

## Customer Terms

### Part A – Introduction

---

#### 1. About this document

This document is B+W's 'Customer Terms'. The terms and conditions in this document are the terms and conditions on which B+W supplies the Products and/or Services to you.

#### 2. B+W

A reference to 'B+W' or 'we' means M2 NZ Limited (Company No: 1750309) trading as 'B+W' or 'Black + White', the company that supplies a telecommunications Product to you.

### Part B – Customer Contracts

---

#### 3. Your Customer Contract

We supply Service under a customer contract that includes:

- (a) the Introduction in Part A;
  - (b) Customer Contracts terms in Part B;
  - (c) the General Terms in Part C;
  - (d) any Service Terms for a Service;
  - (e) the Schedule of Fees and Charges; and
  - (f) the signed application form in respect of a Service,
- (collectively, the "**Customer Contract**").

#### 4. Plans

- (a) Many Services are available under different Plans, each with its own features, entitlements, term of contract, Charges and special conditions.
- (b) Your Customer Contract includes the terms of any Plan you select.

#### 5. Peak & Off-peak

- (a) A Plan may specify certain days and / or times as 'Peak' or 'Off-peak'.

- (b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. The Plan will indicate how that applies in each case.
- (c) We may bill you, and your Contract operates, accordingly.

## 6. Periodic entitlements

- (a) A Plan may include the right to use a certain amount of a Service during a certain period.  
  
e.g. An Internet Plan might let you download a gigabyte of data each month at no extra cost.  
  
e.g. A local call Plan might let you make 20 local calls a month at no extra cost.  
  
We call these 'periodic entitlements'.
- (b) Unused periodic entitlements do not carry forward and are not redeemable for cash or other credit.
- (c) If you exceed the periodic entitlement, further Charges may apply or a Service may be limited in some way. Your Plan will give details.

## 7. Prepaid Plans

For a prepaid Plan:

- (a) prepayments are not redeemable for cash or other credit;
- (b) the Plan may specify a 'Use-by Date' i.e. a period after which any prepaid entitlements that are not used are expired without refund. Unless a Plan specifies otherwise, a Use-By Date of one (1) year applies to all prepaid Plans;
- (c) prepayments are not transferable between Plans – if you change Plans, there is no credit for unused entitlements (unless the Plan states otherwise);
- (d) we may fix minimum and/or maximum prepayments that you may make in our sole and absolute discretion; and
- (e) when your prepaid entitlements are used up we may cease providing a Service. We are not responsible for the consequences of Service ceasing.

**8. Fair Use Policies**

- (a) We or our Partners may publish Fair Use Policies for a Service by which you will be bound.
- (b) A Fair Use Policy will be directed against extreme, abusive, antisocial, illegal and / or a use of a Service that we believe to be unreasonable.
- (c) The Services are subject to our Fair Use Policy. We may apply our Fair Use Policy where in our reasonable opinion, your usage of our Service is excessive and/or unreasonable as detailed in this clause. We have developed our Fair Use Policy by reference to our average customer profiles and estimated customer usage of our Services. If your usage of our Services exceed estimated usage patterns over any month, or is inconsistent with normal usage patterns, then your usage will be excessive and/or unreasonable. If your usage is excessive and/or unreasonable we may contact you to advise you that your usage is in breach of our Fair Use Policy. We may then (in addition to our other rights) request that you stop or alter your usage to come within the terms of the Fair Use Policies. If your excessive or unreasonable usage continues after receipt of a request to stop or alter the nature of such usage, we may without further notice (in addition to our other rights):
  - (i) apply charges to your account for the excessive and/or unreasonable element of your usage; or
  - (ii) suspend, modify or restrict your use of the Service; or
  - (iii) withdraw or terminate your access to the Service.
- (d) Without limiting what we or our Partners may include in a Fair Use Policy, 'Fair Use' will exclude activities such as auto-dialling, continuously call forwarding, tele-marketing, call centres and use of CTUs.

**9. Operational Directions**

- (a) Acting reasonably, we may give Operational Directions about a Service.
- (b) Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when we believe to be reasonably necessary.

- (c) You must comply with any Operational Direction we may give you from time to time.

## **10. Partner Requirements**

- (a) Telecommunications Services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Partners.
- (b) Partners often have their own Partner Requirements for the use of their Facilities and we may only be permitted to provide Service to you subject to such Partner Requirements.
- (c) You must comply with applicable Partner Requirements we notify you of.

## **11. Fixed terms**

A Plan may specify a particular, fixed or minimum term. If so:

- (a) A Contract for the Plan is a contract for at least that term unless terminated earlier in accordance with this Contract.
- (b) The Plan terminates at the end of that term if you or we give thirty (30) days termination notice, unless it is renewed for a further fixed or minimum term (provided that the Contract is not terminated earlier in accordance with the terms of this Contract).
- (c) If neither party provides a termination notice, or a Contract is renewed for a further fixed or minimum term, it becomes month-to-month after that term.

## **12. Month-to-month, casual or 'no contract' terms**

If a Plan or Contract is described as 'month-to-month', 'casual' or 'no contract' or similar, you or we may terminate it on thirty (30) days written notice unless this Contract is terminated earlier in accordance with its terms. If you do not provide us with thirty (30) days notice, you acknowledge and agree that we are entitled to continue billing you until the expiration of those thirty (30) days.

**13. Bundled Equipment**

- (a) Under some of our Plans, you will be supplied with Equipment (e.g. a mobile handset or modem) without paying its full purchase price on delivery ('Bundled Equipment').
- (b) Bundled Equipment may be:
  - (i) free – in which case we absorb its full cost;
  - (ii) amortised – in which case you pay \$0 up front and we recoup the cost from you as part of the Charges over a minimum term; or
  - (iii) subsidised – in which case we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.
- (c) Clause 26(c) explains when ownership of Bundled Equipment passes to you.

**14. Consumer Guarantees**

- (a) Under some New Zealand Laws, consumers (as defined in the Laws) have the benefit of certain guarantees that cannot be excluded (unless you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business).
- (b) For the purposes of this Contract, those Laws are referred to as the 'Consumer Guarantees', and their main elements are set out in clauses 34 and 35 below.
- (c) Your Contract never operates to exclude the Consumer Guarantees (where they apply) or to limit your remedies for breach of them (in a way not permitted by law).

