agreement) will survive termination or expiry of this SFOA for any reason.

18.10 Severability of provisions

Any provision of this SFOA that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this SFOA nor affect the validity or enforceability of that provision in any other jurisdiction.

19 Service Book - Supplier specific services that apply in addition to the above SFOA and form part of our Agreement

20 Data Service – NBN

20.1 Partner Requirements - nbn

These Partner Requirements apply in addition to the above SFOA when we supply you with an nbn Service directly or via a third-party supplier.

20.2 nbn Service conditions

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

20.3 Providing information to nbn

We may provide information about you to nbn:

- a) To facilitate the provision of an nbn Service to you;

- b) To enable nbn to carry out its role and responsibilities or exercise its rights;
- c) As specified in our privacy policy; or
- d) As otherwise required or permitted by law.

20.4 Connecting your Service Address to the nbn

nbn connection charge

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

Landlord's Consent

If you do not own your Service Address:

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

Consent – shared HFC sites

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

Consent – other shared sites

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

Withdrawn approval

If:

- a) A third party has given approval for the installation of an nbn Service at your Service Address; and
- b) That approval is withdrawn before the installation is complete – you must notify us immediately.

Installing nbn Equipment

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

Your cooperation

You must:

- a) Provide nbn and us with reasonable assistance to allow nbn to complete installation; and
- b) If reasonably requested, be present personally or by an authorised adult representative during installation.

Access

You must give nbn or us access to:

- a) Enable the supply of an nbn Service to you;
- b) Perform any work on or in relation to the nbn, nbn Equipment, our Network, or, where lawful, a third party's network whether or not associated with the supply of an nbn Service; and
- c) Enable nbn to exercise its rights under or comply with the nbn Wholesale Broadband Agreement.

nbn Connection Box

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

FTTB Installations

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

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

FTTC Installations

For nbn FTTC Services where your building has an MDF, you must procure that NBN Co has all necessary consents to use any in-premises or in-building wiring, cabling, or equipment (including common property) at the building to supply your service. You must tell us immediately if any such consent is withdrawn.

Installation appointments

- a) nbn may offer you a choice of appointment times through us, but we do not manage their schedule.
- b) We rely on nbn to tell us about rescheduling your appointment and will give you as much warning as we reasonably can.
- c) Subject to the Consumer Guarantees:
 - (i) we do not promise that nbn will keep its appointments; and
 - (ii) we exclude liability for any loss or inconvenience you may suffer if it does not.

Missed appointments

If you miss an nbn installation appointment, you may be charged a missed appointment fee.

Rescheduled appointments

- a) If you do not give us as much notice as possible (and at least one clear Business Days' notice) that you need to reschedule an nbn installation appointment, you may be charged a late cancellation fee.
- b) If nbn or its installer requests or agrees, they may reschedule an appointment directly with you.

Types of installation

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

- a) A Standard Installation;
- b) A Non-Standard Installation; or

- c) A Subsequent Installation.

Non-Standard and Subsequent Installations

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

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

Works you arrange

- a) All cabling, equipment and works on your side of the nbn Boundary are your responsibility.
- b) Where you engage anyone to carry out works associated with an nbn Service, you must ensure that they are registered cablers, hold all relevant industry certifications and otherwise comply with all Laws.

20.5 nbn Mains Power Requirements

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

20.6 nbn Back-up Power

- a) For an nbn FTTP Service or an nbn Fixed Wireless Service, you may ask nbn to supply and install a back-up battery and power supply unit with the nbn Connection Box for an extra charge.
- b) The back-up battery:
 - (i) for a limited time, will allow you to make voice calls using the UNI-V (voice) port of the nbn Connection Box using a compatible handset **that does not require mains power for normal operation** connected to that port;
 - (ii) for a limited time, will supply power to the UNI-D (data) port of the Connection Box **but will not supply power to devices that require their own power supply e.g., modems and cordless phones. Unless you make your own arrangements to supply these with a back-up power system, they will cease working during a power outage.**
- c) nbn publishes instructions on checking the condition and status of a back-up battery. If you have one, you must check it regularly in accordance with nbn's instructions.
- d) An SLA (if any) for an nbn Service does not apply where the nbn Service is disrupted due to a power outage at the Service Address or to a flat or faulty back-up battery.

