

- 2.3 Equipment, Maintenance and Software is only available to you if you nominate Voice Services, Data & Internet Services, Mobile Services, or any other Services in your Application as a Package.
- 2.4 From time to time, we may vary a term of this SFOA (and, for the avoidance of doubt, any document forming part of this SFOA in accordance with clause 1.3.3) in accordance with the following:
 - 2.4.1 where the variation is likely to benefit or have a neutral or minor detrimental impact on you, the variation will take effect upon us giving written notice to you;
 - 2.4.2 where we acquire a carriage service from a third party for resale to you and variations to this SFOA are required because of an amendment made by our third party supplier to the contract between us and our third party supplier, we will provide you with prior written notice explaining the variation and its effect and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
 - 2.4.2.1 usage or network access charges incurred up to the date of termination; and
 - 2.4.2.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination and any outstanding amounts that cover installation costs unless such Purchase Equipment is not compatible with other suppliers' services; and
 - 2.4.3 where the variation has a more than minor detrimental impact on you, we will provide you with at least 21 days notice and you may terminate this SFOA within 42 days of the date of the notice by giving us written notice and paying us:
 - 2.4.3.1 usage or network access charges incurred up to the date of termination; and
 - 2.4.3.2 all outstanding amounts in a lump sum for any Purchase Equipment which you have not fully paid for at the date of termination and any outstanding amounts that cover installation costs unless such Purchase Equipment is not compatible with other suppliers' services.

3. CHARGES & PAYMENT

- 3.1 You must pay the charges for the provision of the Services or the Package, at the relevant rates as notified to you from time to time, as well as any other charges incurred by you in accordance with this SFOA.
- 3.2 We will usually invoice you monthly for charges due under this SFOA. Our first invoice will be issued either in the month that we commence provisioning Services to you or, in our discretion, the following month. We may vary invoice frequency at our discretion. We may issue interim invoices. We may bill you more often if you exceed your spend limit (see clause 4.2).
- 3.3 Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for periodic charges, connection and service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases. We will endeavor to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per 8.2.2 of ACIF CS42 - Industry Code - Billing, we will not bill charges older than 190 days from the date the charge was incurred by the customer.
- 3.4 All charges are due and payable by the due date shown on the invoice ("Due Date"). Payment must be made by the Due Date in full by cheque, credit card, direct debit or any other method permitted by us.
- 3.5 If an invoice is paid by cheque or direct debit from your bank account and that cheque or direct debit is dishonoured, cancelled or otherwise fails, you may be liable for a charge which will be added to your next invoice.
- 3.6 Supplier charges:
 - 3.6.1 Our charges to you may pass on any charges another Supplier charges to us (including increases and special or one-off charges).
 - 3.6.2 You will pay us any charge which any other Supplier or other person renders to us:
 - a) if you approach that other Supplier or person directly, or otherwise than through us; or
 - b) for connection or initiation of any service or for cancellation of any service.

11.1.5 you can transfer a Service Number or PIN to another person if you get our consent first.

11.2 Caller Line Identification ("CLI"):

11.2.1 If you do not Bar CLI in respect of calls made from your equipment then you agree that when a call is made or any text message sent from your equipment your Service Number may be sent automatically to the equipment of the called party.

11.2.2 You agree that if a party calling your equipment has not Barred CLI in respect of a call made from their equipment then the Service Number of the calling party may be displayed on the screen of your equipment at the time the call is made.

11.3 We, like other Suppliers, are required by law to provide your name, address, Service Number and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only provided for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have your IPND data altered in any way.

12. TERMINATION, SUSPENSION & CANCELLATION

12.1 We may terminate this SFOA or suspend, limit or cancel the provision of any Service or Package by notice in writing to you if:

12.1.1 you fail to pay any amount due under this SFOA by the due date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within the specified number of days after we give you that notice;

12.1.2 you breach any material provision of this SFOA;

12.1.3 you are declared bankrupt, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;

12.1.4 a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors, where we are of the reasonable belief that we are unlikely to receive amounts due and payable by you;

12.1.5 any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you do not function because we are unable to enter your premises in order to update or rectify such equipment;

12.1.6 you cease receiving any service that we rely upon in providing the Service or Package through no fault of ours or our Suppliers;

12.1.7 you are in breach of a licence, permit or authorisation relating to the use of your telecommunications equipment, the Equipment, the Package, or the Services;

12.1.8 you do not provide security as required by us;

12.1.9 we reasonably suspect you of fraud or attempted fraud;