**15. Understanding and navigating our Customer Terms**

- (a) Expressions used in our Customer Terms are explained in the Dictionary in clause 90.

**16. Application for Service**

- (a) You must comply with any application form or process we require.
- (b) All information you provide in connection with an application must be true, correct, complete and not misleading.
- (c) Certain Plans or Services (or parts thereof) are restricted to a certain category or class of customers or some other eligibility criteria ("**Eligibility Criteria**"). If you apply for any such Plan or Service (or part thereof) you:
  - (i) warrant to us that you satisfy the Eligibility Criteria;
  - (ii) you agree to provide us with any information that we may reasonably require to determine whether or not you satisfy the Eligibility Criteria;
  - (iii) must notify us immediately if by reason of any fact, matter or circumstances, you no longer satisfy the Eligibility Criteria; and
  - (iv) agree that we may migrate you to a different Plan or Service if you no longer satisfy the Eligibility Criteria and make any appropriate adjustment to the fees and charges (considering the fees and charges that were paid by you and the fees and charges that would have been paid by you having regard to your satisfaction of the Eligibility Criteria, or lack thereof).

**17. Processing an application**

- (a) We do not have to accept an application from you for any Service and we may reject any application that you provide to us in our sole and absolute discretion (to the maximum extent permitted by law).
- (b) Before we confirm that we can and will provide a Service (as in clause 19(b)), if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.
- (c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clause 53.

**18. Relevant dates**

- (a) The date when you make an application is the 'Application Date'.
- (b) The date when we confirm to you in writing that we can and will provide a Service is the 'Contract Date' for that Service.
- (c) The date when we notify you that a Service is available for use (or the date you first use the Service, if that is the earlier) is the 'Service Start Date'.

**19. Providing Service**

- (a) We will commence the Service in accordance with applicable laws and as soon as reasonably practicable after the Contract Date.
- (b) We may provide the Service using B+W Facilities and / or third party Partner Facilities, as we decide from time to time. Together, we call those Facilities the 'Network'.

**20. Use of Service by others**

- (a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.
- (b) A person who makes use of a Service with your consent or from your premises or using your equipment or log-in password is your 'End User'.
- (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions (whether or not those acts or omissions were authorised by you
- (d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.

**21. Using a Service**

- (a) When using a Service, you must comply with:
  - (i) your Customer Contract;
  - (ii) any applicable laws, regulations, court orders, mandatory standards and industry codes and with the requirements or directions or determinations of any Regulator ("**Law**");

- (b) You must not use a Service:
- (i) in breach of any Law; or
  - (ii) to breach the rights of any person; or
  - (iii) to cause or in furtherance of any nuisance to any person; or
  - (iv) to copy, download, supply to anyone else or communicate to the public copyright material without permission; or
  - (v) to infringe or otherwise diminish our or our Partner's intellectual property rights in the Services; or
  - (vi) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute; or
  - (vii) to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment; or
  - (viii) to send, allow to be sent, or assist in the sending of Unsolicited Commercial Electronic Messages, to use or distribute email harvesting software, or otherwise breach the *Unsolicited Electronic Messages Act 2007* (NZ); or
  - (ix) in a way that is misleading or deceptive or is likely to be such; or
  - (x) in a way that is fraudulent or in connection with fraud; or
  - (xi) in a way that results, or could result, in damage to property or injury to any person; or
  - (xii) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or Networks or exposes us to any liability.
- (c) We or a relevant Partner may apply a call barring or blocking mechanism or other network control in connection with a 0900 service that we or our Partner reasonably consider to be appropriate.



**22. Call and Data Roaming**

- (a) The use of a Service outside New Zealand (where available) is provided by external carriers and is subject to those carriers' terms and conditions.
- (b) As roaming involves services provided by parties other than us, you agree that we will not be responsible for the way in which any external carrier provides or fails to provide any service (including disconnection, lack of coverage or the performance of that carrier's network).
- (c) You must have data capable Equipment for overseas data roaming.
- (d) You agree to be charged for using data roaming at the rates set out by external carriers advertised by us, either on our website or via other means from time to time. While we frequently update the website, we accept no liability for fluctuating prices with overseas carriers. We recommend you check on pricing with overseas networks at the time of roaming.
- (e) You acknowledge that Charges are measured on data volume. The speed at which a device receives data impacts volume and therefore price. Since overseas networks vary their data speeds ensuing Charges will relate to the amount downloaded rather than time spent online.
- (f) Unless otherwise advised, from time to time, all outgoing calls are charged at airtime rates based on the Charges from the external carrier. This airtime rate will vary from carrier to carrier. International rates will also apply where you make international calls (including calls to voiceMail). Charges may change without prior notice and all prices are indicative only. If your Plan includes monthly minutes, these minutes do not apply to roaming Charges. 0800 (1800) and other special numbers may be charged for by external carriers.
- (g) SMS messages sent while roaming have a surcharge applied by the external carrier. The surcharge rate will vary from carrier to carrier.
- (h) Incoming calls are charged at the international rate applicable at the time the call is made to you. Some external carriers may add an incoming call rate from the time you answer the call. You agree that all Charges incurred while roaming will be charged to your bill. You agree to pay all Charges in full on or before they are due (There may be a

delay in us receiving notice from external carriers of Charges to be billed to you. This does not affect our right to Charge you or receive payment from you).

### **23. Telephone numbers**

- (a) In connection with a Service, you may be allocated with a telephone number.
- (b) We must comply with the Number Administration Deed and the Number Allocation Rules (“**Numbering Rules**”) which sets out rules for issuing, transferring and changing a telephone number.
- (c) You have no claim against us arising from anything we do in compliance with the Numbering Rules, including changing or withdrawing a previously allocated number.
- (d) You must not knowingly and deliberately:
  - (i) do anything that causes us to breach the Numbering Rules or which makes it more difficult for us to comply with it; or
  - (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another Service Provider) you have no right to retain a particular number when your Contract ends.
- (f) You acknowledge and agree that a number allocated to you (and standard directory information) may be published in a telephone directory (for example, in the Yellow Pages). You must notify us if you do not want your number and standard directory information to be published.

### **24. 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) 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.
- (c) We are not liable to you for anything done, or required to be done, by these authorities.
- (d) 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 Contract ends.

## **25. Dynamic IP addresses**

- (a) Unless your Service specifies 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 a Service with a dynamic IP address. If you intend to operate such a server you should use a Service with a static IP address. We are not liable to you if that occurs.