20.7 Effects of power failure

nbn FTTP Service or nbn Fixed Wireless Service

If your nbn FTTP Service or nbn Fixed Wireless Service suffers a mains power outage:

- a) You cannot use data services e.g., the internet, email or VOIP calling.
- b) If you have a back-up battery that is not flat or faulty, you can make voice calls for a limited time via a handset that is compatible with the UNI-V port of your Connection Box and can draw sufficient power from it.
- c) If you do not have a back-up battery, or it is flat or faulty, you cannot make or receive telephone calls (including to emergency numbers) using the nbn Service.

nbn (FTTN Service, FTTB Service, FTTC Service, HFC Service or Satellite) Service

If your nbn FTTN Service, nbn FTTB Service, nbn FTTC Service, nbn HFC Service or NBN Satellite Service suffers a mains power outage:

- a) You cannot use data services e.g., the internet, email or VOIP calling.

- b) You cannot make or receive telephone calls (including to emergency numbers) using the nbn Service.

20.8 Disruption to nbn FTTC Service

An nbn FTTC Service may be temporarily interrupted if NBN Co performs any installation, activation or relocation work or other activities that affect the relevant DPU. Such activities may relate to other properties or nbn customers or their nbn Services.

20.9 Priority Assistance Services

- a) We do not offer priority assistance services. If anyone at your Service Address has a life-threatening medical condition, please seek a provider that can offer you a priority assistance service, such as Telstra.
- b) For your information, we advise that nbn will only support priority assistance services if you have a back-up battery and power supply unit.

20.10 nbn Services using existing copper wiring

- a) Some nbn Services make use of the copper wiring that may already be connected to or within your building and/or Service Address (e.g., nbn FTTN Services or nbn FTTC Services). These services require you to install a compatible VDSL2 modem inside your Service Address.
- b) As part of the set-up of these Services, nbn will disconnect that wiring from the existing telephone network and connect it to the nbn. During that process:
 - (i) nbn will notify your existing telecommunications service provider when disconnection has occurred.
 - (ii) you will no longer be able to use any phone, fax, internet service etc. that was supplied over that wiring.
 - (iii) there will be a period when your previous service/s are disconnected but nbn Services are not yet available.
 - (iv) if possible, you should have access to a mobile phone to make calls with during that period.

20.11 nbn Services using HFC technology

- a) Some nbn Services make use of the Hybrid Fibre Coaxial (HFC) service that may already be connected to your Service Address.
- b) As part of the set-up of these Services, nbn will install and activate its own equipment. During that process:
 - (i) nbn will install an HFC radio frequency (RF) splitter so your existing services will work after the installation.
 - (ii) there will be a period when your existing HFC service/s (e.g., internet or pay TV) are not available.
- c) If you do not require any of your existing services after the installation, you must arrange to cancel them.

20.12 Incompatible services

- a) Our nbn Services may not support specialised third-party services like medical alarms, security alarms, elevator emergency phones, fire indicator panels or EFTPOS machines.
- b) If you use a specialised service, please contact the provider of that service to discuss your needs and, if possible, how to migrate the service to the nbn. We do not provide support for these specialised services.

20.13 Setting up your in-premises equipment

- a) As well as an active nbn Connection Box, you will need in-premises equipment (e.g., a modem) to use an nbn Service.

- b) Unless we expressly agree to supply and/or set up your modem or other in-premises equipment, you are responsible for doing so, using instructions we will supply.
- c) We do not have to agree to supply and/or set up your modem or other in-premises equipment but if we do, extra Charges will apply.

20.14 nbn Service speed

Predicting actual nbn Service speeds is difficult, as they depend on several factors such as your distance from an exchange (where applicable), the network connecting the exchange, your equipment and software and internet traffic. Devices that connect to your modem by wi-fi may operate at slower speeds than those connected by cable.

20.15 NBN Co liability

- a) This clause has effect to the fullest extent allowed by Law.
- b) You must not make, and you release NBN Co, its Related Bodies Corporate and/or their respective Personnel from, any Claim against any of them in connection with or arising out of the nbn Wholesale Broadband Agreement (Excluded Claim).
- c) You indemnify NBN Co, its Related Bodies Corporate and their respective Personnel against any Losses any of them may suffer or incur arising from or in connection with an Excluded Claim.
- d) If you make an Excluded Claim, you must indemnify us against any Losses we may suffer or incur by virtue of our obligation under the nbn Wholesale Broadband Agreement to indemnify NBN Co, its Related Bodies Corporate and/or their respective Personnel in respect of any Losses they may suffer or incur arising from or in connection with the Excluded Claim.