12.1.10 you vacate the premises to which we had been supplying Services or a Package to you;

12.1.11 you change your address or phone number; and

12.1.11.1 you do not notify us in accordance with clause 10.5; or

12.1.11.2 the Service may not be provided at your new address or phone number through no fault of ours or our Supplier;

12.1.12 we reasonably believe that your usage of the Services is unusually high (as referred to in clause 4.2);

12.1.13 we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;

12.1.14 we are permitted or required to do so by law;

12.1.15 you are in breach of the Internet Acceptable Use Policy or the Fair Use Policy;

12.1.16 any of our or our Supplier's Data & Internet Services Related Equipment is lost, stolen or substantially destroyed;

12.1.17 any of the Purchase Equipment is lost, stolen or substantially destroyed;

12.1.18 the physical infrastructure and site conditions for your service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study; or

12.1.19 you die.

32. PERIOD OF AGREEMENT

- 32.1 You must take the Data & Internet Services for the Minimum Term if specified in your Application, subject to your rights
- 32.2 The Minimum Term commences when:
- 32.2.1 if you are arranging for self installation of the required equipment and:
 - 32.2.2 you supply the required equipment yourself, on the date we activate your Data & Internet Services; or
 - 32.2.3 if we supply you with the required equipment, on the date of delivery of the required equipment; or
 - 32.2.4 if we are installing equipment for you and:
 - 32.2.5 the equipment is being installed at a single Site, the date that we install the equipment at the Site; or
 - 32.2.6 the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.
- 32.3 Unless you notify us in writing prior to the expiration of the Minimum Term that you wish to cease receiving the Data & Internet Services at the expiration of the Minimum Term, the Minimum Term of this SFOA will be automatically extended from month to month ("**Holding Over Period**") at the same rate, including the same Minimum Monthly Spend, and on the same terms and conditions.

33. DATA & INTERNET SERVICES CHARGES

- 33.1 The charges applicable to the Data & Internet Services are specified in the Rate Sheets and the applicable Schedule attached to your Application.
- 33.2 The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and the Rate Sheets. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise.
- 33.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.
- 33.4 We may vary any charges for the Data & Internet Services in accordance with clause 2.4.

34. SHIFTS/ MOVES/ UPGRADES

- 34.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule attached to your Application. If Data & Internet Services cannot be provided at your new address, we may terminate this SFOA by notice to you.
- 34.2 You may be able to change your Data & Internet Service if it is specified in the applicable Schedule attached to your Application. Changes to your plan involving a downgrade on the Data & Internet Service or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

35. CLAUSE IS NOT USED**36. SERVICE LEVELS**

- 36.1 We will use reasonable endeavours to meet the Response Target where response target/SLA's are advertised and/or advised by us as specified in the Terms and conditions.
- 36.2 We will use our reasonable endeavours to meet the Restore Target and the Availability Target.
- 36.3 The Availability Target will be calculated in accordance with the formula set out: (Available Hours during month x 100) ÷ hours in month
- 36.4 The Available Hours are measured at a point in the relevant network designated by us to be indicative of the availability experienced by you.
- 36.5 At your request, we will calculate the Available Hours in a calendar month. If a Service is unavailable to you for any period of time as a result of an outage, this period of time will only be excluded from your Available Hours if you notify our Help Desk within five days of the outage.

36.6 Availability Guarantee:

- 36.6.1 If the Availability Target is not met then, for each hour of Service unavailability or fraction thereof in any calendar month above the Service unavailability time which meets the Availability Target, at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for the Service with respect to which the Availability Target has not been met.
- 36.6.2 If the Restore Target is not met then, for each day the Restore Target is not met, at your request your account shall be credited by an amount equivalent to one day of Charges (on a pro-rata basis) for the Service with respect to which the Restore Target has not been met. You may obtain no more than one credit per day, irrespective of how often in that day we failed to meet the Restore Target.
- 36.6.3 Notwithstanding anything to the contrary, the maximum total amount of credit issued in any calendar month as the Availability Guarantee remedy shall not exceed the total of the monthly Charges and the start-up Charges (if any) which, absent the credit, would have been charged for that month for the Service with respect to which the Availability Guarantee has not been met.
- 36.6.4 The Availability Guarantee in respect of the Availability Target and Restore Target is applicable only if you complete our "Service Level Agreement Rebate Form", which is available on request from our Corporate Support department. You are solely responsible for providing us with accurate and current contact information for your account administrator. We will be relieved of our obligations under the Availability Guarantee in respect of an Availability Target and a Restore Target if our contact information for your account administrator is out of date or inaccurate due to your action or omission.
- 36.6.5 We will use all reasonable endeavours to provide you with information regarding the progress of resolving any reported fault before the end of each Customer Update Period, but you acknowledge that we are only required to do so if any new information is available.