## **26. Supplied Equipment**

- (a) This clause applies if we supply Equipment to you.
- (b) You assume risk in Equipment upon delivery.
- (c) We or our Partners or other third parties retain title to Equipment:
  - (i) for Equipment rented or loaned to you – at all times;
  - (ii) for any SIM Card provided to you – at all times;
  - (iii) for Bundled Equipment, until completion of the minimum term; and
  - (iv) for any other Equipment – until full payment has been made (as may be applicable under the terms of your Plan).
- (d) While we or our Partners retain title to Equipment, you hold it in a fiduciary capacity as bailee-at-will for us. Where any bailment of Equipment to you constitutes a security interest for the purposes of the PPSA, then we or our Partner may perfect the security interest by

registered a finance statement in the PPSR, and this clause will constitute a security agreement for the purposes of the PPSA.

- (e) Without limiting our other rights, we may remove the Equipment that we or our Partners retain title to if the Equipment is interfered with, damaged or no longer required by you.
- (f) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- (g) If you use in connection with a Service any Equipment we have not approved or provided:
  - (i) it must comply with all applicable technical and interconnection standards and requirements, including those set by its supplier or the manufacturer;
  - (ii) you are responsible for ascertaining what those technical and interconnection standards and requirements are; and
  - (iii) we will not be liable to you for any loss or expense you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
    - A. our negligence; or
    - B. our breach of the Consumer Guarantees.

## 27. Substituted Equipment

- (a) On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may, in our sole and absolute discretion, supply substitute Equipment that we believe to be substantially equivalent to the original Equipment.
- (b) On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may, in our sole and absolute discretion, supply substitute or modified Equipment that we believe to be more suitable.

## 28. Delivery of Equipment

- (a) We will try to deliver Equipment to you on the delivery date ("**Delivery Date**") and at the address ("**Site**") indicated on your Application during normal business hours in that area.

- (b) Variations at your request to Delivery Date or Site:
  - (i) are at our sole and absolute discretion; and
  - (ii) may be subject to conditions, including extra Charges which you are responsible to pay to us (or to such person as may be nominated by us).

## **29. Installation and connection of Equipment**

- (a) This clause only applies if we expressly agree to install or connect Equipment.
- (b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications issued by us) at your own expense, including providing (without limitation):
  - (i) appropriate electricity supply;
  - (ii) appropriate electrical and mechanical fittings;
  - (iii) appropriate environmental conditions;
  - (iv) a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
  - (v) all relevant facilities for the location of the Equipment;
  - (vi) access to all relevant personnel including your technical personnel; and
  - (vii) where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- (d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- (e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis), in

connection with such entry and installation, except to any extent that we cause or contribute to it by:

- A. our negligence, or
  - B. our breach of the Consumer Guarantees.
- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) If installation must be rescheduled because you breach this clause 29, you may incur a Charge for our additional costs which you are unconditionally liable to pay to us (or to a party nominated by us).

### **30. Installation Charges**

- (a) We will charge you installation Charges as stated (or indicated by) in your Contract.
- (b) 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 pay the revised Charges.

### **31. Additional Equipment services**

- (a) You may ask us to supply additional services in relation to Equipment including without limitation, repairs or maintenance.
- (b) If we agree to provide additional services (which agreement we may withhold in our sole and absolute discretion to the maximum extent permitted by law), we will Charge you at our standard rates at the time.

### **32. Lost, stolen and damaged Equipment**

- (a) You are responsible for any lost, stolen and damaged Equipment owned by us, except if it is caused by us or our personnel.
- (b) You must pay for Equipment that is lost, stolen or damaged, except if it is caused by us or our personnel.

**33. Return of Equipment**

On the termination of your Contract for any reason, you must immediately return all our Equipment. If you fail to return the Equipment, you may be liable to us in accordance with clause 42.

**34. Consumer Guarantees – consumer goods**

If we supply you with goods of a kind ordinarily acquired for personal, domestic or household use or consumption and you do not hold yourself out as acquiring the goods for the purpose of resupply, consumption in a process of production or manufacture or for repairing to treating in trade other goods, you may have the benefit of guarantees set out in sections 5 to 12 of the *Consumer Guarantees Act 1993* (NZ), which (in outline – you should refer to that Act for the precise wording) provide that if we supply goods to you :

- (a) we have a right to do so;
- (b) the goods are free from any undisclosed security;
- (c) we provide a guarantee that you will enjoy undisturbed possession of the goods, except where we or a third party with an interest in them you were pre-informed of are entitled to disturb it;
- (d) we provide a guarantee that the goods will be of acceptable quality, having regard to the nature of the goods, the price of the goods, any statements made about the goods on packaging or labeling, any representation made about the goods and other relevant circumstances (defects that have been drawn to your attention prior to the supply will not make the good unacceptable);
- (e) we provide a guarantee that the goods will be reasonably fit for any purpose you told us you wanted them for, except if you did not rely (or unreasonably relied) on our skill or judgment in that regard;
- (f) the goods, if supplied by description, will correspond with that description;
- (g) the goods, if supplied by reference to a sample, will correspond with that sample;
- (h) where the price is not determined by the Contract, nor left to be determined by the parties, nor left to be determined by the parties in the course of dealing, the price for the goods will be reasonable; and

- (i) we guarantee that we will take reasonable action to ensure that facilities for repair of the goods and the supply of parts are reasonably available, and nothing in this Contract limits or excludes those conditions and warranties or your remedies for any breach of them.

### **35. Consumer Guarantees – consumer services**

If we supply you with a Service of a kind ordinarily acquired for personal, domestic or household use or consumption and you do not hold yourself out as acquiring the Service for the purpose of resupply or consumption in a process of production or manufacture, you may have the benefit of guarantees set out in sections 28 to 31 of the *Consumer Guarantees Act 1993* (NZ), which (in outline – you should refer to that Act for the precise wording) provide that if we supply Services to you, we guarantee that:

- (a) the Services will be rendered with reasonable care and skill;
- (b) the Service, and any product resulting from the Service will be reasonably fit for any particular purpose and of such a nature and quality that can be expected to achieve any particular result that you make known to us before the time of entering into this Contract (except if you do not rely on our skill or judgment or it is unreasonable for you to so rely);
- (c) where the time for completion or supply is not determined by the Contract, nor left to be determined by the parties, nor left to be determined by the parties in the course of dealing, the time for the completion or supply of the Service will be reasonable; and
- (d) where the price is not determined by the Contract, nor left to be determined by the parties, nor left to be determined by the parties in the course of dealing, the price for the Service will be reasonable,

and nothing in this Contract limits or excludes those warranties or your remedies for any breach of them.