20.16 Our liability

If:

- a) You would, but for this clause, have a Claim against us; and
- b) We would, but for the nbn Wholesale Broadband Agreement, have a right to claim contribution or indemnity from nbn in relation to your Claim; and
- c) The nbn Wholesale Broadband Agreement precludes us from claiming such contribution or indemnity –

then you must not make, and you release us from, the Claim to the extent of the contribution or indemnity for which nbn would have been liable but for the nbn Wholesale Broadband Agreement.

20.17 Other terms – applicable to all Customers

nbn compliance

You must ensure that the equipment, networks, or systems you use with the nbn:

- a) Are technically compatible with the nbn; and
- b) Comply and are used in accordance with all Laws.

No pass through breaches

You must not use or attempt to use any nbn Service in a way that causes, or would cause, us or nbn to breach the nbn Wholesale Broadband Agreement.

No unlawful use

You must not use an nbn Service unlawfully.

No damage

You must not (and must not allow anyone else to) damage, threaten, interfere with, cause the deterioration or degradation of the operation or performance of, nbn, an nbn Service, our Network, systems, facilities or equipment or those of another person, or the provision by us or another person of services to you or anyone else.

No relocation of nbn Connection Box

You must not relocate an nbn Connection Box to a Service Address other than that where it was originally installed. An nbn Service connected to a relocated Service Address may be terminated without notice.

Providing assistance and complying with directions

You must reasonably assist us:

- a) To supply or maintain your nbn Service; and
- b) To comply with our obligations to nbn.

Associated equipment

- a) If you become aware that any nbn Equipment used to supply your nbn Service is damaged or faulty, you must notify us.
- b) You must ensure your equipment used with your nbn Service is maintained in good repair and working condition.

Cooperation with directions

You must follow our reasonable directions, instructions, policies, and procedures concerning:

- a) Protecting the integrity of the nbn, our Network or any third-party network or equipment;
- b) Protecting the health or safety of any person.

Changes and repairs to nbn Equipment

Except for work carried out under a Consumer Guarantee, if you want nbn to change or repair nbn Equipment, nbn will:

- a) Give you a quote for the work; and
- b) Only perform work if you agree to pay for it. Alternatively, nbn may give us a quote for the work, and we will only direct nbn to proceed with it if you agree to pay for it.

Erroneous fault reports

If:

- a) You make a fault report in relation to an nbn Service; and
- b) nbn determines there was no fault with the nbn; and
- c) nbn charges us in connection with the erroneous fault report – you must pay or reimburse the charge.

nbn Fair Use Policy

NOTE: The nbn Fair Use Policy applies to all nbn Services, including nbn Fixed Wireless & Satellite Services. See **nbn Fair Use Policy – nbn Fixed Wireless Heavy User usage limits** for more information.

You must comply with the nbn Fair Use Policy, including:

- a) Not using the nbn in a way that causes or may cause interference, disruption, or congestion;
- b) Not undertaking (or attempting to undertake) any of the following without permission:
 - (i) accessing material or data or logging in to a server or account unlawfully;
 - (ii) disabling, disrupting, or interfering with the regular working of any service or network, including, without limitation, via means of overloading it, denial or service attacks or flooding a network;
 - (iii) probing, scanning, or testing the vulnerability of a system or network; or
 - (iv) breaching the security or authentication measures for a service or network;

- c) Not using your nbn Service to support:
 - (i) any substantial carrier or service provider data aggregation applications, (such as backhaul for mobile base stations or multiplexed access systems and/or networks) that result in substantial and continuous network throughput; or
 - (ii) connections for the purpose of providing or enabling carrier or service provider interconnection;
- d) Ensuring that the networks, systems, equipment, and facilities you use in connection with the nbn are technically compatible with the nbn network and comply with and are used in accordance with:
 - (i) all reasonable procedures notified to you by us or nbn; and
 - (ii) all Laws; and
- e) Not using or attempting to use your nbn Service, or allow it to be used in any way which:
 - (i) would cause us to breach our obligations to nbn;
 - (ii) would damage, threaten, interfere with, cause the deterioration or degradation of the operation or performance of the nbn, our Network, or any third-party network, or the provision of services to you or anyone else on the nbn. Severe or persistent breaches of the nbn Fair Use Policy may result in the suspension or termination of your nbn Service by nbn.

nbn Fair Use Policy – nbn Fixed Wireless Heavy User usage limits

Usage of the nbn Fixed Wireless network has been steadily increasing in recent years. A small number of customers' usage is disproportionately larger than others to the extent that their usage is materially impacting the performance for other users.