37. INTERNET ACCEPTABLE USE POLICY

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

38. SOFTWARE

- 38.1 Except for Software provided as part of the Data & Internet Services Related Equipment, or Maintenance, we will not provide you with any Other Software in order to access and use the Data & Internet Services or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Data & Internet Services or Purchase Equipment, but you must first get our prior written permission.
- 38.2 We will not provide support on any Other Software and in our absolute discretion we may charge you an additional fee to install Other Software (if required).

39. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT

- 39.1 In order to access the Data & Internet Services, we or our Suppliers may provide you with Data & Internet Services Related Equipment or you may use your own equipment, as nominated in your Application and approved by us.
- 39.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

40. INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT

- 40.1 We may either install your Data & Internet Services Related Equipment at the Site or you may install the Data & Internet Services Related Equipment yourself as specified in your Application.
- 40.2 You are responsible for all costs of delivery (as specified in the applicable Schedule attached to your Application) and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.
- 40.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.
- 40.4 If we are installing your Data & Internet Service Related Equipment, you must provide us or our Suppliers with reasonable access to your premises during Business Hours unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule attached to

your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

- 40.5 You are responsible for all additional installation service charges where the work required on Site is greater than two hours unless otherwise stated in your Application. The installation charge is payable on commencement of the Service (pro rated where the network is delivered to you in stages).
- 40.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.
- 40.7 Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Schedule attached to your Application. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application.
- 40.8 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the Data & Internet Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.
- 40.9 Telephone line configuration changes are only available for our supported modems and routers.
- 40.10 Changes made by you to the supplied configuration are at your risk and will not be supported by us.

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

- 41.1 If you are supplied with Data & Internet Services Related Equipment by us or by our Suppliers on our behalf, other than where you purchase such equipment, then the whole of this clause 41 applies to you. If you purchase Data & Internet Related Equipment from us, then only clauses 41.4, 41.7, 41.8, 41.12 apply to you.
- 41.2 We will permit you to use the Data & Internet Services Related Equipment on the terms and conditions of this SFOA.
- 41.3 The Data & Internet Services Related Equipment is and remains our property unless specified by us (or the property of our Suppliers or of an entity related to us or our Suppliers) and you hold it for us or our Suppliers (as the case may be). We may change the Data & Internet Services Related Equipment at any time by giving you three days notice.
- 41.4 Risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.
- 41.5 You must not do anything to give rise to an adverse claim to our rights (or the rights of our Suppliers or of an entity related to us or our Suppliers) in or ownership of the Data & Internet Services Related Equipment.
- 41.6 The Data & Internet Services Related Equipment may also be subject to design rights or other rights. You must not copy or reproduce any part of the manuals or of the Data & Internet Services Related Equipment without our written permission.

42. FAULT REPORTING AND MAINTENANCE

- 42.1 If we have a Service Level agreement with you then the Service Level nominated in your Application applies and details of such Service Levels are available at our website at www.myowntel.net.au or available from us on request. You should notify any faults regarding your Data & Internet Services to our help desk, the contact number for which is located on your invoice and on our website at www.myowntel.net.au
- 42.2 Before reporting a fault to us, you should ensure that the fault is not due to hardware, software or networks that are not being managed by us. We reserve the right to charge you our standard on-site visit fee if no fault is found.
- 42.3 We are:

- 42.3.1 responsible for correcting faults in the Services and you must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility;
- 42.3.2 not responsible for any fault which is on your side of the network termination point; and
- 42.3.3 not responsible for any fault which is within the network of a Supplier and we will notify that Supplier of the fault and request that the fault be corrected promptly.

- 42.4 If we request, you must provide us or our Suppliers with reasonable access to your premises during the hours of 9am - 5pm, Monday to Friday (excluding public holidays) or if Service Levels apply to your Data & Internet Service, at the times specified in the Service Level Agreement.
- 42.5 We reserve the right to charge you in accordance with the relevant Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time. Regional services may attract an additional charge which is also specified in the relevant Schedule attached to your Application. A charge may be due where line fault requires an on-site visit to rectify.
- 42.6 You are responsible for the supply and maintenance of any additional hardware required to make the Data & Internet Services operational as a result of incompatible services being used.

