Hypernet™

CORE TERMS

THIS DOCUMENT:

- is the core terms of a standard form of agreement (SFOA) under section 479 Telecommunications Act 1997 (Cth);
- applies to Contracts & Service Orders made before, on or after 1st October 2022; and
- does not apply if and to the extent otherwise agreed between Hypernet and a Customer.

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1. DEFINITIONS

Act means the Telecommunications Act 1997 (Cth).

Application means an application by you for a Service, in such form as we require.

Billing Period means a period of time in relation to which Charges are billed.

Broadband means an Internet Service of a type known as broadband

Bundle means an arrangement where more than one Service (or Service/s and Equipment) is supplied to you as a single package.

Business Customer means a customer who:

(a) acquires from us goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption or

(b) acquires from us goods or services for purposes other than the ordinary personal, domestic or household use or consumption of those goods or services.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

Cancelled Period means the period by which a Minimum Term Contract is terminated early.

Carriage Service Provider means the same thing as in the Act (usually, it means a supplier of Internet Access or telephone services.)

Charge means a charge to you for a Service.

Claim means a claim, counter-claim, cross-claim, demand, action, proceeding, entitlement or right of set-off by you against us for any damages, compensation, rebate, refund, payment, contribution or indemnity howsoever arising under or in connection with your Contract or any Service whether in tort, contract, equity, under statute or otherwise.

Competition and Consumer Act means the Competition and Consumer Act 2010 (Cth).

Confidential Information means all information (except information that is in the public domain other than as a result of a breach of an obligation of confidentiality) regarded by a party or any Related Body Corporate (as defined in the Corporations Act) as being confidential, whenever the other party became aware of the information.

Consumer means a person who acquires from us goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, for

the purposes of the ordinary personal, domestic or household use or consumption of those goods or services.

Contract has the meaning described in clause 4 of these Core Terms.

Core Terms means these Core Terms.

Corporate Customer means a Business Customer who has a genuine and reasonable opportunity to negotiate the terms of your Contract.

Customer means a Consumer or a Business Customer.

Due Date means, unless another date is agreed, in the case of an email or electronic bill which is payable by direct debit or equivalent means, 5 days after issue of the bill and, in other cases, 14 days after the date of the bill on which a Charge first appears.

Early Termination Charge means a charge which may be incurred by the Customer for terminating their Contract before the specified end date of the Contract.

Equipment means goods or software used in connection with a Service, and includes:

Bundled Equipment means Sold Equipment supplied as part of a Bundle

Sold Equipment means Equipment sold to you by us

Our Equipment means Equipment that belongs to us or to another Supplier.

Fixed Charge means a Charge that does not depend on how much a Service is used.

Force Majeure means an unforeseen or uncontrollable force or event, such as fire, flood, earthquake, storm or other disturbance caused by the elements, an act of God, war, strike, lockout, riot, explosion, insurrection or government action, which is not reasonably within the control of the party affected, but does not include in your case, a failure to pay Charges by the Due Date.

GST means goods and services tax under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Internet Access means being able to access the internet.

Internet Service means a Service that provides Internet Access and related Services, including if it is so agreed, access to email.

Law means any applicable Australian Federal, State or Territory law and, where applicable, includes industry or other codes, including the TCP Code, by which we are bound.

Minimum Term means a fixed minimum period of the Term of your Contract.

Other Supplier means a third-party supplier or wholesaler (whether to us or to you directly) of goods or services in relation to a Service.

Our System means the network, systems, resources and Equipment in connection with a Service that are under the control of us or our wholesaler.

Plan means the features, rules, allowances, entitlements and pricing of a Service or a Bundle.

Pre-Paid Service means a Service for which we require Prepayment.

Prepayment means a payment of Charges before they are incurred.

Hypernet, **we**, **us** and the like means Hypernet Pty Ltd (ABN 64 664 759 871) of Level 5, 20 Bond Street Sydney NSW 2000

Privacy Act means the Privacy Act 1988 (Cth).

Reasonable Notice will be at least 14 days unless:

(a) that is impossible or unlawful in the circumstances or

(b) in our reasonable opinion there are urgent or grave circumstances which make it inappropriate.

Resold Service means a Service that we acquire from an Other Supplier and re-supply to you.

Service means a service (and includes Equipment) which we provide to you, including but not limited to:

(a) a standard telephone service within the meaning of the Act; or

(b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); or

(c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001.

Service Schedule means the terms and conditions that are specific to particular Services.

Site means premises to which we supply a Service or where there is located Equipment.

Suspend means:

(a) in relation to a telephone Service – to bar all or some outgoing and/or incoming calls; and

(b) in relation to any other Service – to deny or restrict access to or use of the Service or part of it.

Suspended Period means the period for which a Service is Suspended or disconnected.

TCP Code means Industry Code C628:2012 Telecommunications Consumer Protections Code.

Term means the term of your Contract.

Third Party System means, in relation to Services, network, systems, resources and equipment outside Our System.