### **36. Guarantees – Contracting Out**

Notwithstanding clauses 34 and 35, we do not provide you with, and expressly exclude, any and all of the Consumer Guarantees set out in clauses 34 and 35 if you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business.



### 37. Service Level Agreements

If a Service or a Plan includes a SLA:

- (a) we are liable for any remedy or rebate allowed to you under the SLA; and
- (b) subject to clauses 34 and 35, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

### 38. Exclusion of implied terms and limitation of liability

Subject to clauses 34 to 35 and without limiting clause 36:

- (a) Any representation, warranty, condition or undertaking that would be implied in your Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law.
- (b) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- (c) We and our Partners (in accordance with clause 43A of the *Consumer Guarantees Act 1993* (NZ)) are never liable to you for:
  - (i) economic loss;
  - (ii) business interruption;
  - (iii) loss of revenue, profits, actual or potential business opportunities or contracts;
  - (iv) anticipated savings;
  - (v) loss of profits;
  - (vi) loss of data;
  - (vii) indirect or consequential loss;
  - (viii) an act or omission by a party for whom we are not responsible in Law;
  - (ix) a fault in or failure of a Facility we do not control or operate;
  - (x) any loss arising from circumstances beyond our reasonable control; or
  - (xi) a failure to continue to provide the Services to you for any reason whatsoever.

- (d) Otherwise, our maximum aggregate liability to you under, in connection with or arising out of your Contract or our Service to you (whether pleaded in contract, tort, breach of statutory duty or on any other basis, whether arising from acts or omissions, and whether in relation to damage or loss the risk of which we were or should have been aware) is limited to the aggregate Charges you actually paid to us in respect of the first three (3) months of your Contract.
- (e) We may plead this clause 38 as an absolute bar to any claim you may make against us or our Partners. You expressly acknowledge and agree that a release given in this Contract in favour of a party who is not a party to this Contract is:
  - (i) inserted for the benefit of each such party and is intended to be, and is, directly enforceable by each such person (for the purposes of the *Contracts (Privity) Act 1982* (NZ);
  - (ii) for the purpose of that release (but for no other purpose unless expressly stated to the contrary) we act as agent for, and with authority of, that person; and
  - (iii) this Contract operates as a deed poll in favour of that person.

### **39. Your liability to us – General**

- (a) You must pay us all Charges and other amounts due under your Contract.
- (b) You must pay us the fair market value of any Equipment that you fail to return to us when required.
- (c) You must compensate us for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- (d) You must indemnify us for any loss, damage or expense we suffer as a result of or in connection with:
  - (i) your breach of your Contract; or
  - (ii) your use of a Service or Equipment; or
  - (iii) a claim against us by an End User in relation to a Service we supply to you; or
  - (iv) any non-genuine 111 emergency calls made by you or by an End User.

- (e) You indemnify us and our Partners for any loss, damage or expense we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment.
- (f) Your obligations under this clause 39 survive termination of your Contract.
- (g) You expressly acknowledge and agree that an indemnity given in this Contract in favour of a party who is not a party to this Contract is:
  - (i) intended to be, and is, directly enforceable by each such person;
  - (ii) for the purpose of that indemnity (but for no other purpose unless expressly stated to the contrary in this) we act as agent for, and with authority of, that person; and
  - (iii) this Contract operates as a deed poll in favour of that person.

#### **40. Your liability to us – legal requests, etc**

- (a) This clause applies where we reasonably incur expense as a result of or in connection with:
  - (i) a police request for information or evidence in relation to you or your use of a Service; or
  - (ii) a Court or other competent authority's direction (including of a Regulator) for provision of information or evidence in relation to you or your use of a Service; or
  - (iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- (b) You must reimburse our expenses immediately on request.

#### **41. Your liability to us – (alleged) illegal use, etc**

- (a) This clause applies where:
  - (i) your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
  - (ii) we suffer loss or reasonably incur expense as a result.
- (b) You must make good our loss and reimburse our expenses on request.

**42. Maintenance and faults****(a) Maintenance**

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

**(b) Reporting faults**

- (i) You may report faults in relation to a Service or the Network by contacting our call centre during its operating hours.
- (ii) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by Equipment which is not part of the Network.
- (iii) You must not report a fault directly to one of our Partners unless we direct you to do so in writing.
- (iv) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

**(c) Repairing faults**

- (i) We will use reasonable efforts to repair faults in B+W Facilities within a reasonable period.
- (ii) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.
- (iii) You are responsible for maintaining and repairing your own Equipment (except where we supplied it and you have warranty rights in relation to a fault).

**(d) Cost of repairs**

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

**(e) Access to Premises**

You must provide us or our Partners with reasonable and safe access to your relevant Premises:

- (i) to maintain or develop a Network or the Equipment; or
- (ii) to fix any fault or replace any Equipment; or
- (iii) for any other reasonable purpose.

**43. General power to vary your Contract**

We may vary this Contract (including the Charges) from time to time but:

- (a) A variation does not have retrospective effect.
- (b) If a variation could be reasonably expected to adversely affect you, we will endeavour to give you reasonable notice, having regard to:
  - (i) the nature of the variation; and
  - (ii) the means by which notice is to be provided; and
  - (iii) the length of time remaining before the variation is to occur; and
  - (iv) any other matter that is reasonably relevant.

**44. When variations take effect**

Contract variations take effect:

- (a) at the end of any applicable notice period; or
- (b) if no notice period applies, immediately.

**45. Customer transfers**

- (a) Transfer to us
  - (i) If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.
  - (ii) By making an application for a Service, you instruct and authorise us to arrange with your current supplier to transfer the service to us, and authorise us to act on your behalf with your current supplier to transfer the Service to us.
  - (iii) You must promptly pay your current supplier all amounts you owe it.
- (b) Transfer from us
 

If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.