43. TERMINATION

- 43.1 The services described in this Part of the SFOA may be terminated in accordance with clause 12.

44. DEFINITIONS

- 44.1 In this Part, unless the context requires otherwise:
 - 44.1.1 **Internet Acceptable Use Policy** means the policy relating to your use of the Internet Services which can be accessed on our website at www.myowntel.net.au.
 - 44.1.2 **Internet Services** means that part of the Data & Internet Services which is accessible via the public internet. This includes internet access, email facilities, web-page facilities and any other related internet facility or services that we may provide from time to time. This specifically does not refer to wide area networking services that are not accessible via the public internet.
 - 44.1.3 **Minimum Monthly Spend** means the total monthly recurring charge specified in the Rate Sheets or your Application for the Data & Internet Service.
 - 44.1.4 **Service Levels** means the service levels applicable to the Data & Internet Service you have chosen in your Application and details of such Service Levels are available on our website or available from us on request.
- 44.2 In this Part, any references to 'standard' or 'regional' coverage, is to such coverage as determined by us from time to time.

PART C – MOBILE SERVICES AND MOBILE EQUIPMENT

45. APPLICATION OF THIS PART

- 45.1 This Part C applies if you have requested in your Application that we supply you with Mobile Services, and if nominated in your Application, Mobile Equipment. This Part C sets out the terms and conditions on which we will supply you with Mobile Services and (if applicable) Mobile Equipment.
- 45.2 To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part C and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Voice Services, or Purchase Equipment.
- 45.3 The Minimum Term, the Minimum Monthly Spend, the Mobile Equipment, as varied in accordance with this Part C.
- 45.4 We will provide the Mobile Services to you, for the Minimum Term specified in your Application, when your accounts are transferred from your current Supplier to us in accordance with the MNP process and any other arrangements with another Supplier for the provision of the Mobile Services have been completed or when your account with us has been established.
- 45.5 We will provide the Mobile Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.

- 45.6 We will provide the required Mobile Services subject to availability, geographical and technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G network or GPRS Network is connected. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Mobile Services where capacity, geography or technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G Network or GPRS Network is connected affect the Mobile Services or Mobile Equipment. If you require a coverage map or further information you may telephone Customer Service.
- 45.7 We do not warrant that the Mobile Services or Mobile Equipment will be free of interruption, delays or faults. The Mobile Service is only available (as the case may be):
- 45.7.1 within the limitations of the GSM Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable;
 - 45.7.2 within the limitations of the 3G Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
 - 45.7.3 within the limitations of the GPRS Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.
- 45.8 You acknowledge and agree:
- 45.8.1 that the Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and
 - 45.8.2 that you are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative telecommunications services suitable for such purposes.
- 46. APPROVED EQUIPMENT**
- 46.1 You may only access the Mobile Service and the Value Added Feature with equipment, SIM cards and other devices approved by us. You may only use the Mobile Service and the Value Added Feature with a handset or other device as being compatible with the Value Added Feature. However, you agree that:
- 46.1.1 we do not represent or guarantee the extent to which a handset, Mobile Equipment or other device we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature; and
 - 46.1.2 your ability to use a Value Added Feature and each of its features will depend upon the features and functionality of your handset or Mobile Equipment.
 - 46.1.3 The use of optus network sim cards on an untimed or timeless voice plan in any device other than a mobile handset device is strictly prohibited. For further information please refer to the reason use section of our Fair Use Policy.
- 47. MINIMUM TERM**
- 47.1 If you are on a Minimum Term Contract the fixed minimum term specified in your Application commences on the provision of the Mobile Services or when the SIM is activated.
- 47.2 The reference in this Part C to a Minimum Term Contract relates to one SIM only and (where applicable) one handset and/or other Mobile Equipment. As nominated in your Application, you may acquire as a Package more than one Minimum Term Contract by which you will enter into one or more separate contracts with us.
- 47.3 At the end of the Minimum Term we will continue providing the Mobile Service to you until you notify us that you no longer require the Mobile Service. After we receive your notice we will stop providing the Mobile Service from the date received or future date that you advise us. If you wish to cancel the Mobile Service before the end of the Minimum Term you must give us notice and pay all Charges under this SFOA. Subject to you having paid all Charges and complying with all other obligations under the SFOA with you, this SFOA will terminate.
- 48. MINIMUM MONTHLY SPEND**
- 48.1 Each monthly payment will comprise:

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

48.2 There may also be charges which are identified in your Application and any other charges which we can charge under this SFOA. We will invoice you in advance for the Minimum Monthly Spend.