TIO means the Telecommunications Industry Ombudsman.

Usage Charge means a Charge that depends on how much a Service is used.

2. INTERPRETATION

2.1 Headings are for convenience only and do not affect the interpretation.

2.2 The singular includes the plural and vice versa.

2.3 Reference to any gender includes all genders.

2.4 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

2.5 Reference to a person includes a body corporate, an unincorporated body or other entity and vice versa.

2.6 Reference to a party means us or you and includes the party's executors, administrators, successors and permitted assigns

2.7 Reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

2.8 Reference to an agreement or other instrument or Law includes any variation or replacement of any of them.

2.9 All dollar amounts mean Australian dollars.

2.10 In measuring volumes of data and the like, we may use the following meanings:

2.10.1 'Kilobyte' and 'KB' meaning 1000 bytes,

2.10.2 'Megabyte' and 'MB' meaning 1000 Kilobytes,

2.10.3 'Gigabyte' and 'GB' meaning 1000 Megabytes,

2.10.4 like rounded numbers for multiples of bytes or bits.

3. INTRODUCTION

3.1 These are our Core Terms. Unless otherwise agreed between us, these Core Terms apply to you if we supply you with Service/s.

4. YOUR CONTRACT AND SERVICES

4.1 We supply Services under 'your Contract' that consists of:

4.1.1 these Core Terms; and

4.1.2 any Service Schedule including the Plan for the particular Service.

4.2 Your Contract applies as a 'standard form of agreement' under the Act. Under the Act, it also includes any other terms agreed with you.

4.3 We will supply Service/s using Our System, which may include facilities and / or services of Other Suppliers.

5. APPLICATIONS

5.1 There is a Contract with you if:

5.1.1 you make an Application for a Service; and

5.1.2 you satisfy any applicable technical or other preconditions; and

5.1.3 we accept your application and agree to supply the Service (which may be by way of commencing to supply it, or notifying you that it is ready, or entering an arrangement with a third party to enable us to provision it).

5.2 We are not obliged to accept any Application.

5.3 You appoint us to be your agent to do all things (including executing all documents) necessary or desirable to enable us to provide the Service/s on Our System, including without limit the exercise of any Customer authorisation necessary to port, transfer, cancel or otherwise deal with a telephone number or a service supplied in whole or part by an Other Supplier.

In acting as your agent, we will act in a manner as we reasonably consider to be in your interests.

6. TERM OF YOUR CONTRACT

6.1 If no other Term is agreed for your Contract, it is from month to month.

6.2 If a Minimum Term applies to your Contract, you may not terminate the Contract during it, except where your Contract allows.

6.3 After the end of any Minimum Term:

6.3.1 your Contract may by agreement be renewed for a further Minimum Term,

6.3.2 otherwise, it continues from month to month.

7. TERMINATING A MONTH-TO-MONTH CONTRACT

7.1 You can terminate a month-to-month Contract by giving us a month's notice:

7.1.1 by telephone to our customer service desk;

7.1.2 in writing to our postal address; or

7.1.3 in such other way as we specify.

7.2 We can terminate a month-to-month Contract without cause by giving you at least a month's notice in writing.

8. TERMINATING YOUR CONTRACT - GENERAL

8.1 You or we may terminate your Contract or Service if the other party is in material breach of the Contract and does not remedy the breach within 14 days of a notice requiring the breach to be remedied.

8.2 If a Charge under your Contract or Service is overdue for payment; and:

8.2.1 we have given you at least one payment reminder; and

8.2.2 you have still not paid it after a further 24 hours; and

8.2.3 you have not disputed the Charge under clause 19 – we may terminate your Contract.

8.3. We may also terminate your Contract if:

8.3.1 if you have breached it in a serious way. We consider a "serious" breach to be where a Service is used in a way which poses an unacceptable risk to our security or network capability, or is used in a way that is illegal or likely to be found illegal;

8.3.2 we reasonably suspect fraud in the use of your Service. If we reasonably believe that fraudulent activity has occurred, we will provide you the opportunity to dispel our reasonable suspicions or belief;

8.3.3 you die or become insolvent or bankrupt or have a receiver, manager, administrator or liquidator appointed over your estate, and we have a reasonable belief that Charges are unlikely to be paid;

8.3.4 you have given to us material information which we reasonably believe is not true;

8.3.5 you permanently vacate a Site to which a Service is supplied, without giving notice to us;

8.3.6 we have reasonable grounds for believing that, by reason of anything relating to your Service, a threat or risk exists to Our System or any Third Party System;

8.3.7 we reasonably suspect that your Service is being used so as to expose us to the risk of legal action, or in breach of any Law; but we will give you Reasonable Notice in the circumstances.