At present nbn has limited ability to reduce the impact these Heavy Users have on other users. For this reason, nbn will enforce the Fixed Wireless Fair Use Policy in a way that nbn believe will have a positive impact on the vast majority of users, by implementing a framework to minimise the impact Heavy Users have on other users of the same network cell, particularly during busy periods.

It is important to note that in both downlink and uplink scenarios, no application shaping will be implemented if the Heavy User is not having an impact on network performance.

How does nbn determine if a customer is a Heavy User on the nbn Fixed Wireless network.

Downlink

- a) Month one – identifying Heavy Users
 - (i) nbn will identify that Bendigo Telco has exceeded the Fair Use Policy average download threshold of 200GB across all of our Fixed Wireless customers in a calendar month.
 - (ii) nbn will identify any individual customers that have exceeded 400GB in the same calendar month.
- b) Month 2 – enforcing the Fair Use Policy
 - (i) nbn will identify whether the specified Heavy User customers (that exceeded 400GB in the previous calendar month) are using Intensive Application Types and impacting performance for other customers during busy periods.
 - (ii) if so, nbn will apply the application shaping remedy only for the relevant Intensive Application Types during busy periods. This could be for as little as a few minutes, an hour, or longer depending on the network traffic at the time.

Uplink

- g) Month one – identifying Heavy Users
 - (i) nbn will identify any customers that have exceeded 120GB uplink for a calendar month and notify Bendigo Telco about these customers.

- h) Month 2 – enforcing the Fair Use Policy
 - (i) nbn will identify whether the specified Heavy User customers (that exceeded 120GB in the previous calendar month) are using Intensive Application Types and impacting performance for other customers during busy periods.
 - (ii) if so, nbn will apply the application shaping remedy only for the relevant Intensive Application Types during busy periods. This could be for as little as a few minutes, an hour, or longer depending on the network traffic at the time.

Refer to the nbn website for more details on the framework and the criteria to define a Heavy User and the Intensive Application Types.

nbn Operations Manual

You must comply with the nbn Operations Manual as far as it is relevant to your use of an nbn Service or nbn Equipment.

Additional termination rights

In addition to our rights under this SFOA, we may terminate an nbn Service:

- a) Immediately, without notice and without undertaking our own investigation of your conduct, if nbn informs us that your conduct is in breach of your Contract as it applies to an nbn Service; or
- b) On as much notice as is practicable in the circumstances, if nbn suspends, interrupts, or terminates the supply of anything that is necessary for us to supply the nbn Service to you

but you must still pay us for any Charges incurred before termination.

Liability

In addition to your liability under the SFOA, you are responsible for any loss or damage suffered by us or anyone else or any of our networks, systems, facilities, equipment, or sites or those of anyone else to the extent that such loss or damage was:

- a) Caused by you, your agents, suppliers, contractors, or representatives; or
- b) Your failure to obtain permission to install the nbn Service from the owner of your Service Address.

except to the extent that the loss or damage was caused by us or nbn.

21 Mobile Telephone Services

21.1 Partner Requirements – Mobile Telephone Services

Where we supply you with a Mobile Telephone Service:

- a) If arrangements between our Wholesale Supplier and us are terminated, our Wholesale Supplier may arrange to supply you directly. You acknowledge that the rate plan applicable to the provision of Mobile Telephone Services to you may be altered to the nearest applicable rate plan of our Wholesale Supplier in the event that our rights and obligations under your Contract are assigned or novated to our Wholesale Supplier so that our Wholesale Supplier provides the Mobile Telephone Services directly to you.
- b) You may not resell or resupply the Mobile Telephone Services provided by us.
- c) We shall have the right to assign or novate all or part of its rights and obligations under your Contract to our Wholesale Supplier without your consent. You cannot assign or novate all or part of your rights and obligations under your Contract other than in accordance with this Clause 21.1(c).