48.3 Minimum Monthly Spend:

- 48.3.1 You agree to pay the Minimum Monthly Spend each month throughout the Minimum Term.
- 48.3.2 You agree to pay the Minimum Monthly Spend even if your actual spend on Eligible Calls, which is a component of this Minimum Monthly Spend, is less than the Minimum Monthly Spend specified in your Application.
- 48.3.3 If you do not reach your Eligible Call spend in a month, this amount will not accrue and will not roll-over into the following month, unless we agree in your Application to roll-over.
- 48.3.4 Your Eligible Call spend is calculated based on all Eligible Calls made by you using the Mobile Services which are captured and recognised by us within a billing period, regardless of when the Eligible Call was actually made.
- 48.3.5 You agree to pay, if any, the charges for Mobile Services used in excess of the Eligible Call spend and charges relating to non-Eligible Calls each month throughout the Minimum Term.
- 48.3.6 In calculating the charges for Mobile Services included in your Minimum Monthly Spend, we may include other charges which are additional to the Minimum Monthly Spend.
- 48.3.7 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of Service supply in the relevant month.

48.4 Your Minimum Term Contract or plan will be calculated by us based on your Minimum Monthly Spend commitment.

48.5 Your right to vary the Minimum Monthly Spend:

- 48.5.1 At any time during the Minimum Term you can choose to increase the Minimum Monthly Spend, with our agreement.
- 48.5.2 If the Minimum Monthly Spend is varied in accordance with the above then we will recalculate the Minimum Monthly Spend based on the Rate Sheet (at the commencement of your Minimum Term).
- 48.5.3 You may not decrease your minimum monthly commitment during the agreement period.

49. SIM

- 49.1 You will receive only one SIM card for one GSM or 3G Mobile Service.
- 49.2 We may charge you a SIM card replacement fee or a fee for a new sim card.
- 49.3 You must inform us immediately if the SIM card is lost, stolen or damaged by calling Customer Service. We will then disconnect or Bar your connection (you will be responsible for all charges up to this time) until the SIM card is replaced or repaired. We may charge you a SIM replacement fee unless we were at fault.

50. VALUE ADDED FEATURES AND MOBILE PREMIUM SERVICE

- 50.1 The Mobile Service has the Value Added Features specified in your Application or at the time of provisioning.
- 50.2 We may vary the Value Added Features in accordance with clause 2.4 of the General Terms.
- 50.3 The Mobile Service has the Mobile Premium Service nominated in your Application. You agree and acknowledge
 - 50.3.1 that the amount of charges for the Mobile Premium Service component of your Mobile Service, including requests for Content from content providers and charges for Content purchased from content providers, will be included in your invoice for the Mobile Service;
 - 50.3.2 we will not charge you for our provision of credit in relation to the Mobile Premium Service Content charges;

- 50.3.3 we may prevent, suspend or terminate your access to the Mobile Premium Services in certain circumstances, including in response to notices issued by ACMA under the Mobile Premium Services Determination;
- 50.3.4 that you must direct any queries or complaints about the Content supplied by a content provider directly to that content provider in the first instance. Alternatively, you may complain to Customer Service;
- 50.3.5 unless otherwise advised by us, access to age-restricted services by way of the Mobile Premium Service is not permitted or available;
- 50.3.6 resupply or resale of Content obtained from content providers and by using the Mobile Premium Service is prohibited;
- 50.3.7 unlawful use of Content obtained from content providers and by using the Mobile Premium Service is prohibited.

51. MOBILE SERVICES CHARGES

- 51.1 The charges applicable to the Mobile Services are specified in the Rate Sheets and your Application.
- 51.2 Only calls captured and recognized by us within the bill period are included in Minimum Monthly Spend calculation. Certain call types such as international calls may take up to 3 months to appear on your bill.
- 51.3 International call rates and international roaming rates are subject to variation. Please contact Customer Service to confirm any prices before calling or travelling overseas.