8.4 We may also terminate your Contract if:

8.4.1 we are required to terminate your Service in order to comply with any Law;

8.4.2 you change your address without telling us your new address;

8.4.3 a wholesale Service necessary for your Contract is cancelled;

8.4.4 we are unable to provide Service due to the termination of any agreement between us and any Other Supplier for the provision of services; or

8.4.5 an emergency occurs which, in our reasonable opinion, warrants it – but we will give you Reasonable Notice in the circumstances.

9. CONSEQUENCES OF TERMINATION OF YOUR CONTRACT OR SERVICE

9.1 If we request it, you must following termination promptly return Our Equipment to us or to an agent we nominate. Upon Reasonable Notice to you, we are entitled to unimpeded access to each Site in order to remove Our Equipment.

9.2 If your Contract is terminated, and there are unused Prepayments on your account, we will credit them against amounts you properly owe us, and refund any balance to you.

9.3 After your Contract is terminated:

9.3.1 you still have to pay Charges incurred before the end of your Contract;

9.3.2 the provisions relating to liability and indemnity continue to apply;

9.3.3 any right of action that arose before it ended, survives; and

9.3.4 any provision that is expressed, or by reasonable implication is intended, to survive termination, continues to operate.

9.4 If we validly terminate your Contract under clause 8.1, 8.2 or 8.3, we may charge you an Early Termination Charge, as per clause 12.

9.5 If you validly terminate your Contract under clauses 8.1

9.5.1 no Early Termination Charge applies; and

9.5.2 you do not have to pay any more for Equipment Sold, but if we so request you to return it to us, you must within 14 days either:

(a) return it to us in good condition (ignoring fair wear and tear for its age) and we will pay the reasonable costs of shipping or

(b) pay us the balance of its purchase price and retain it.

9.6 If you terminate a Minimum Term Contract early without cause, we may charge you an Early Termination Charge as per clause 12.

10. SUSPENDING A CONTRACT

10.1 We also have the right to Suspend your Contract (subject to our giving Reasonable Notice in the circumstances) if:

10.1.1 we become entitled to terminate your Contract, but choose to Suspend it instead; or

10.1.2 if we reasonably suspect that you are a credit risk.

10.2 A suspension will be for a reasonable period. Within that time, we will notify you as to whether we will lift the suspension or proceed to termination.

10.3 If a suspension is lifted, we may charge a reconnection Charge, as per clause 13. This does not apply if the suspension was not your fault.

10.4 If a suspension ends in termination, we may charge an Early Termination Charge, as per clause 12. This does not apply if the suspension / termination is not your fault.

11. CHARGES

11.1 You must pay Charges by the Due Date.

11.2 Some of our Charges may represent recoupment of amounts you cost us by breaching your Contract, but if so, they will be limited to reasonable amounts, reasonably incurred as a result of your breach.

11.3 Charges for a Service will be in accordance with your Contract, including its Service Schedule.

11.4 If your Service is used to access a service provided by an Other Supplier, and we are charged for that other service, you must pay us for that service.

11.5 If we incur bank or financial institution charges because your cheque, credit card payment or direct debit or other payment method is not honoured, we are entitled recoup those charges from you.

11.6 If we incur bank or financial institution charges because of a chargeback from your banking institution in the event we have tried to take payment for an outstanding balance on your account, we are entitled to recoup those charges from you.

11.7 You are responsible for the payment of Charges arising out of the use of a Service, including unusual use (providing that we inform you of a method by which you can monitor or control use of your Service or that we notify you of unusual use within a reasonable time of it having occurred).

12. PAYMENT DEFAULT

12.8 Should you fail to pay your charges by the Due Date, Hypernet its agents or solicitors will have the right to do one or more of the following actions

12.8.1 charge you interest on any overdue amount, being the penalty interest rate under the Penalty Interest Rate Act 1983 (Vic) from the due date until the date of payment.

12.8.2 terminate or suspend the provision of Services

12.8.3 set-off monies due to you with monies you owe us in respect of all of your Debts.

12.8.4 Refer unpaid Debts and Interest to a Collection Agent for the recovery of monies owed by you to us; a debt collection administration charge may apply and you will be liable for all legal costs and disbursements which may we may incur arising from the default calculated on the indemnity basis.

13. EARLY TERMINATION CHARGE

13.1 If we are entitled to charge you an Early Termination Charge, it will be set out in the Plan terms which are provided to you prior to entering into your Contract. If at any time, you want to know what Early Termination Charge would apply, you may telephone us.

13.2 Any Early Termination Charge:

13.2.1 will be a fair and reasonable amount;

13.2.2 is calculated with reference to network access and hardware costs;

13.2.3 may include a reasonable allowance for unrecovered costs or charges that we incur or have incurred with respect to your Contract, unless we can reasonably avoid or mitigate them or apply them to other Customers; and

13.2.4 if practicable, may be expressed as a fixed amount or a fixed amount pro-rated for the number of months in the Cancelled Period.

14. RECONNECTION CHARGE

14.1 If we are entitled to charge you a reconnection Charge, it will be calculated in accordance with this clause. The maximum reconnection Charge is $129 plus third-party charges. If at any time, you want to know what reconnection Charge would apply, you may telephone us.