**46. Charges & payment (1): kinds of Charge**

We have various kinds of Charges, including:

- (a) installation Charges e.g. for installing Equipment;

- (b) set up Charges e.g. a one-off Charge when you start on an Internet Service;
  - (c) periodic Charges e.g. a fixed monthly Charge for an fixed line service or ADSL Service;
  - (d) usage Charges e.g. a Charge per call made on a local call Service;
  - (e) prepaid Charges e.g. a Charge for call credit on a mobile telephone service;
  - (f) call connection Charges e.g. a Charge incurred when a telephone call connects;
  - (g) miscellaneous Charges e.g. a Charge for providing a paper bill, and any Charge that an applicable Law allows us to make;
  - (h) third party Charges e.g. an amount we must pay to a Partner to install a second telephone line in your premises;
  - (i) equipment Charges e.g. the price of a modem we sell to you,
- and other Charges that we state as part of a Plan, including an Early Termination Fee. Such Charges are detailed in the Schedule of Fees and Charges by which you are bound.

**47. Charges & payment (2): Prices**

- (a) Our prices are as stated in your Plan – subject to clause 49.
- (b) Our current prices at any time are referred to as our 'Price List' or 'Rate Sheet'.

**48. Charges & payment (3): spot priced Services**

- (a) We may designate a Service as a 'spot priced' Service.
- (b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.
- (c) Without limiting the forgoing, international telephone calls and international roaming are 'spot priced' Services.

**49. Varying Charges**

We may vary the Charges or add new Charges from time to time in accordance with clause 43.

**50. Special Promotions**

- (a) We may offer Special Promotions to you, on particular terms.
- (b) The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Contract.

**51. Bundled Plans**

- (a) We may offer a group of Services as a package (“**Bundle**”) for discounted total Charges (compared to the total Charges that may ordinarily apply if you acquired the same Services not as a Bundle).  
e.g. We might offer Bundled ‘Home phone + Internet Access for \$89.95 a month’ where our Charges for the individual Services would be \$99.95 a month.
- (b) Each Service in a Bundle is subject to a separate but dependant Contract.
- (c) If you stop acquiring any Service in a Bundle:
  - (i) you have ‘broken’ the Bundle; and
  - (ii) we may bill you non-discounted Charges for any remaining Services.

**52. Credit management (1): Guarantees and security**

- (a) We can make supply of Service conditional on you giving us, and maintaining, security and / or third party guarantees to our reasonable satisfaction.
- (b) If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and / or third party guarantees to our reasonable satisfaction.
- (c) We notify you that we may use a security payment to offset any undisputed amount that you owe us.

**53. Credit management (2): Credit reports**

- (a) Acknowledgment and authority that credit information may be given to a credit reporting agency  
  
You acknowledge and agree that we may give to give a credit reporting agency certain Personal Information about you, and you authorise us to

do so. The information which we may give to a credit reporting agency include:

- (i) the fact that you have applied for credit, and the amount;
- (ii) the fact that we are a credit provider to you;
- (iii) payments which become overdue more than 60 days;
- (iv) advice that payments are no longer overdue;
- (v) in specified circumstances, that in our opinion, you have committed a serious credit infringement; and
- (vi) that the credit provided to you by us has been discharged.

(b) Authority for us to obtain certain credit information

If you apply to us for personal or commercial credit, you authorise us:

- (i) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us;
- (ii) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us;
- (iii) to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by us; and
- (iv) to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.

(c) Authority to exchange information with other credit providers

You authorise us to give to and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about your credit arrangements. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1993* (NZ) or other Law.

You acknowledge that the information may be used for the following purposes:



- (i) to assess your application;
  - (ii) to assist you to avoid defaulting on your credit obligations;
  - (iii) to notify other credit providers of a default by you; and
  - (iv) to assess your creditworthiness.
- (d) **Consent to Transfer Personal Information outside New Zealand**  
 You authorise us to give to transfer Personal Information about you from New Zealand to another country in connection with this Contract. We warrant that we will ensure that, notwithstanding the transfer of Personal Information about you outside New Zealand, your Personal Information will be subject to such safeguards which are comparable to those under the *Privacy Act 1993* (NZ).

#### **54. Credit management (4): Services you acquire for others**

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

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

You must treat all information that allows control of your Service as confidential information. We are not liable to you if you fail to keep such information as confidential or for the acts or omissions of any person who may control your Service by reason of your failure to keep such information confidential (to the maximum extent permitted by law).

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

**55. When we can bill**

- (a) Your 'Billing Period' is the period between bills. Our standard Billing Period is monthly, but reserve the right to vary it in our sole and absolute discretion.
- (b) We can bill a part-period e.g. to align your Billing Period with the first day of each month.
- (c) We may bill for Charges as follows:

Type of Charge:	payable:
• set up Charge	immediately
• periodic Charge	14 days before the start of the period it relates to
• usage Charge	at the end of each Billing Period
• prepaid Charge	when you buy a prepaid Service
• call connection Charge	at the end of each Billing Period
• miscellaneous Charge	at the end of each Billing Period
• third party Charge	immediately
• Equipment Charge	when or before we despatch the Equipment

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

**56. How we can send you a bill**

- (a) You agree that you can incur a Charge without us issuing any invoice, statement or bill.
- (b) We may choose not to provide an invoice, statement or bill for a Service.
- (c) You agree that we need do not need to offer payment by mail as a payment method for any Service, including for a Standard Telephone Service.
- (d) If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including making it available to you via your Account Page.

**57. Extra Charges for bills and information**

- (a) We may charge you an extra Charge if:
  - (i) you request non-standard information about your bill or Charges, or
  - (ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.
- (b) If you request a paper bill when that is not the standard method for a Plan, you may incur an extra Charge as detailed in the Schedule of Fees and Charges by which you are bound.

**58. Out-of-pocket expenses**

- (a) We may notify you that, in order to supply a Service, we need to incur some out-of-pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- (b) We notify you that a Partner may charge us if you report a fault and there was no such fault, or the fault lies with equipment for which the Partner is not responsible, or if you contact the Partner directly. You must pay or reimburse all such amounts.

**59. GST**

- (a) In this clause, a term or expression within a pair of asterisks has the meaning given to that term or expression in the GST Act.
- (b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.
- (c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any *\*taxable supply\** for which that amount is paid. Otherwise:
  - (i) The *\*consideration\** payable by you represents the *\*value\** of any *\*taxable supply\** for which payment is to be made.
  - (ii) If we make a *\*taxable supply\** for a *\*consideration\**, which represents its *\*value\**, then you must pay immediately the amount of any GST payable in respect of the *\*taxable supply\**.

