



Pivotel Mobile Pty Limited

ABN 43 116 239 813

**STANDARD AGREEMENT
FOR THE SUPPLY OF
INTEGRATED SATELLITE
AND CELLULAR MOBILE SERVICE**

INDEX

Dictionary

PART A – Service Description

PART B – Pivotel Mobile Call Plans

PART C – General Terms and Conditions

PART D – Service Specific Terms and Conditions

Customer Enquiries call **1300 882 448** or visit the web site at

www.pivotel.com.au

National Relay Number

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DICTIONARY

1.1 Definitions

4G Compatible Device means a device for use with a 4G Service.

4G Service means a Service provided using a public mobile telecommunications network that utilises Universal Mobile Telecommunications Service as standardised by the European Technical Standards Institute.

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Access Charge means charges applied to access the Service. For the avoidance of doubt, they may be charged on a monthly or annual basis, may be charged either in advance or in arrears, and may be charged either on a prorated or not prorated basis for the period of access granted to the Service.

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

Agreement means this Standard Agreement, comprising this Dictionary, Part A – Service Description, Part B – Pivotal Mobile Call Plans, Part C – General Terms and Conditions, and Part D - Service Terms and Conditions, which forms the entire agreement between Pivotal Mobile and the Customer.

Call includes without limitation Voice, Messaging or Data Call Types or a combination of those Call Types as the case may dictate.

Call Plans means call plans for the Service, as set out in Part B of this Agreement.

Call Rates means the call rates for a Call Plan.

Call Type means the type of usage used in conjunction with the Service. Applicable categories of call types used in conjunction with the Service include Voice, Messaging and Data call types.

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

Claim means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.

CLI means calling line identification.

Compatible Device means a device compatible with the specific Service Network with which it is intended to be used.

Complaint has the meaning set out in the TCP Code.

Complaint Handling Policy means the policy for handling Complaints developed by Pivotel Mobile in accordance with the requirements of the TCP Code.

Confidential Information means all confidential information about the Service, Pivotel Mobile, its Related Bodies Corporate, the Network, or the Customer, which is or has been disclosed under or in connection with this Agreement or learnt or acquired in the performance of this Agreement, other than any such information which:

- (a) was in the public domain at the time of its provision, otherwise than through a disclosure in breach of this agreement; or
- (b) is or lawfully came into the possession of the other party otherwise than as a result of a disclosure in breach of this agreement.

Connection means the activation of the Service. **Connected** has a corresponding meaning.

Consequential Loss includes:

- (a) indirect loss and special damages;
- (b) loss of revenue;
- (c) loss of profits;
- (d) loss of business;
- (e) loss of anticipated savings;
- (f) loss of goodwill;
- (g) loss of data;
- (h) claims of third parties; and
- (i) loss or costs associated with any of the above.

Content means any data or other digital material created, transmitted, distributed or displayed by You when using the Services.

Contract Term in respect of a Call Plan means the applicable contract term specified in Part B of this Agreement.

Credit Limit means the maximum credit, where applicable, provided by Pivotel Mobile to the Customer for the Service.

Customer means the person who uses the Service.

Customer Authorisation Form means a form authorising a phone number to be ported.

Data in the context of a Call Type, means a service designed to transfer data over IP between end users or applications. Data services are normally charged both for data received on the Service Network (downloads), and data sent on the Service Network (uploads). Data charges may apply in addition to the charges for use of any other Call Types which rely on data services for their operation.

Disconnection means the disconnection of a Connection. **Disconnected** has a corresponding meaning.

Fair Use Policy means the policy for fair use of the Cellular Service set out in Part D.

Financial Institutions has the meaning set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Free and Local Rate Numbers means numbers which when dialled from a PSTN network in Australia are free (1800 dialled prefix), or a supplied at the rate for a local call (13/1300 dialled prefix). For the avoidance of doubt, unless expressly stated by Pivotal Mobile calls to these numbers using the Cellular Service will be charged at the rates set out in the Call Plan.

Gateway means a ground station communicating with a satellite and being part of a Satellite Service Network that switches and receives or transmits calls, messages or usage for the Service.

GST means any tax on goods or services and other things in force in Australia from time to time under the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* (Cth) as varied or replaced from time to time.