14.2 A reconnection Charge:

14.2.1 will be a reasonable amount;

14.2.2 may include a reasonable allowance, capped at the amount of any applicable Early Termination Charge, for unrecovered costs, charges or overhead that we incur or have incurred with respect to the suspension or reconnection of the Service; and

14.2.3 if practicable, may be expressed as a fixed amount or a fixed monthly amount pro-rated for the number of days in the Suspended Period.

15. GST

15.1 Charges will be expressed as inclusive of GST or in a way that allows the total GST inclusive price to be easily determined.

15.2 You must pay to us at the same time when the Charges are payable, an amount equal to any GST payable. We will issue a tax invoice to you for any payment on which GST is imposed.

16. HOW WE BILL

16.1 We issue bills online and notify you of your bill via email.

16.2 Charges apply to some methods by which we issue bills. If at any time you want to elect a method for billing other than that specified in the applicable Service Schedule, you may telephone us, we are not obliged to issue bills via methods over than applicable in the Service Schedule.

16.3 We may impose a reasonable charge for billing you by a method other than the primary billing method offered by us for your Service, if you request billing by that method.

17. WHEN WE BILL

17.1 Billing for Usage Charges does not apply before:

17.1.1 the date we notify you that access to the Service is or will be available.

17.2 If an Other Supplier notifies us late about a Charge to your account, or there is some other reasonable cause why we do not include a Charge in your next bill, we may bill it later, but not more than 160 days after it was incurred.

17.3. Otherwise, unless otherwise agreed, we bill you each Billing Period:

17.3.1 for Fixed Charges, in advance or partly in advance; and

17.3.2 for other Charges as they are incurred.

18. HOW YOU MUST PAY

18.1 You must pay bills by direct debit, unless another method is specified in the Service Schedule applicable to your Service.

18.2 We may impose a reasonable charge for your failure to pay by direct debit, and for certain other payment methods that you elect to pay by. The charge will be notified to you prior to any payment that you are required to make.

19. WHEN YOU MUST PAY

19.1 A bill must be paid by the Due Date.

19.2 Overdue payments:

19.2.1 attract interest at the rate fixed under the Penalty Interest Rate Act 1983 (Victoria) or its equivalent in your State or Territory; or

19.2.2 may attract an overdue Charge representing the costs and charges that we incur.

20. DISPUTING A CHARGE

20.1 Limitation of legal actions

20.1.1 If you have any legal cause of action in respect of a Charge; and

20.1.2 that legal cause of action is subject to a legal time limit; and

20.1.3 that legal time limit cannot be shortened by contractual agreement then no time limit referred to in this clause shortens the legal time limit.

20.2 Suspension of payment obligation

20.2.1. If you have a bona fide complaint or dispute about a Charge; and

20.2.2 you provide us with reasonably detailed and accurate information about the complaint or dispute to understand the nature and basis of the dispute – you do not have to pay that Charge unless the complaint or dispute is resolved and the Charge is found to be payable.

20.3 All other Charges must be paid.

20.4 Except for Charges that are Suspended under clause

20.2 you must pay all Charges by their Due Date.

21. YOUR RESPONSIBILITY FOR YOUR ACCOUNT

21.1 You must take reasonable steps to prevent anyone using your Service without your authority.

21.2 We notify you that family members, housemates (particularly teenagers), employees and contractors often make use of telephone and internet accounts, but deny having done so, or the extent of their use. It is a good general rule not to allow unrestricted use of such Services to anyone whom you would not trust with unsupervised use of your credit card.

21.3 You must not authorise or allow anyone to do an act that would breach your Contract if you did it.

22. CREDIT LIMITS

22.1. We may, as part of our credit control procedure, agree to provide you with a Service subject to a specified credit limit.

22.2. A credit limit includes unpaid bills plus other Charges accrued (but not late Charges under clause 17.2, unless they are unpaid by the Due Date).

22.3. You must not exceed your credit limit.

23. CREDIT REPORTING

23.1 If we have notified a credit reporting agency that you failed to pay a Charge, we will also notify it if you later pay the Charge.

23.2 You authorise us to conduct credit checks and searches and to use the information obtained as a result of these checks and searches to assess your creditworthiness, so long as in doing so, we comply with the Privacy Act. You have rights of access and correction in relation to your personal information contained in credit reports held by credit reporting agencies.

23.3 When conducting a credit check, we may give to a credit reporting agency the following information:

23.3.1 information reasonably necessary to identify you;

23.3.2 the fact that you have applied for credit and the amount;

23.3.3 the fact that we are a current credit provider to you;

23.3.4 payments which become overdue more than 60 days and for which collection action has commenced;

23.3.5 advice that payments are no longer overdue;

23.3.6 a cheque for at least $100 drawn by you that has been dishonoured more than once;

23.3.7 that in our reasonable opinion, you have done an act:

a) that involves fraudulently obtaining credit, or attempting to do so;

b) that involves fraudulently evading your obligations in relation to credit, or attempting to do so; or

c) that a reasonable person would consider indicates an intention, on your part, not to comply with your credit obligations;

23.3.8 that the credit provided to you by us has been paid or otherwise discharged.