- (d) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an *\*acquisition\** of a *\*taxable supply\** from a third party, the amount you must pay, reimburse or contribute will be the value of the *\*acquisition\** by us less any *\*input tax deduction\** to which we are entitled plus, if our recovery from you is a *\*taxable supply\**, any GST payable under this clause.
- (e) We may recover any GST payable under this clause in the same manner as our Charges.

**60. Late billing**

- (a) We may late bill (that is, we may bill you for a Service provided to you 190 days prior to the date of the bill).
- (b) Our policy on late billing is that we will only do so up to 190 days in arrears.

**61. When you must pay**

- (a) Where a direct debit or credit card arrangement applies, we may debit any Charge when it is billed or billable.
- (b) If any bill is overdue for payment, you must pay that bill and any other bill immediately.
- (c) In any other case, you must pay a bill within 14 days after its bill date unless a different timeframe is stated in your Plan or Customer Contract.

**62. How you can Pay**

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

- (i) Direct debit is our preferred payment method and we do not charge you any surcharge for making payment in that manner (your bank or financial institution may charge you fees and charges in respect of payments that you make by way of direct debit and we will not be liable for those fees and charges).
  - (ii) Other available payment methods are detailed on your bill.
  - (iii) Payments made using either American Express, Diners Club, Mastercard or Visa credit cards are subject to a surcharge, as detailed in the Schedule of Fees and Charges and/or your bill.
- (c) If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees and charges incurred by us in connection with a dishonoured payment.

### **63. Late payment**

If a bill is not paid on time:

- (a) you are in breach of your Contract, and
- (b) we may also charge:
  - (i) interest at 1.5% a month from the Bill Date until it is paid in full;
  - (ii) a reasonable late fee; and
  - (iii) any collection fees and expenses that we incur (including legal costs on an indemnity basis).

### **64. Early Termination Fees**

The amount of an Early Termination Fee that we are entitled to charge is:

- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) otherwise, a reasonable estimate of our loss in connection with an early termination.

### **65. Billing disputes**

- (a) Our records of what you owe us are deemed to be right unless you prove them to be wrong.
- (b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.

- (c) You may not raise a billing dispute more than twelve (12) months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

**66. Billing for unauthorised use of your account**

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

**67. Billing agents**

- (a) We may bill you using a billing agent (which may be a related company).
- (b) Payment to our billing agent constitutes payment to us.
- (c) Failure to pay our billing agent constitutes failure to pay us.

**68. Calls to Mobiles**

- (a) Our prices for calls to mobile phones are always quoted on the basis that the mobile telephone you are calling has its home network in New Zealand and is located in New Zealand when you call.
- (b) We cannot necessarily know when a mobile telephone is outside its home network. If it is, extra Charges may apply and you are liable to pay those extra Charges.

**69. Payment for third party services**

- (a) Using a Service may depend on you having goods or services supplied by third parties. For instance:
  - (i) In order to use a dial up Internet Service, you must have a telephone line, and your modem will make calls using it.
  - (ii) In order to use a local call Service, you must have a suitable handset.
- (b) You are solely responsible for the costs and expenses in respect of any and all third party goods and services you acquire.

**70. Part Service**

In the event where your Service does not contain a full Service, e.g. service and Equipment/line rental and pre-select calls, you may be charged a fee per account, as set out in the Schedule of Fees and Charges.

**71. Complaints**

- (a) If you have any complaints in connection with the Service (including complaints about your invoice), you should contact us first to resolve the complaint via the contact details available on our website or your bill.
- (b) We will handle your complaint in accordance with our complaints procedure. Information on our complaints procedure may be obtained by contacting us.
- (c) You may also be entitled to make a complaint to the Office of Fair Trading . We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- (d) We may bill you a reasonable complaint handling Charge.

**72. Termination & Suspension by us:**

We may terminate this Contract with immediate effect or immediately suspend or limit Service without notice to you if, in relation to that or any other Contract or Service:

- (a) you fail to pay us any money that we claim is due to us (whether or not under this Contract); or
- (b) you threaten not to pay us money that you owe us, or are reasonably likely to owe us in the future; or
- (c) you die;
- (d) you cause to be reversed any direct debit or credit card payment to us (except with our prior written agreement); or
- (e) you are in material breach of this Contract or fail to remedy a breach capable of remedy within thirty (30) days of our request for you to do so;  
or
- (f) you become insolvent or an Insolvency Event happens to you; or

- (g) we reasonably believe that you have vacated your Premises without notice to us; or
- (h) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm; or
- (i) it becomes unfeasible for us to continue the Service (including by reason of any matter which affects the terms and conditions on which our supplier can supply the services to us, including any withdrawal or variation to the carrier licence of any supplier of ours or any suspension or termination of any agreement we have with a relevant Partner); or
- (j) your use of the Service is unusual or excessive; or
- (k) you continue to use the Service in breach of an applicable Fair Use Policy after we have contacted you to discuss your excessive or unreasonable usage;
- (l) you tamper with or modify any Equipment (including a SIM Card) that you hold as a bailee-at-will, other than in accordance with instructions given to you by us; or
- (m) we are unable to obtain access to your Premises as required to provide, maintain or repair the Service; or
- (n) there is an emergency that warrants it; or
- (o) you have told us that you no longer require the Service; or
- (p) the relevant Service is permanently or temporarily (for any reason) unavailable to you; or
- (q) we reasonably suspect fraud or attempted fraud involving the Service; or
- (r) we reasonably suspect that you are in breach or may be in breach of any Law (including the *Copyright Act 1994* (NZ)) in connection with the use of the Service by you or an End User; or
- (s) we become entitled to suspend the Service, and the suspension continues for more than one month; or
- (t) the *Telecommunications Act 2001* (NZ) is amended, varied or replaced;
- (u) we believe that it is appropriate to do so to comply with any Law (to the extent that the Law require us to do so); or



- (v) you are, or become, a Service Provider or Network Operator under the *Telecommunications Act 2001 (NZ)* (and we did not agree to provide you with Service despite that), or
- (w) in any other circumstances stated elsewhere in this Contract.

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

### **73. Charges during a period of suspension**

If we suspend a Service:

- (a) because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension; and
- (b) otherwise – you are entitled to a *pro rata* reduction in Charges in respect of the period of suspension.