52. MOBILE NUMBER PORTABILITY

- 52.1 Subject to clause 5, provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.
- 52.2 If in providing the Mobile Services to you, we need to change your arrangements with your current Supplier, then we will do so in accordance with clause 5 and this clause 52. By signing the Mobile Number Portability Customer Authorisation ("**MNP Authorisation**") which forms part of your Application, you acknowledge and agree:
 - 52.2.1 to your current Supplier transferring to us your Service Number;
 - 52.2.2 that we are only transferring your Service Number not your mobile service. This means you may lose value added services and/or Value Added Features provided by your current Supplier. When you are connected to the Mobile Services you will use the Mobile Services and Value Added Features specified in your Application, which may be different to the features that you had with your current Supplier;
 - 52.2.3 that by transferring your Service Number, the Mobile Service and/or any Value Added Features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;
 - 52.2.4 that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you transfer your Service Number to us;
 - 52.2.5 that your current Supplier may or may not disconnect your existing service and/or value added services;
 - 52.2.6 if you are porting between GSM and 3G or any other mobile platform, you may need to purchase new handset and/or Mobile Equipment;
 - 52.2.7 if you intend to use your existing handset and/or Mobile Equipment, you may need to get it unlocked or reprogrammed prior to porting. You may also need to get new Mobile Equipment;
 - 52.2.8 that you may need to purchase approved Mobile Equipment to access the Mobile Service;
 - 52.2.9 that you have not cancelled your existing mobile service with your current Supplier;
 - 52.2.10 that you can only withdraw your MNP Authorisation prior to the port cutover notification being received by us from your current Supplier. Withdrawing MNP Authorisation does not change your contractual obligations to us under your Application and this SFOA;
 - 52.2.11 that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to port, if the information you provide in the MNP Authorisation is incorrect or does not match the data held by your current Supplier. In this case,

- we reserve the right and you authorise us to correct the information and resubmit the request to port or dispute the rejection with your current Supplier;
- 52.2.12 that if your Service Number cannot be transferred then you may accept a new Service Number from us; that your authorisation to transfer your Service Number to the Mobile Services is valid for 30 days from the date of the Mobile Number Portability Authorisation Form;
- 52.2.13 that in the event of a reversal, we:
- 52.2.14 are not responsible for any period of outage of Mobile Service or Value Added Features or your current service or any value added service provided by your current Supplier;
- 52.2.15 do not warrant that your Service Number will be transferred to us within any specified timeframe; and
- 52.2.16 to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of your Service Number to us, port, withdrawal or reversal, including a negligent act or omission by us;
- 52.2.17 that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and
- 52.2.18 that we reserve the right to charge for transferring your Service Number to and from us.
- 52.3 We will not accept any liability for any amounts owing by you to another Supplier for services which the other Supplier provided to you prior to the commencement of the Mobile Services. You agree to indemnify us against any claims made on us by your previous Supplier in relation to such amounts.

53. MOBILE EQUIPMENT AND MOBILE PLANS

- 53.1 For the avoidance of doubt, this clause only applies to Mobile Equipment.
- 53.2 To be eligible to receive Mobile Equipment you must:
- 53.2.1 apply for Mobile Services in your Application;
- 53.2.2 apply for Mobile Equipment in your Application;
- 53.2.3 agree to our Minimum Term and Minimum Monthly Spend requirements;
- 53.2.4 use the Mobile Services and Mobile Equipment for business or personal use only; and
- 53.2.5 meet our minimum credit requirements.
- 53.3 If you purchase outright any Mobile Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery. We will retain ownership in all Mobile Equipment purchased from us until you have paid for them in full in accordance with Part D. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Mobile Equipment will not pass to you until this residual amount is paid in accordance with your Application.
- 53.4 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Mobile Equipment. You cannot sell or use the Mobile Equipment for a loan or deal with it in any way until you own the Mobile Equipment. If you damage or lose any Mobile Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Mobile Equipment. You are responsible for arranging your own insurance for any Mobile Equipment.
- 53.5 You are responsible for maintaining and repairing any Mobile Equipment supplied by us or our Supplier and complying with the manufacturer's instructions relating to the Mobile Equipment and SIM (where applicable) and its use. You indemnify us and our Supplier against any loss, damage, malfunction or failure resulting from misuse, neglect, abuse, use for a purpose for which the Mobile Equipment was not designed or is not suited, in connection with the Mobile Equipment.
- 53.6 Lost or stolen Mobile Equipment: If:
- 53.6.1 your Mobile Equipment is lost or stolen you must contact Customer Service to request that your SIM card and/or Mobile Equipment be blocked. This will prevent the Mobile Equipment being used on the GSM Network or 3G Network;
- 53.6.2 you obtain a handset that is lost or stolen, we or our Supplier may block your handset without your consent even if you are not aware it is stolen; and

53.6.3 you obtain the Mobile Equipment and Mobile Service under false pretences, we or our Supplier may block the handset without your consent.