23.4 For the purpose of performing a credit check, we may seek from or (subject to obtaining your separate and specific agreement) disclose to any credit provider named in a credit report issued by a credit reporting agency information (limited in the case of a disclosure by us to information contained in the report) about your personal identity information and arrangements. This information may include any information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other. You acknowledge that the information may be used for the following purposes:

23.4.1 to assess an Application by you for credit;

23.4.2 to notify other credit providers of a default by you;

23.4.3 to exchange information with other credit providers as to the status of this credit where you are in default;

23.4.4 to assess your creditworthiness.

23.5 If we consider it relevant to assess your Application for credit, you understand and acknowledge that we may:

23.5.1 obtain a report about your commercial activities or commercial credit worthiness from a business which provides information about the commercial creditworthiness of persons;

23.5.2 obtain from a credit reporting agency a credit report containing personal information about you in relation to commercial credit provided by us;

23.5.3 receive from a credit reporting agency a credit report containing personal information about you in relation to collecting overdue payments.

23.6 If, having conducted a creditworthiness assessment, we reasonably consider that you may not be able to pay Charges when they become due, we may require from you a security bond or a Prepayment.

23.7 If at any time you want to access and correct your personal information, you may telephone us.

24. YOUR OTHER OBLIGATIONS

24.1 You will ensure that all information you give us, in connection with your Application or subsequently, is true, to the best of your knowledge.

24.2 You must not use a Service or Our System other than in accordance with your Contract or otherwise as authorised by us.

24.3 You must not use a Service fraudulently, or in the course of any fraud or any other unlawful activity.

24.4 You must not do or allow anything in relation to a Service which is contrary to any Law, or which causes us to reasonably suspect that you or another person are doing any of those things.

24.5 You must not do or allow anything in relation to a Service which may expose us to the risk of legal action.

24.6 You must comply with any reasonable directions from us in relation to the Services and these Core Terms.

24.7 You may use a Service which we offer as a residential Service only for personal, domestic or household use or consumption and not for business or commercial purposes.

23.8 You will provide to us timely and safe access to each Site and all relevant Equipment, other than Sold Equipment, and any reasonable assistance and facilities that we may require for the purpose of inspection, maintenance, repair, or removal of Equipment or Services.

24.9 If you choose not to purchase or use Equipment supplied by us, you will ensure that all Equipment meets the standards that are from time to time reasonably specified by us and that all Equipment that you own is in working order at all times.

24.10 You must not resupply to another person a Service except to the extent expressly permitted under your Contract or with our written consent.

24.11 You must not permit another person to do anything that, if done by you, would breach your Contract.

24.12 For the benefit of Other Suppliers as well as us, you agree in respect of each Service, to comply with (and not to permit any other person who uses the Service not to comply with) the following obligations:

24.12.1 not publish, copy or distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing or illegal under any Law at any place where transmissions are sent from, viewed or received;

24.12.2 not publish, copy or distribute material if there is no right to do so (for example, someone else's copyrighted works or Confidential Information);

24.12.3 not do anything that may expose us or you or any Other Supplier to civil or criminal liability;

24.12.4 not do anything that may damage, interfere with or make unsafe Our System or any Third Party System;

24.12.5 obtain any necessary consents and provide safe and lawful access to us and Other Suppliers on any Site;

24.12.6 where you are reasonably capable of doing so without incurring any associated expenses; if we or any Other Supplier require modifications to any Equipment under your control, to avoid danger or interference, to make those modifications;

24.12.7 not to use any Equipment which does not meet any applicable standards; and

24.12.8 such other lawful requirements of us or Other Suppliers as notified to you by us.

25. WHERE YOU ACT THROUGH AN AGENT

25.1 You may appoint an agent to deal with us on your behalf. This clause applies where you have appointed an agent or someone contacts us claiming to be your agent.

25.2 If someone contacts us claiming to be your agent, we in our discretion may accept that they are truly your agent if they quote your account password and such information as we reasonably accept as indicating they have your authority.

25.3 As long as we act reasonably and in good faith, you release us from responsibility for anything we do on the basis of the instructions of your agent or someone who claims to be your agent.

25.4 We may in our discretion decline to accept that someone is your agent, and you release us from responsibility for so declining.

26. EQUIPMENT

26.1 This clause applies if we provide Equipment to you on a lease only basis.

All modems, set-top boxes, ancillary accessories or other hardware supplied by Hypernet remains the property of Hypernet. The supplied hardware must not be tampered with or modified. The supplied equipment must be returned within 30 days if your service is cancelled for any reason during the service relationship.

The nbn connection box remains the property of nbn co. Postage and handling fees and non-return fees may apply.