### **74. Early termination by you**

- (a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless this Contract or the Law says otherwise.
- (b) Our Plans are priced on the basis that you will complete your Contract.
- (c) Where you are entitled to terminate your Contract early, we may bill you for:
  - (i) any outstanding amounts for installation costs or Equipment that can be used in connection with services provided by other suppliers, and
  - (ii) usage or network access charges incurred up to the date on which the Contract ends.
- (d) If we agree that you may terminate it early in any other circumstances, we may bill you:
  - (i) an Early Termination Fee;
  - (ii) any applicable amounts under sub-clause (e);
  - (iii) a reasonable administration Charge;
  - (iv) usage or network access charges incurred up to the date on which this Contract ends; and

- (v) any other Charge (including an Early Termination Fee) that is specified in the applicable Plan or the Price List.
- (e) Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and we agree that you may do so), we may bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

## **75. Termination by you**

- (a) You may terminate your Contract:
  - (i) (except during a fixed or minimum term) at any time, on 30 days written notice; or
  - (ii) by giving us written notice if we breach a term of your Contract and:
    - A. the breach is material and we cannot remedy it; or
    - B. the breach can be remedied, but we do not remedy it within thirty (30) Business Days of receipt of a written notice from you requiring it to be remedied; or
  - (iii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 14 days.
- (b) You may also terminate your Contract:
  - (i) in any other circumstances where your Contract provides for it; or
  - (ii) (in a case where you have a non-excludable legal right to do so) by transferring the Service from us to another supplier. We will cancel the Service and terminate your Contract immediately once the other supplier has informed us that you have elected to transfer the Service from us to that other supplier.

## **76. Post-termination**

If this Contract ends:

- (a) our obligations to you under that Contract are at an end;

- (b) we may bill you for any Services we have not yet invoiced and all other amounts we believe we are entitled to under the Contract;
- (c) all bills are payable immediately;
- (d) you authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or direct debit them from your credit card or bank account if you normally pay by direct debit;
- (e) you must return to us, promptly, any of our Equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.);
- (f) any cause of action that either of us had against the other predating the termination is not affected;
- (g) the limitations of liability, and rights of indemnity, under this Contract continue (in addition to any other term which, by its nature, is intended to survive the end of this Contract); and
- (h) no other contract is affected unless we also terminate it.

**77. Errors in our documents**

- (a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Contract, including any Plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- (b) To the maximum extent permitted by Law, you are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints.

**78. Service Provider or Network Operator**

- (a) You represent that you are not a Service Provider or a Network Operator.
- (b) If you do become a Service Provider or a Network Operator, then we or our Partners may immediately cancel the Service and terminate your Contract by notice to you.

**79. Provision of Services by our Partners**

- (a) If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.
- (b) If our rights and obligations under your Contract are assigned or novated to our Partner in order to supply the Service directly to you, you acknowledge that the rate plan and Charges applicable to the provision of the Service may be altered to the nearest applicable Partner rate plan.
- (c) Our Partners do not provide, grant or confer any benefit, right or privilege on you.
- (d) Without limiting clause 38(c), to the maximum extent permitted by Law, all liability of our Partners and its group and personnel arising from, or in connection with, the Services is excluded.

**80. Assignment**

- (a) We may assign or novate all or part of our rights and obligations under your Contract to any of our Partners without your consent.
- (b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

**81. Notices**

- (a) We may give any written notice to you in connection with, or as required by this Contract, by:
  - (i) sending the notice to you in person; or
  - (ii) by prepaid post to the address we have you attributable to you; or
  - (iii) by email to the email address we have attributable to you in our records; or
  - (iv) by facsimile to the facsimile number we have attributable to you in our records; or
  - (v) by sending an SMS to your mobile device on the mobile number we have attributable to you in our records; or
  - (vi) for pre-paid Telecommunications Services, by otherwise making it available to you and informing you how to obtain it.

- (b) A notice given in accordance with clause (a) will be deemed received by you:
- (i) if delivered personally, on the date of delivery; or
  - (ii) if sent by pre-paid post, three (3) days after the date of posting; or
  - (iii) if sent by email, immediately (unless our email system receives a delivery failure notification in respect of the email); or
  - (iv) if sent by facsimile transmission, on the day the transmission is sent if a Business Day and, if not, then on the next succeeding Business Day (as long as the sender has a facsimile confirmation report specifying the facsimile number of the recipient, the number of pages sent, the date of the transmission and a confirmation that the transmission was successful); or
  - (v) if sent by SMS, immediately (unless we receive a delivery failure notification in respect of the SMS); or
  - (vi) in respect of clause (a)(vi), two (2) days after making the notice available to you and informing you how to obtain it.

## **82. Governing law**

Your Contract is governed by and must be construed in accordance with the laws of New Zealand. You and we submit to the exclusive jurisdiction of the courts of New Zealand.

## **83. No waiver**

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Contract (such as a right that we have due to your breach of your Contract) does not operate as a waiver of the power or right.

## **84. Commission**

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

## **85. Information about your rights**

Information and advice about your rights can be obtained by contacting the New Zealand Commerce Commission.

**86. Complaints and assistance services**

Our contact details are available on our website.

You may contact us and make any complaint by contacting Customer Service, on the details set out in our website or on your bill

**87. Entire Agreement**

This Contract constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.

**88. Cooperation and Information Sharing**

- (a) You consent to us sharing information about you with our Partners to the extent necessary for our Partners to provide the Services and to comply with any interception capability, security, fraud investigation cooperation, 0900 calls made by you or an End User or emergency response services requirements and you consent to our Partners using that information for those purposes.
- (b) You acknowledge and agree that our Partners may collect from us and retain information about you (including your Personal Information) and:
  - (i) share it with its employees, contractors, suppliers and other agents, but only where it is reasonably necessary or desirable to do so in connection with the Services (for example, to provide the Services);
  - (ii) share it with other Network Operators to enable our Partners to send or receive messages of any kind through those networks;
  - (iii) use it to ensure compliance with non-discrimination or similar clauses in contracts between our Partners and other customers of our Partners; and
  - (iv) use it for statistical purposes (provided that you are not identifiable through those statistics).
- (c) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have (including advising us promptly if you change Premises or your postal address).

- (d) You acknowledge that, where a Service is a Telecommunications Service within the meaning of the *Telecommunications Act 2001* (NZ), we or a Partner may be required :
  - (i) to intercept communications over the Service, and
  - (ii) monitor usage of the Service and communications over it.