For the purposes of novation, you agree to novate your Contract to our Wholesale Supplier on receipt of a notice from either us or our Wholesale Supplier, such novation to be on terms no less favourable than the terms of your Contract in existence immediately prior to the novation.

- d) You consent to allow us to disclose to our Wholesale Supplier (or its Related Bodies Corporate) your details including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address, and account history) or carriage services supplied to you.

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

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

21.2 Mobile Porting Terms and Conditions

- c) You may be able to port your mobile number from your current mobile service provider to Bendigo Telco if that mobile number is declared portable under the ACMA's *Telecommunications Numbering Plan 1997* which you may obtain a copy of by visiting www.acma.gov.au.
- d) Bendigo Telco agrees to comply with the operational procedures for porting mobile numbers described in the Australian Communications Industry Forum's Industry Code – Mobile Number Portability ACIFC570 2005 (MNP Code), you may obtain a copy of this by visiting www.acif.org.au.
- e) The terms of this SFOA will apply to the supply of mobile services to you by Bendigo Telco once you have successfully ported your mobile number to Bendigo Telco.
- f) If your mobile number cannot be ported to Bendigo Telco, then your application to have a mobile service will be cancelled. Alternatively, you may choose a new mobile number from Bendigo Telco.
- g) You acknowledge that:
- (i) Only your mobile number ports to Bendigo Telco. Existing value-added services (including voice mail, SMS, paging, or facsimile services) provided by your current mobile service provider may be lost and new value-added services will be provided by or on behalf of Bendigo Telco.
 - (ii) There may be costs and obligations associated with porting your mobile number away from your current mobile service provider and you may lose any remaining pre-paid call credits if you port from a pre-paid mobile service.
 - (iii) You may have an ongoing contract with your current mobile service provider which requires the payment of cancellation and/or terminations fees to that mobile service provider if you port to Bendigo Telco. Any such fees are your responsibility.
 - (iv) Regardless of whether your mobile number is successfully ported to Bendigo Telco, you will still be responsible for any amounts owing to your current mobile service provider.
 - (v) Your current mobile service provider may or may not disconnect your existing mobile service and/or value-added services.
 - (vi) If you are transferring your service to us from another mobile provider you may need to purchase a new handset, or get it unlocked by your previous provider (if it is locked to the provider).

- (vii) If you intend to use your existing handset, you may need to get it unlocked or reprogrammed prior to porting. You may also need to get a new handset.
 - (viii) You may withdraw your authority to port at any time before your current mobile service provider sends Bendigo Telco a Port Cutover Notification Confirmation. If you withdraw your authority to port, your
 - (ix) application to become a Bendigo Telco mobile customer will be cancelled.
 - h) Bendigo Telco does not warrant that it can port your mobile number from your current mobile service provider or that your number will be ported to Bendigo Telco within any specified timeframe. Your current mobile service provider may reject the request to port if the information you provide is incorrect or does not match the data held by them. In this case, Bendigo Telco reserves the right to correct the information and resubmit the request to port or dispute the rejection by your current mobile service provider.
- Additionally, a request to port may be rejected if:
- (i) the request is for a non-portable mobile number - e.g., a cancelled mobile number;
 - (ii) the MNP Code requires the request to be rejected; or
 - (iii) Bendigo Telco cannot otherwise provide porting for that mobile number in the circumstances.
- g) We are not liable to you for any direct or indirect loss or damage that you may suffer due to a failure or delay in the porting process that was due to matters outside our control including the acts or omissions of another service provider.
 - h) If you wish to port your mobile number from Bendigo Telco to another mobile service provider, then you must contact that other provider to implement the port.

21.3 About our mobile plans fees and rates for international calls, SMS, and MMS

- a) We may change these rates in accordance with our Partner Requirements. For a current list of applicable rates for voice calls to standard international landline and mobile numbers, please refer to the [International Rates](https://www.bendigotelco.com.au) listed on our website www.bendigotelco.com.au.
- b) For SMS and MMS to standard international landline and mobile numbers, we charge international SMS at \$0.35 per message and international MMS at \$0.75 per message.

22 Voice including: Hosted PBX, SIP/SIP Trunk, Teams Calling & BizExpress

22.1 Partner Requirements – Voice (VoIP): Hosted PBX, SIP Trunk, Teams Calling.

This Service Schedule is for the supply of Voice Origination and Termination minutes over IP connection. It will apply to the first and any subsequent Service Orders executed by the Customer.