26.2 Broadband.

For your internet service you need a nbn or Opticomm, Fiberco, Hypernet Fibre, LBN Co or other connection box depending on the relevant supplier of technology to your property, as-well as a compatible modem and telephone handset. You may opt for a Hypernet supplied modem or source your own third party equipment. If you choose to use your own equipment Hypernet may only be able to provide limited support .

Homephone

For your VoIP service an active internet connection and VoIP compatible handset is required to use this service.

26.2 Sold Equipment

Your Contract for Sold Equipment includes the following:

26.2.1 Unless otherwise agreed, we will deliver any Sold Equipment to the agreed Site at a mutually agreed time.

26.2.2 You must pay us for the Sold Equipment upon delivery, unless otherwise agreed.

26.2.3 We will retain ownership of any Sold Equipment until you have made full payment for it. In the case of Bundled Equipment for which no separate Charge is specified, we will retain ownership until you have paid all the Charges payable in respect of any Minimum

Term applicable to the Bundle (or payment of any Early Termination Charge, if applicable).

26.2.4 You will be responsible for any Sold Equipment from the time it is delivered to you or to the agreed Site.

26.3 Our Equipment

26.3.1 We retain ownership of all Our Equipment.

26.3.2 You must take reasonable care of and are responsible for Our Equipment from the time it is delivered to you until it is returned to us, and must compensate us for any harm we suffer if you fail to do so.

26.3.3 You must not sell, rent or dispose of Our Equipment or any of its parts and must return it to us upon request.

26.3.4 You must not give anyone any legal rights over our Equipment.

26.4 Installation

Where you request installation or maintenance of Equipment, and we agree to do so, you must give us at least 24 hours' notice where an appointment is cancelled or changed by you, failing which we may charge you a reasonable cancellation Charge.

27. FAULTS

27.1 You must immediately report to us any faults of which you become aware in relation to:

27.1.1 a Service;

27.1.2 Equipment for which we are responsible; or

27.1.3 Our System.

27.2 Subject to your Contract:

27.2.1 we will use reasonable steps to correct faults for which we are responsible;

27.2.2 in the event of unexpected faults outside our control, we will, where possible, take reasonable steps to restore the Service as soon as practicably possible;

27.2.3 you will promptly correct faults in Equipment that you own or is under your control (where such steps are within your reasonable ability to carry out and are cost free) that may affect a Service.

27.3 Before reporting any suspected fault to us, you should take all reasonable steps to ensure that the fault is not caused by any equipment that is not owned or supplied by or through us.

28. CHANGES TO YOUR CONTRACT OR SERVICE

28.1 If We reasonably believe that an amendment to these Core Terms will benefit You or have a neutral impact on You We can make the amendment immediately. We will take reasonable steps to bring the general nature of such changes to Your attention (for example, by informing You in a bill that the terms have changed).

28.2 Where We reasonably believe that the amendment to these Core Terms will have a minor impact on You, We will give You 30 days written notice of the change being implemented by bill message, direct mail or email. We will use this method of notification for example where We withdraw a minor feature of a Service or there is a small increase in the price of a call.

28.3 Unless a change falls under clauses 28.3 or 29, if an amendment to these Core Terms will have more than a minor impact on You, We will give You individual notice 30 days prior to the amendment taking affect by bill message, bill insert, direct mail or email. Additionally, you may elect to cancel Your Service without incurring any early termination fees or other penalty and without being bound by the change, and we will consider refunding You any upfront costs You have incurred in connecting Your Service.

28.4 We can change any Core Terms that applies to your service:

28.4.1 if we are required by law to make the change;

28.4.2 if changes are required to implement a tax that is imposed by law; and

28.4.3 for security or technical reasons.

28.5. We will try to tell You before a change occurs under this clause 28.4 by any method, we consider reasonable in the circumstances. However, sometimes, due to the nature of the change, we may not be able to tell You beforehand but we will give as much warning as We reasonably can.

29. CHANGES TO CONTENT/PREMIUM SERVICES, INTERNATIONAL CALLS

29.1 If the Change is detrimental to you; and

29.1.1 it relates to a content or premium Service provided by a third party; and

29.1.2 it is required by the third party or a regulator we will give notice to you if you have used the content or premium Service within the previous six months, and you may terminate the content or premium Service without penalty until 42 days after the Change takes effect, but you may not terminate other Services or your whole Contract.

29.2 If the Change relates to Charges for international calls or roaming services, and results from changes made by an Other Supplier, you cannot terminate your Contract or Service.

30. PERSONAL INFORMATION

30.1 We will comply with the Privacy Act when dealing with your personal information.

30.2 Our privacy policy can be viewed on our website. Alternatively, a copy can be obtained by calling Customer Service.

31. OUR OBLIGATIONS AND LIABILITY

31.1 Non-excludable Consumer rights Consumers, as defined under various consumer protection Laws, have rights that cannot be excluded, and cannot be limited, or can only be limited in certain ways. These rights are in addition to, and not instead of, other rights you may have. These rights include, but are in no way limited to, the right to a refund or rebate for significant interruptions to a Service or a right to terminate your Contract for prolonged or repeated interruptions.