## **89. Interpreting your Contract**

- (a) If an expression is defined in the Dictionary in clause 90, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning.
- (c) Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) Where one thing is said to include one or more other things, it is not limited to those other things.
- (h) There is no significance in the use of gender-specific language.
- (i) A 'person' includes any entity which can sue and be sued.
- (j) A 'person' includes any legal successor to or representative of that person.
- (k) A reference to a law includes any amendment or replacement of that law.
- (l) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (m) Anything we can do, we may do through an appropriately authorised representative.
- (n) Any matter in our discretion is in our absolute and unfettered discretion.

- (o) A reference to a document includes the document as modified from time to time and any document replacing it.
- (p) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (q) The word “month” means calendar month and the word “year” means twelve (12) months.
- (r) The words “in writing” include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- (s) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re enacted or replaced from time to time.
- (t) Money amounts are stated in New Zealand currency unless otherwise specified.
- (u) In the event of any inconsistency between:
  - (i) Part C of this Contract; and/or
  - (ii) Part B of this Contract; and/or
  - (iii) Part A of this Contract; and/or
  - (iv) the Schedule of Fees and Charges; and/or
  - (v) the signed application form in respect of a Service; and/or
  - (vi) the Service Terms,
 the order of precedence between them will be the descending order listed above unless an express contrary intention appears.

## 90. Dictionary

The expression:	means:
Account Page	a web page or facility we may provide that permits you to view and / or manage details of your account
Acceptable Use Policy	an acceptable use policy made under our Customer Terms



ADSL	means asymmetric digital subscriber line
Application Date	as in clause 18(a)
B+W	As in clause 2
B+W Facilities	Facilities that we manage and maintain
Billing Period	as in clause 55(a)
Bundled Equipment	as in clause 13 (a)
Bundle	as in clause 51 (a)
Business Day	Monday to Friday excluding statutory holidays
Charge	a charge applicable under your Customer Contract
CTU	means Cellular Trunking Unit
Consumer Guarantees	has the meaning given in clause 14
Contract	means Customer Contract
Contract Date	as in clause 18(b)
Customer Contract	has the meaning given in clause 3
Customer Terms	as in clause 1
Delivery Date	as in clause 28
Early Termination Fee	as in clause 64
Eligibility Criteria	as in clause 16(c)
End User	as in clause 20(b)
Equipment	a handset, modem, router or other hardware
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
Fair Use Policy	as in clause 8
GST	Goods and Services Tax
GST Act	<i>Goods and Services Tax Act 1985 (NZ)</i>
Insolvency Event	the occurrence of any of the following to a person:

- (a) a person becomes an insolvent under administration; or
- (b) an Administrator is appointed (as that term is defined in the *Companies Act 1993* (NZ)); or
- (c) a person is in liquidation, provisional liquidation, under administration, wound up (or in the process of being wound up or a Receiver has been appointed to any part of that person's property (as that term is defined in the *Companies Act 1993* (NZ)); or
- (d) a person is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
- (e) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with the person, which is preparatory to or could result in any of the facts, matters and circumstances set out in sub-clauses (a) to (d) above; or
- (f) a person has failed to comply with a statutory demand issued under the *Companies Act 1993* (NZ); or

- (g) a person is unable to pay its debts as and when they fall due; or
- (h) a person commits any act of bankruptcy or any person takes any step towards commencing bankruptcy proceedings; or
- (i) a person is subject of an event described in section 287 of the *Companies Act 1993* (NZ) (or a person makes a statement from which it may be reasonably deduced that the person is so subject); or
- (j) something having a substantially similar effect to sub-clauses (a) to (i) happens in connection to a person under the law of any jurisdiction.

#### Intervening Event

an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our suppliers, any disruption to our or our suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster

#### Law

as in clause 21(a)

Network	as in clause 19(b)
Network Operator	as in the <i>Telecommunications Act 2001</i> (NZ)
Network Provider	the host network being used by us for the provision of Services
Number Administration Deed	means the document titled the Number Administration Deed dated 1 May 2000 as amended from time to time
Number Allocation Rules	means the document titled the Telecommunications Numbering Plan Number Allocation dated 15 October 2008 as amended from time to time
Number Rules	means the Number Administration Deed and the Number Allocation Rules
Operational Directions	as in clause 9
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content that we resupply to you (including any of our Related Companies), and expressly includes the Network Provider
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	as in clause 10
Periodic entitlements	as in clause 6
Personal Information	as in the <i>Privacy Act 1993</i> (NZ)
Plan	a particular set of features, entitlements, term of contract, Charges and special conditions in connection with a Service
PPSA	<i>Personal Property Securities Act 1999</i> (NZ)
PPSR	the Personal Property Securities Register

	established and maintained in accordance with the PPSA
Premises	the physical place from which the Service is or will be primarily used or where the majority of the Equipment to be used in connection with the Service is contained
Price List	as in clause 47
Product	goods and / or services
Rate Sheet	as in clause 47(b).
Regulator	includes the Commerce Commission of New Zealand and any other relevant government or statutory body or authority
Schedule of Fees and Charges	means the document titled 'Schedule or Fees and Charges' (or similar) made available to you by us, as amended from time to time in our sole and absolute discretion
Service	a service (and includes Equipment) which we provide to you, including but not limited to (a) a Standard Telephone Service; or (b) a Telecommunications Service, as amended from time to time
Service Level Agreement	a written service quality assurance titled as such
Service Provider	as in the <i>Telecommunications Act 2001</i> (NZ)
Service Start Date	as in clause 18(c)
Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
SIM Card	'Subscriber Identity Module', a removable card or module which is used in the GSM or 3G authentication procedures and

	contains the international subscriber identity number and other subscriber data, any associated information and intellectual property which, when used with compatible Equipment, enables access to a Network.
Site	as in clause 28(a)
SLA	means a Service Level Agreement
SMS	means Short Message Service and includes Multimedia Message Service (" <b>MMS</b> ")
Special Promotion	a special promotion we may offer from time to time, on terms we notify in connection with the offer
Standard Telephone Service	a PSTN service (as in the <i>Telecommunications Act 2001</i> (NZ))
Telecommunications Service	as in the <i>Telecommunications Act 2001</i> (NZ)
Use-by Date	has the meaning give in clause 7(b)
You or you	means the person who enters into this Contract with us

---