- a) Bendigo Telco VoIP is not intended to be used as a standard telephone service. If your internet is not functioning properly for any reason, including where there is a power failure, data congestion, throttling, or other internet outage, Bendigo Telco VoIP will not function or will not function correctly.
- b) It is not possible to use Bendigo Telco VoIP to make calls to premium numbers such as 19 and 1900 numbers, Universal International Freephone Numbers (UIFN) or 0500 numbers.
- c) Bendigo Telco VoIP is not useable for fax transmission, pay TV system dialups (e.g., Foxtel, Austar, Select TV), back to base alarms and other monitoring systems using phone lines, dial up modem and other analogue data calls (e.g., EFTPOS).

22.2 Prerequisites to supply of the Service

- a) It is a condition of supply of the Service that you must not preselect to another carrier or use the Bendigo Telco VoIP service to make override calls on a third-party network.

Bendigo Telco may terminate the supply of the service if you preselect to another carrier or use the service to make override calls. You agree that you will not request Bendigo Telco procure the ability to preselect or override to other carriage service providers.

- b) The customer must organise means of connection either via public internet or by ordering Virtual Private IP Service.
- c) The customer is responsible for any required cabling works to be done at the customers premises;
- d) Bendigo Telco will provide all required assistance in the initial system configuration; however, it will be the customers responsibility to unpack and to physically connect VoIP equipment supplied by Bendigo Telco to the customers Local Area Network.

22.3 Provision of Service

- a) The Customer agrees it will comply with the National Numbering Plan and any directives from the Australian Communications and Media Authority (ACMA). Specifically, the Customer agrees to allocate numbers to End Users in a way consistent with the requirements of the National Numbering Plan.
- b) The Customer will be permitted to pass its valid CLI originating number where that number is a valid Local Service Number (as defined by the ACMA) or is presented in the E.164 format and where that service is completely within the administrative domain of the Customer or the Customer's End User.

22.4 Telecommunications Customer Service Guarantee Waiver

In accordance with Parts 5 of the *Telecommunication (Customer Protection and Service Standard) Act 1999* (Cth), and the *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* (CSG), Bendigo Telco proposes that you waive your protection and rights under CSG. As a Customer, you are not obliged to waive your protection or rights, however because Voice Over IP technologies are not equivalent to standard telephone networks, you acknowledge that Bendigo Telco reserves its right not to provide you with a VoIP service under the CSG.

The Protection and Rights you are waiving include:

- a) Damages for breach of performance standards, as per section 116 of the Act.
- b) Time for payment if damages for breach if performance standards, as per section 117A of the Act.
- c) Right of Contribution, as per section 118A of the Act.
- d) Guaranteed maximum connection periods, as per the CSG.
- e) Guaranteed maximum rectification period, as per the CSG.
- f) Information to be given to Customers, as per the CSG.
- g) Making and Changing Appointments, as per the CSG.

Full detail of the compensation can be found with a search of the ACMA website (www.acma.gov.au).

22.5 Security

- a) The Internet is an unsecure environment. Bendigo Telco advises that it may be possible for a third party (such as a hacker) who has obtained access to your equipment or software, including equipment or software provided to you by Bendigo Telco, to make calls using your Bendigo Telco VoIP service.
- b) Bendigo Telco will provide you with a username and password at the time of activation. It is your responsibility to maintain safe and secure that username and password. You must ensure that appropriate security mechanisms are placed on all equipment so as to protect against hacking, including over wireless networks. Some steps that you should take include:
 - (i) not recording your username and password details on your computer or in any other location where they may be obtained by a third party;

- (ii) restricting administration access to your equipment;
 - (iii) ensuring that WIFI access is protected with appropriate encryption and with limitation on persons and equipment that are permitted to access the WIFI; and
 - (iv) ensuring that your passwords (including your router passwords) are not given out to unauthorised persons and are regularly changed.
- c) Calls made from your Bendigo Telco Voice service will be chargeable, whether such calls have been authorised by you or not, except to the extent to which we caused or contributed to the hacking or unauthorised access.