31.2 Personal, domestic or household goods If we supply you with Sold Equipment or other goods of a kind ordinarily acquired for personal, domestic or household use or consumption:

31.2.1 they come with non-excludable warranties, including that we are the rightful owner, the goods are reasonably fit for their purpose, are not damaged, and match any description or sample;

31.2.2 you are entitled, at your option, to a refund, repair or replacement for a breach of those warranties and to compensation for any other loss; and

31.2.3 there is no limitation on our liability for breach of those warranties. These warranties are separate from any manufacturer's warranty.

31.3 Personal, domestic or household Services If we supply you with Services of a kind ordinarily acquired for personal, domestic or household use or consumption:

31.3.1 they come with non-excludable warranties, including that they will be provided with due care and skill and be reasonably fit for their purpose;

31.3.2 you are entitled, at your option, to a refund or service redelivery for a breach of those warranties and to compensation for any other loss; and

31.3.3 there is no limitation on our liability for breach of those warranties.

31.4 Goods under $40,001 If we supply you with Sold Equipment or other goods not of a kind ordinarily acquired for personal, domestic or household use or consumption but that have a cash price under $40,001:

31.4.1 they come with non-excludable warranties, including that we are the rightful owner, the goods are reasonably fit for their purpose, are not damaged, and match any description or sample, but

31.4.2 our liability for breach of those warranties is limited, at your option, to:

a) replacing the goods (or paying the cost of doing so),

b) supplying equivalent goods (or paying the cost of doing so),

c) repairing the goods (or paying the cost of doing so).

These warranties are separate from any manufacturer's warranty.

31.5 Services under $40,001 If we supply you with Services not of a kind ordinarily acquired for personal, domestic or household use or consumption but that have a cash price under $40,001:

31.5.1 they come with non-excludable warranties, including that they will be provided with due care and skill and be reasonably fit for their purpose, but

31.5.2 our liability for breach of those warranties is limited, at your option, to re-supplying the Services (or paying the cost of doing so).

31.6 Manufacturer's and importer's liability

31.6.1 In addition to our statutory warranties and in addition to any manufacturer's warranty, the Competition and Consumer Act requires the manufacturer or importer to compensate you for any loss if goods we supply you are, for example, not reasonably fit for their purpose.

30.6.2 In such a case, you may have the option of seeking compensation from the manufacturer / importer or from us.

31.7 Negligence

If we are negligent in our supply of Services to you and our negligence in supplying Services causes personal injury, death or damage to your property (Negligence Loss) we accept liability for our negligence, but:

31.7.1 we are not liable for a Negligence Loss to the extent that it was caused, or contributed to, by you or a third party who is not our employee or agent, or by Force Majeure; and

31.7.2 Other than any rights you may have under Law, we are not liable for any loss of profits or anticipated savings, economic loss, loss of data or any indirect or consequential damages that you may suffer.

31.8 Breach of Contract If we breach your Contract and our breach causes personal injury, death or damage to your property (Contract Loss) we accept liability for our breach, but:

31.8.1 we are not liable for a Contract Loss to the extent that it was caused, or contributed to, by you or a third party who is not our employee or agent, or Force Majeure;

31.8.2 we are not liable for a Contract Loss to the extent that you could reasonably have avoided or reduced it; and

31.8.3 Other than any rights you may have under Law, we are not liable for any loss of profits or anticipated savings, economic loss, loss of data or any indirect or consequential damages that you may suffer.

31.9 Corporate Customers

31.9.1 In this clause 'Year' means a year (or shorter period at the end of the Term) starting on the commencing date of the Term or an anniversary of that date.

31.9.2 If you are a Corporate Customer, in spite of anything else in your Contract, our aggregate liability to you for all Claims:

a) first made during any Year of the Term – is limited to the aggregate Charges you have paid us for Services delivered during that Year; and

b) first made after the Term – is limited to the aggregate Charges you have paid us for Services delivered during the final Year of the Term.

31.9.3 No Claim may be made more than 12 months after it arises.

32. NO LIABILITY

32.1 Subject to clause 31, except to the extent that it arises from our breach of your non-excludable consumer rights, explained above, we have no liability to you or to any other person:

32.1.1 for faults or defects in Services which are caused to any material extent by your conduct, breach of your Contract or your misuse of a Service;

32.1.2 because Services are incompatible with other telecommunications goods or services that you obtain (whether from us or a third party) or cause malfunctions in each other; or

32.1.3 for or in relation to an event, situation or circumstance that, subject to clause 31:

a) cannot readily be anticipated;

b) is beyond our reasonable control; and

c) impairs or prevents a Service; or

d) other than any rights you may have under Law, for any loss of profits or anticipated savings, economic loss, loss of data or any indirect or consequential loss or damage that you may suffer.