GST Rate means the prevailing rate of GST payable in accordance with the GST Legislation.

Included Call Value means the value of Call Charges included within the Minimum Monthly Fee for a Call Plan as the case dictates. For the avoidance of doubt, the Included Call Value may include various categories of usage including Voice Calls, Messaging Calls or Data Calls. In some Call Plans, the Included Call Value may be broken out into different categories based on the Call Type.

Included Usage has the same meaning as Included Call Value.

Insolvency Event means the happening of any of the following events in relation to a party:

- (a) if a natural person, it becomes bankrupt or insolvent;
- (b) if a company:

- (i) a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, or receiver and manager or similar officer is appointed in respect of it;
- (ii) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganisation, moratorium or other administration, involving its creditors or a class of its creditors;
- (iii) it enters into a deed of company arrangement;
- (iv) it resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to so resolve, except by way of bona fide solvent reconstruction or amalgamation on terms approved by the other party;
- (v) it suspends payments of its debts generally; or
- (vii) it is or becomes unable to pay its debts when they are due or becomes unable to pay its debts within the meaning of the *Corporations Law*, or is presumed to be insolvent under the *Corporations Law*.

IP means Internet Protocol.

Law means any:

- (a) legislation, regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) government agency requirement or authorisation (including any conditions of any authorisation);
- (d) mandatory codes, standards and guidelines;
- (e) writ, order, injunction or judgement; or
- (f) local government legislation including regional, district and zone plans, regulations, by-laws, declarations and other subordinate legislation.

Non-excludable Rights means rights and remedies conferred on a party by the *Consumer and Competition Act 2010* (Cth) and similar legislation which cannot be excluded, restricted or modified.

Messaging in the context of a Call Type, includes without limitation short message services (SMS) and multi-media messages (MMS).

Minimum Monthly Fee means the minimum monthly fee payable by a Customer Connected to a Call Plan.

nbn™ Satellite Charges means the charges for the use of the nbn™ Satellite Service.

nbn™ Satellite Network means the constellation of satellites owned and operated by nbn co limited and associated ground based infrastructure used by Pivotal Mobile and its Related Bodies Corporate to provide the Service within the coverage area.

nbn™ Satellite Service means the satellite telecommunications service provided using the nbn™ Satellite Network as described in Part A.

Non-Standard Installation is an installation that is unusually complex, or requires significant additional cabling or an extended mast.

PATT App means the software program that can be downloaded and installed on Apple iOS or Android devices which allow users to use the PATT Service

PATT Charges means the charges for the use of the PATT Service.

PATT Network means the PATT App, IP voice and messaging infrastructure and interconnect owned, operated and used by Pivotal Mobile and its Related Bodies Corporate to provide the PATT Service over IP based networks.

PATT Service means the IP based voice and messaging service provided by Pivotal Mobile as described in Part A.

PIN means the personal identification number used by a Customer to access the Service, or any part of the Service.

Pivotal 4G Charges means the charges for the use of the Pivotal 4G Service.

Pivotal 4G Network means the 4G infrastructure owned, operated and used by Pivotal Mobile and its Related Bodies Corporate to provide the Service within the coverage area.

Pivotal 4G Service means the mobile telecommunications service provided using the Pivotal 4G Network and as described in Part A.

Pivotal Mobile means Pivotal Mobile Pty Limited ABN 43 116 239 813.

Pivotal Mobile Call Plans means the various Call Plans available to eligible Customers, as set out in Part B of this Agreement.

Privacy Act means the *Privacy Act 1988* (Cth) as varied or replaced from time to time.

Privacy Policy means the privacy policy of Pivotal Mobile as varied or replaced from time to time, and made available to Customers by contacting Pivotal Mobile Customer Care on 1300 882 448 or by download from the website www.pivotal.com.au.

Re-connected means the re-activation of a Connection which has been Disconnected.

Related Body Corporate has the meaning given to the term in the *Corporations Law*.

Service means the Satellite Service incorporating the 4G Service as the context dictates, and for the avoidance of doubt, excludes any roaming or pre-paid service.

Service Network means the Pivotel 4G Network, and the nbn™ Satellite Network.