54. CHANGING PLANS

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

55. ACCEPTABLE USE

55.1 You warrant that while using the Mobile Services, Value Added Features or the Mobile Equipment you or anyone else will not engage in conduct which affects the GSM Network or 3G Network or another person's network including the sending of commercial electronic messages as defined under the SPAM Act 2003 (Cth).

55.2 You warrant that you will at all times comply with the SMS Code of Conduct irrespective of whether the SMS Code of Conduct has been registered by the ACMA under Part 6 of the Act.

55.3 While we will exercise due care and skill in providing the Mobile Service, you agree that your ability to use the Mobile Service to access, use, download and upload Content; or send data in any form including voice, SMS and Content will depend upon the features and functionality of your handset and the nature and quality of the Content being accessed or sent.

55.4 While receiving Mobile Services, you agree to comply with our Fair Use Policy set out on our website at www.myowntel.net.au or available from us on request.

55.5 You acknowledge that the ability to access, view or otherwise receive Wireless Packet Data is dependent upon external factors outside our control and the control of our Suppliers, including:

55.5.1 the media contained in MMS Messages;

55.5.2 WAP Data and Packet Data media limitations; and

55.5.3 Wireless Device type, software version and capabilities.

56. LOST AND STOLEN AND FAULT REPORTING

56.1 We will provide a seven days a week lost and stolen reporting service. You should notify our customer service team for this.

56.2 We will provide a fault reporting service via our help desk during Business Hours.

56.3 Actions:

56.3.1 We are responsible for correcting faults in the Mobile Service. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.

56.3.2 We are not responsible for any fault which is within the network of a Supplier.

56.3.3 We will notify that Supplier of the fault and request that the fault be corrected promptly.

57. TERMINATION

The services described in this Part of the SFOA may be terminated in accordance with clause 12.

58. DEFINITIONS

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

58.1.1 **3G** means 3rd generation mobile network on the 900Mhz or 2100Mhz spectrum

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

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

- Australia) or any other call type not specifically identified as being an Eligible Call (including where so identified under a Rate Sheet).
- 58.1.4 **GSM** means Global System for Mobiles as defined by ETSI and the GSM Memorandum of Understanding and as applied in Australia.
- 58.1.5 **GSM Network** means the Telstra GSM mobile telephone network in the 900 MHz and 1800 MHz spectrum range.
- 58.1.6 **GPRS** means general packet radio service and as specified in your Application.
- 58.1.7 **GPRS Network** means the Telstra general packet radio service.
- 58.1.8 **Internet** means the International network of data networks utilising the TCP/IP protocol suite of which the SMS Network forms part.
- 58.1.9 **International Calls** means a call from a cellular public mobile telecommunications service from Australia to another country.
- 58.1.10 **Mobile to Local Calls** means calls made from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN number which if made from a PSTN or ISDN number would be a Local Call.
- 58.1.11 **MNP Code** means the code entitled ACIF C570:2003 Mobile Number Portability registered by the ACA under section 117 of the Act, as at 1 February 2003 or as otherwise agreed in writing between the parties.
- 58.1.12 **Mobile Equipment** means any equipment purchased from us as specified in your Application that is not Data & Internet Equipment, or Data & Internet Services Related Equipment, and may include handsets, accessories, and equipment supplied by us but does not include the SIM.
- 58.1.13 **Mobile Number Portability** or **MNP** has the meaning given to it by the Industry Code: Mobile Number Portability registered by the ACMA under Part 6 of the Act.
- 58.1.14 **Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you on the terms and conditions of this SFOA and as specified in your Application.
- 58.1.15 **National Calls** means a call made within Australia from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN telephone service that is not a Mobile to Local Call.
- 58.1.16 **SMS Code of Conduct** means the SMS Code of Conduct developed by the Australian Communications Industry Forum and registered or published by the ACMA under Part 6 of the Act.
- 58.1.17 **SIM** means the subscriber identity module owned by us and we issue to you which enables you to access the Mobile Service.
- 58.1.18 **WAP** means Wireless Application Protocol which is a protocol that enables internet services to be delivered to small-screen mobile devices.
- 58.1.19 **Wireless Packet Data** means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded using the Mobile Service.