33. NUMBERS

34.1 We will comply with Telecommunications Numbering Plan and instruments made under it (Numbering Plan) which sets out rules for issuing, transferring and changing telephone numbers.

34.2 You have no Claim against us arising from anything we do in accordance with the Numbering Plan, including changing or withdrawing a previously allocated number.

34.3 You must not knowingly and deliberately:

34.3.1 do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it; or

34.3.2 relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

34.4 You obtain no proprietary rights in relation to any number allocated to you, and (subject to cases 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.

34. MISUSE OF A SERVICE

35.1 If you, anyone acting with your authority, or anyone for whose actions you are liable under Law uses a Service in breach of your Contract, or in breach of our reasonable and lawful directions (that are consistent with your rights under your Contract), or in breach of Law, and we suffer harm as a result, then you must compensate us for the harm; except to any extent we increased the harm by our own negligence, default or unlawful act or omission.

35. INDEMNITY

36.1 If a party (Breaching Party) breaches your Contract, and the breach results in harm to the other party (Harmed Party) then the Breaching Party must compensate the Harmed Party for that harm except to the extent that:

36.1.1 the Harmed Party caused or contributed to the harm; or

36.1.2 your Contract limits or excludes the Breaching Party's liability for that harm.

36. ASSIGNMENT AND SUB-CONTRACTING

37.1 We may assign our rights under your Contract (including our right to receive payment of Charges).

37.2 We may assign the whole of our interest in your Contract (including our obligations) to a reputable, creditworthy third party who agrees to be bound by your Contract in the same way as us.

37.3 We may sub-contract the performance of any of our obligations, but we remain responsible for them.

37.4 You may only transfer or assign any of your rights under your Contract with our prior written consent, which consent may not be unreasonably withheld or delayed in the case of a person whom we would accept as a customer in the ordinary course.

37. INTELLECTUAL PROPERTY

38.1 You acknowledge that (subject where applicable to the rights of Other Suppliers) we are the owner of all intellectual property rights, present and future, in all things related to Our System or to the Services, including improvements developed at any time (whether or not those improvements are developed by or at your request). To the extent necessary to give effect

to this clause, you assign and will assign to us all of your interest in such intellectual property rights and will do all things reasonably necessary to give effect to such assignment.

38.2 This clause does not require you, in relation to communications between end users, to assign, license or otherwise transfer your intellectual property rights to us in a manner that exceeds the intellectual property rights we reasonably require to supply the relevant Service or to perform our obligations under your Contract.

38. CONFIDENTIAL INFORMATION

39.1 Each party agrees to keep in confidence and must not use or disclose any Confidential Information of the other party, except for the purpose for which it is disclosed. This clause will not prevent us disclosing any information to anyone undertaking due diligence enquiries or the like in relation to transactions and to which we are a party.

39.2 This clause does not limit your right to make a complaint or a Claim to a competent body authorised to consider the complaint or Claim.

39. NOTICE

40.1 We may give you any notice (which need not be signed):

40.1.1 by delivering it to you in person, or in the case of a corporation, by posting or delivering to your registered office;

40.1.2 by sending it to your fax number, to your email address (if you have agreed), or to your street or postal address specified in an application or otherwise notified by you to us (whether or not that address is the billing address);

40.1.3 (if you have agreed) to an email address allocated to you by us;

40.1.4 by including it in or with a bill (on paper, electronic or other medium); or

40.1.5 in relation to Pre-Paid Services, by making it available and informing you how to obtain it.

40.2 A notice is duly given:

40.2.1 if delivered – at the time of delivery;

40.2.2 if given by telephone call – on completion of the call;

40.2.3 if posted by mail – at 10:00 am one Business Days after posting;

40.2.4 if emailed by us – 4 hours after sending;

40.2.5 if posted on our website – 4 hours after posting; or

40.2.6 if faxed – when the sender's fax machine indicates a successful transmission.

40.3 Unless otherwise specified, a notice to us must be in writing delivered or sent by mail addressed to: Legal Services, Level 5, 20 Bond Street Sydney NSW 2000

40.GENERAL

41.1 If a provision of your Contract is illegal, unenforceable, or invalid, it will be severed and the remaining provisions will not be affected.

41.2 Our failure or delay in enforcing any right under your Contract does not necessarily mean that right has been waived.

41.3 Your Contract is exclusively governed by and subject to the Law of Australia, and you and we must comply with the Law of Australia in connection with it.

41.4 Where it is necessary to identify governing State or Territory Law for your Contract, or which courts have jurisdiction with respect to it, you may choose the governing Law of the State or Territory in Australia in which you ordinarily reside and/or the non-exclusive jurisdiction of the courts in that State or Territory.

41.5 In addition to services we provide on our own network, Hypernet supplies telecommunications services through a number of wholesale service partners.

Hypernet Pty Ltd

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