SIM means the subscriber identity module card.

Special Services means special services available with the Service to approved Customers, as described in Part A of this Agreement.

Standard Agreement has the meaning given to the term by Part 23 of the Act.

Tax Invoice means an invoice which complies with the requirements for such an invoice under the GST Legislation.

Taxable Supply has the meaning given in the GST Legislation.

TCP Code means C628:2016 *Telecommunications Consumer Protection Code* registered by ACMA on 1 September 2012.

TIO means the Telecommunications Industry Ombudsman.

Unreasonable Use has the meaning set out in Part D.

Value Added Services means the value added services as described in Part A of this Agreement.

Voice in the context of a Call Type, means a service designed to transfer voice over a voice channel between end users using digital or analogue voice codecs. Outbound voice Calls are usually made by direct dialling a telephone number, and inbound voice Calls are usually received by answering a voice Call which has dialled the Customer's telephone number. For the sake of doubt, VOIP calls are Voice Call Types.

VOIP means voice over IP, and in the context of a Call Type, is a Data service designed to transfer voice over a Data channel between end users. VOIP calls are usually made by using a software application on the handset in conjunction with a Data service to transfer voice as Data between end users.

VSAT means very small aperture terminal.

VSAT Terminal means a fixed satellite telecommunications terminal used in conjunction with the nbn™ Satellite Network as described in Part A.

You means the Customer entering into this Standard Form of Agreement. **Your** and **Yourself** have a corresponding meaning.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and visa versa;
- (c) all references to dollars, value and price are to the Australian currency;
- (d) references to a party includes its successors and permitted assigns;
- (e) references to payment to any party includes payments to another person on the direction of that party; and
- (f) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.

PART C - GENERAL TERMS AND CONDITIONS

1. THE SERVICE

1.1 Pivotal Mobile supplies You with the Service on the terms and conditions set out in this Agreement.

1.2 Pivotal Mobile will take all reasonable steps to make sure that You can receive the Service. However, You acknowledge that:

- (a) the Service is not free from faults or interruptions;
- (b) You may not be able to use the Service in some areas, or in some buildings, or at certain times;
- (c) Pivotal Mobile does not warrant currency, availability, accuracy, security or the quality of any information which You receive or can access using the Service;
- (d) You are responsible for any reliance on or use of the information which You receive or can access using the Service; and
- (e) the Service can only be used in areas where the Service Network is present.

1.3 Subject to the *Telecommunications Numbering Plan 2015* (Cth), and national regulatory policy on numbering:

- (a) Pivotel Mobile may allocate a number to Your Service and vary that number; and
- (b) You have not, and You cannot claim any legal interest or goodwill in any number or PIN allocated by Pivotel Mobile.

2. YOUR OBLIGATIONS

2.1 You must:

- (a) keep the SIM safe and in good condition;
- (b) return the SIM to Pivotel Mobile immediately upon request;
- (c) notify Pivotel Mobile immediately of loss of, or damage to, a SIM;
- (d) use the spend control tools provided by Pivotel Mobile, and otherwise diligently monitor Your Call usage so that You do not overcommit Yourself financially;
- (e) pay Pivotel Mobile all fees and charges which are incurred in Your use of the Service, as set out in Part A and Part B of this Agreement and all applicable government taxes, duties, imposts or levies such as GST;
- (f) comply with all Laws concerning use of the Service;
- (g) give Pivotel Mobile all information and co-operation it may require in relation to the Service;
- (h) not resell, distribute or reproduce any part of the Service;
- (i) notify Pivotel Mobile as soon as You becomes aware of any claim You may have against Pivotel Mobile in relation to the Service.

2.2 You must not:

- (a) disclose to any person any Confidential Information or security number provided by Pivotel Mobile (including but not limited to Your enquiry number, barring number or PIN); or
- (b) use the Service for any improper, immoral, unauthorised or unlawful purpose or allow any other person to use the Service for such purposes; or
- (c) resupply the Service to any other person without Pivotel Mobile's prior written approval, which approval may be withheld by Pivotel Mobile in its sole discretion; or
- (d) use the CLI or information derived from the CLI except in accordance with the Act; or
- (e) place, attempt or accept a reverse charge call using the Service.