22.6 Numbers & Porting

- a) A telephone number from the Australian Telecommunications Numbering Plan under the Telecommunications Act 1997 will be allocated to you for the period during which you acquire the Bendigo Telco Voice service.
- b) The geographic number allocated to you will be based on the service delivery address that you nominate in the application process or which you subsequently advise us. The number allocated to you will be at Bendigo Telco's discretion. Bendigo Telco has no obligation to give you an alternative number. If you move the service delivery address, Bendigo Telco may be required to give you a different service number, relevant to your new service delivery address.
- c) Bendigo Telco must port out a number at the request of a customer. However, the provider you wish to port to (the gaining provider) does not have to accept the port. Similarly, although Bendigo Telco has porting arrangements with major carriers, Bendigo Telco may not accept ports from all carriers.
- d) If the porting of numbers to the service or from the service is possible, the following provisions apply:
- (i) The porting of your number will be conducted in accordance with the relevant Communications Alliance codes.
 - (ii) You may port your number if it is declared portable in accordance with the porting requirements administered by the ACMA and no exemption from such obligations has been granted.
 - (iii) If you have ported your number from another service provider and the service is subsequently terminated or you terminate the service without reconnecting to another service provider, you will no longer have the right to use that number. Similarly, if you port your number from us to another service provider and are then disconnected you will no longer have the right to use the number.
 - (iv) In order to port your number to us, you warrant to us that all information supplied by you is complete and correct. You indemnify us against (and will pay us for) any loss, liability, claim, damage, costs, expenses and charges reasonably incurred by us as a result of, or in connection with, the porting of any number to us which you authorise us to port but which number has not been validly assigned or allocated to you, or otherwise in connection with any incorrect or incomplete information supplied by you in the port request.
 - (v) Your previous telephone provider may charge you for porting and there may be other costs and obligations such as early termination fees payable to your previous telephone provider. You indemnify us against all such fees and charges.
 - (vi) When porting your number out to another carrier, there may be charges payable to Bendigo Telco for porting and other costs and obligations such as early termination fees and service and call charges that have not already been paid.
 - (vii) During the process of porting the number from another supplier's network to TPG there may be a period when the service is interrupted.

22.7 About our VoIP/SIP plans fees and rates for international calls

We may change these rates in accordance with our Partner Requirements. For a current list of applicable rates for voice calls to standard international landline and mobile numbers, please refer to the [International Call Rates](#) listed on our website www.bendigotelco.com.au.

23 Domain Names & DNS Hosting

23.1 Partner Requirements – TPP Wholesale Domain Name & DNS Hosting Services.

The below Service Terms are in addition to the Mandated Provisions for gTLD Domain Name Registrations as stated under [Clause 23.5 a\)](#).

23.2 Service Terms Registration Agreement

- a) This Registration Agreement is submitted by you (being an individual or entity), the applicant for (and on registration) the licence holder of a domain name, for the purpose of becoming the licensee of a particular domain name.
- b) This Registration Agreement sets out the applicable terms and conditions governing all domain name registrations, pre-registrations, renewals or otherwise. You agree you have read, understand, acknowledge, and agree to be bound by this Registration Agreement.

23.3 Service Terms Rules of registration

- a) A registration or reservation of a domain name does not grant any legal rights of ownership of the relevant domain name, nor does it confer immunity from objection to the registration or use of the domain name.
- b) We do not warrant or guarantee that any domain name applied for will be registered or is capable of being registered by you. No action should be taken in respect of a requested domain name until notification has been provided of successful registration. You irrevocably waive any claims you may have against us in respect of the decision of a Registry to refuse to register a domain name and, without limitation, agree that any administration charges paid by you to us shall be non-refundable in any such event.
- c) Both the registration of the domain name and its ongoing use are subject to the relevant naming authority's terms and conditions of use, and you are responsible for ensuring that you are aware of those terms and conditions and can and do comply with them. You irrevocably waive any claims you may have against us in respect of the decision of a naming authority to refuse to register a domain name and, without limitation agree that the administration charge paid by you to us shall be non- refundable in any event.
- d) We accept no responsibility for the use of a domain name by any party, and any disputes regarding a domain name must be resolved between the parties concerned. We will take no part in any such dispute. We reserve the right to, in our sole discretion and without providing any reason, on our becoming aware of such a dispute, either suspend or cancel the domain name, and/or to make appropriate representations and disclosures to the relevant Registry.
- e) You agree that should this Registration Agreement be terminated by any party, or if the domain name expired or transferred to another registrar, any other services that may be associated with the domain name will remain active. The customer of these other services will continue to be billed in accordance with the relevant terms and conditions.
- f) We may require the applicant of a domain name (who upon registration, would become the Registrant) to supply accepted photo identification (valid passport or driver's license) to verify their identity.
- g) You agree to indemnify and hold harmless ICANN and the relevant Registry, and each parties' officers, employees and agents from and against all liability to any third parties and associated costs in defending any action, claim, proceeding or demand by a third party to the extent to which liability or the claim arises from or in connection with access to our systems or use of our Services under the Agreement.