PART D – PURCHASE EQUIPMENT

59. APPLICATION OF THIS PART

- 59.1 This Part D applies if you have requested in your Application that we supply you with Purchase Equipment and sets out the terms and conditions on which we will supply you with the Purchase Equipment. You are only eligible to purchase Equipment if you also purchase Voice Services, Data & Internet Services, Mobile Services, or any other Services specified in your Application that are required to be purchased with that Equipment. In addition, as stated in your Application:
- 59.1.1 we may offer you a credit towards the purchase price of equipment (including Mobile Equipment), on the terms specified in your Application.
- 59.1.2 To the extent relevant, the General Terms apply to the Purchase Equipment and the Purchase Equipment Charge as though specified in full in this Part D and such terms or part of such terms will be relevant except to the extent they relate to Voice Services and Data & Internet Services, and Mobile Services, and charges for Voice Services, Mobile Services, and Data & Internet Services.
- 59.1.3 For the avoidance of doubt all your rights and obligations in relation to the Purchase Equipment and payment of the Purchase Equipment Charges are contained in this Part D.

60. INSTALLATION

- 60.1 We will provide the Purchase Equipment nominated by you in your Application. You acknowledge that the Purchase Equipment may be either new or refurbished.
- 60.2 You are responsible for all costs of delivery and installation and for preparing the Site for installation. The cost of installation may vary from the quotation price once we have physically inspected the Site.
- 60.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.

61. PERIOD OF AGREEMENT

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

62. PAYMENT

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

63. OWNERSHIP

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

64. THINGS YOU MUST DO

64.1 You must:

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

65. THINGS YOU MUST NOT DO

65.1 You must not.

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

66. INSURANCE

66.1 Unless agreed otherwise in writing, you must:

- 66.1.1 insure the Purchase Equipment and keep it insured for its full insurable value under an all risks insurance policy;
- 66.1.2 take out and maintain an adequate level of public risk liability insurance in relation to the Purchase Equipment and its use;
- 66.1.3 take out each insurance policy with a reputable insurer in your and our joint names for our respective rights and interests;
- 66.1.4 punctually pay all premiums on each insurance policy and not prejudice any policy;
- 66.1.5 if we request, provide us with adequate evidence of the insurance policies;
- 66.1.6 irrevocably authorise us to receive all money payable under the insurance policies, or payable by any person for damage to or loss of the Purchase Equipment or any injury, death, damage or loss caused by the Purchase Equipment or its use; and
- 66.1.7 appoint us your attorney:
- 66.1.8 to make, recover and/or compromise in your name any claim under such insurance or against any person; and
- 66.1.9 to appropriate any insurance money or other amount received at our option towards repair or replacement of the Purchase Equipment or towards any money payable by you to us or to any third party.

67. DESTRUCTION

67.1 If the Purchase Equipment is lost, stolen or substantially destroyed we may terminate this SFOA agreement by notice to you.

67.2 We will credit you any insurance money or proceeds of salvage received by us if and when received up to the amount payable by you.

67.3 Your obligations under this SFOA continue even if the Purchase Equipment breaks down, is defective or damaged.

67.4 If the Purchase Equipment breaks down, is defective or damaged, lost, stolen or substantially destroyed, you agree you have no right or claim to set-off or withhold the Purchase Equipment Charges or other money.

68. OUR ACTION

68.1 If you fail to comply with any obligations under this SFOA, we may in our discretion pay any money or do any other thing necessary to make good that failure (but without affecting any of our rights or remedies as a result of the failure).

68.2 We may do anything which we consider desirable to protect or enforce our rights in the Purchase Equipment.

68.3 You irrevocably authorise us to act on your behalf in protecting or enforcing our rights in the Purchase Equipment, as we may reasonably require.

69. CLAUSE NOT USED

70. SOFTWARE

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

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

71. DEFINITIONS

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

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

ANNEXURE A – EARLY TERMINATION FEES

Product	Early Termination Calculation Method /Charge
Mobile Services	Minimum monthly commitment per service x months remaining in contract
Business Phone Services (excluding Telstra ISDN)	Minimum monthly commitment per line or channel x months remaining in contract
Business Phone Service (Telstra ISDN)	Minimum monthly commitment per line or channel x months remaining in contract plus the relevant installation fee for the service where such installation fee was waived or credited as part of the fixed term agreement
Home Phone Services	Minimum monthly commitment per line x months remaining in contract
Inbound Services	Minimum monthly commitment per service x months remaining in contract
Mobile Broadband Services	Minimum monthly commitment per service x months remaining in contract
ADSL Services	\$349 flat fee (inc GST) charged only if service is cancelled within first 12 months from signed start date of service
VoIP Services	Minimum monthly commitment per service x months remaining in contract
Web & Mail Hosting Services	Minimum monthly commitment per service x months remaining in contract