3. SERVICE SUSPENSION, LIMITATION OR TERMINATION

- 3.1 Subject to applicable Law, Pivotal Mobile may, in its absolute discretion suspend, limit or terminate the provision of the Service if:
- (a) Pivotal Mobile gives You thirty (30) days written notice of its intention to do so, provided only that You have been Connected for a period exceeding the Contract Term; or
 - (b) You exceed the Credit Limit; or
 - (c) You are in breach of this Agreement; or
 - (d) a regulatory authority such as the ACMA or ACCC instructs Pivotal Mobile to do so; or
 - (e) there are technical problems with the Service Network which require corrective action by Pivotal Mobile; or
 - (f) the use of the Service by any person including You might damage the Service Network; or
 - (g) You, or someone acting on Your behalf, informs Pivotal Mobile that You have lost a SIM, handset or device used with the Service; or
 - (h) Pivotal Mobile has an incomplete record of information about You; or
 - (i) Pivotal Mobile reasonably suspects that its record of information about You contains materially incorrect or incomplete information; or
 - (j) You:
 - (i) die;
 - (ii) are a partner in a partnership, and the partnership dissolves; or
 - (iii) suffer an Insolvency Event;
 - (k) Pivotal Mobile reasonably believes that the Service is being used to commit unauthorised, criminal or unlawful activities; or
 - (l) Pivotal Mobile reasonably believes that You have engaged in fraudulent activities in relation to a Service provided by Pivotal Mobile; or
 - (m) Pivotal Mobile reasonably believes that You have resupplied the Service to another person without Pivotal Mobile's prior written approval; or

- (n) Pivotal Mobile is required by law to do so, or is requested to do so by a law enforcement agency; or
 - (o) Pivotal Mobile is required to do so under any agreement with a third party or because a telecommunications service is unavailable from a third party; or
 - (p) if You port out a phone number.
- 3.2 Where Pivotal Mobile suspends, limits or terminates the Service under clause 3.1 (b)-(o), Pivotal Mobile will use its reasonable endeavours to provide notice to You.
- 3.3 Pivotal Mobile will promptly suspend the Service if informed by You or someone acting on Your behalf that a SIM, handset or device used with the Service has been lost or stolen. However, You are responsible for all Call charges incurred up to the suspension of the Service.
- 3.4 Pivotal Mobile may suspend or limit the Service provided to You if, in Pivotal Mobile's reasonable opinion, the amount of Call charges accrued on Your account is unusually high. In making this determination, Pivotal Mobile may have regard to matters including:
- (a) Your previous average daily Call spend;
 - (b) the total of Your unbilled Call charges; and
 - (c) any unusual Call spending patterns.

4. DISCLOSURE OF INFORMATION BY PIVOTEL MOBILE

- 4.1 Pivotal Mobile and/or its agents and service providers may collect Your personal information. Pivotal Mobile collects Your personal information to provide You with personalised services. Pivotal Mobile may use Your personal information for purposes that are related to providing You with those services which would be reasonably expected by You (including for the purpose of keeping You informed about the features of Pivotal Mobile's services or conducting analysis in order to provide a better service to You).
- 4.2 Pivotal Mobile will provide You with access to Your personal information in accordance with the Privacy Act and the Privacy Policy.
- 4.3 Pivotal Mobile may receive and disclose personal information or documents about You to or from:
- (a) credit providers or credit reporting agencies for purposes permitted under the Privacy Act;
 - (b) law enforcement agencies to assist them in the prevention of criminal activity; or

- (c) Financial Institutions for the purpose of preventing fraud and to assist in fraud investigation; or
 - (d) our service and content providers, Authorised Dealers and agents, or any company within the Pivotel Mobile group for purposes that are related to providing you with a telecommunications service which would be reasonably expected.
- 4.4 Unless You consent, Pivotel Mobile will not disclose Your personal information to third parties, other than those who have contracted with Pivotel Mobile to keep the information confidential, or who are subject to obligations to protect Your personal information.
- 4.5 You acknowledge that any calls made to Pivotel Mobile's customer call centre may be recorded for quality assurance purposes.