23.4 TLD Specific Terms

The following provision apply to this Registration Agreement depending on the TLD space of the domain name:

- a) .com.au and .net.au domains can only be registered by an Australian registered company, or business with a registered business number (ABN, BRN, BN). You will need to supply this number during the order process. The domain name you order will need to be an exact match, acronym, or abbreviation of the supplied business registration, or it should bear a close and substantial connection to the domain name. Domains can be two to 63 letters in length. Words can be separated by hyphens but not spaces.
- b) .org.au and .asn.au can only be registered by a “non-commercial organisation”. The domain name you register needs to have a solid relationship to the organisation to which it represents.
- c) .id.au is intended for individuals who reside in Australia. It can be an exact match, abbreviation or acronym of registrant’s personal name or otherwise closely connected to the registrant.
- d) .com and .net domain names are not restricted and can be registered by anyone.
- e) .biz, .org and .info domain names are not restricted and can be registered by anyone.
- f) New gTLD domain names include a number of generic spaces (.photography, .technology, .club etc.) and certain geographical names (.kiwi, .melbourne etc.). Eligibility restrictions may apply to each space — please check on our website and the New gTLD Domain Registration Agreement for further information.
- g) .nz domains are intended for people in, or with ties to, New Zealand. Anyone can register them – there are no restrictions on .nz domain names.
- h) .uk domains are intended for people in, or with ties to, the United Kingdom. Anyone can register them – there are no restrictions on .uk domain names.
- i) .mobi domains are intended for websites designed for a mobile device. Anyone can register them – there are no restrictions on .mobi domain names.

23.5 ICANN Mandated Terms and Materials

TPP Wholesale is accredited by ICANN to provide registrar services for gTLD domain name spaces. As part of that accreditation, TPP Wholesale are required to incorporate mandatory terms and materials into their Terms and Conditions. When you submit an application to register a gTLD domain name with us, you are stating that you have read and understood the following documents, and you agree to be bound by them:

- a) Mandated Provisions for gTLD Domain Name Registrations
- b) Registrants Benefits and Responsibilities

23.6 Obligations

You are responsible for:

- a) ensuring that you provide full, accurate and up-to-date information in relation to the Services (and that such information is updated as necessary);
- b) arranging and obtaining, any and all intellectual property right consents, clearances, and authorisations (including from any third party) necessary to ensure the ordering, provisioning and/or use of our Services does not infringe upon any third-party intellectual property rights. This includes, without limitation, the provision of copyrighted materials, use of trademarks and/or logos; and
- c) (except to the extent we are supplying as part of a Service to you) the proper backup and protection of all your software and data, as well as the implementation and maintenance of firewalls and reasonable security measures (including without limitation, proper virus control).

- d) Ensuring that you take all reasonable and necessary steps to prevent fraudulent activity on your accounts and take corrective action immediately that you become aware of such instances, keeping us informed at all times.

24 References

A new Tax System (Goods and Services Tax) Act 1999

Communications Alliance Assisting Customers Experiencing Domestic and Family Violence Guideline G660:2018

Competition and Consumer Act 2010

Modern Slavery Act 2018

Penalty Interest Rates Act 1983 (VIC)

Privacy Act 1988

Spam Act 2003

Telecommunications Act 1997

Telecommunications (Consumer Complaints Handling) Industry Standard 2018

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications Consumer Protections Code (TCP)

Telecommunications (Customer Service Guarantee) Standard 2011

Telecommunications (Financial Hardship) Industry Standard 2024

Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017

Telecommunications (Interception and Access) Act 1979

Telecommunications Numbering Plan 1997

Telecommunications Regulations 2001

Telecommunications Service Provider (Customer Identity Authentication) Determination 2022