5. TERMINATION

- 5.1 Pivotel Mobile can terminate this Agreement in accordance with clause 3.1.
- 5.2 Subject to Part D, You may terminate this Agreement at any time upon giving written notice to Pivotel Mobile. If You wish to terminate the Agreement before the completion of the Contract Term, You must pay an early termination fee as set out in Part A.
- 5.3 Subject to Part D, when issued a notice of a material adverse change by Pivotel Mobile, You may terminate this Agreement during the period specified in the material adverse change notice.
- 5.4 You acknowledge that a request to port out a phone number does not result in termination of this Agreement. Subject to Pivotel Mobile's termination rights, Pivotel Mobile may assign a new number to the relevant Connection.

6. OBLIGATIONS ON TERMINATION

- 6.1 On termination of this Agreement, You must:
- (a) return all property to Pivotel Mobile to which Pivotel Mobile has rights (including but not limited to the SIM), whether under this Agreement or under the general law; and
 - (b) pay all amounts due to Pivotel Mobile under this Agreement.
- 6.2 On termination of this Agreement, Pivotel Mobile must refund to You any monies held on account for You after any of Your debts and liabilities have been met under clause 6.1. Pivotel Mobile, in its absolute discretion, may set-off any amounts payable to You until You pay Pivotel Mobile all due amounts.

7. ASSIGNMENT

- 7.1 You must not transfer or assign any rights and obligations under this Agreement without the prior written permission of Pivotal Mobile.
- 7.2 If Pivotal Mobile sells or otherwise reorganises its business such that the Services will be supplied by a substantially different Supplier, or using a different Service Network (**Transfer**), Pivotal Mobile must issue notice to You before Your Service is Transferred informing You:
- (a) that the Service will be Transferred to a new Supplier or Service Network, and the contact details for that new Supplier if relevant;
 - (b) any material adverse impact to Your use of the Services, or any equipment used to access the Services expected as a result of the Transfer;
 - (c) when the Transfer is likely to be effected;
 - (d) the contact details for lodging an enquiry or Complaint about the Transfer; and
 - (e) Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.
- 7.3 Pivotal Mobile will use reasonable efforts to notify you of the completion of the Transfer on the day on which it occurs.

8. REPRESENTATIONS & WARRANTIES

- 8.1 You represent and warrant that:
- (a) You have provided full and accurate personal information to Pivotal Mobile in connection with this Agreement;
 - (b) You have full power and authority to enter into this Agreement; and
 - (c) You will take all necessary action to execute, deliver and perform this Agreement in accordance with the terms.
- 8.2 Pivotal Mobile represents and warrants that:
- (a) it is a carriage service provider under the Act; and
 - (b) subject to the terms and conditions of this Agreement, it will provide the Service with all reasonable care and in a timely manner.

9. YOUR RIGHTS

- 9.1 You have rights including the Non-excludable Rights.

- 9.2 If You have a complaint about the Service (the **Complaint**), You must in the first instance attempt to resolve the Complaint with Pivotel Mobile by contacting Pivotel Mobile customer care on 1300 882 448 [free call when using the Service], or by email to mail@pivotel.com.au, or by writing addressed to Pivotel Mobile Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.
- 9.3 In all cases, Pivotel Mobile will acknowledge the Complaint in accordance with the TCP Code, and issue a unique reference number to enable You and Pivotel Mobile to track the subject matter of the Complaint to resolution.
- 9.4 Pivotel Mobile must attempt to resolve the Complaint in accordance with the Complaint Handling Policy, and the requirements of the TCP Code.
- 9.5 If the Complaint is not resolved after contacting Pivotel Mobile in accordance with clause 9.2, You may contact the TIO by calling 1800 062 058, or visiting their website at www.tio.com.au, by sending a fax to 1800 630 614, or by writing the TIO at PO Box 276, Collins Street West, VIC 8007, or You can contact the ACCC or the Office of Fair Trading in the Customer's relevant State or Territory.

10. TITLE

Except for any SIM, property in any goods which You take possession of under this Agreement passes to You on the first payment by You of monies to Pivotel Mobile unless otherwise provided by the Part D.

11. LIMITATION OF LIABILITY

- 11.1 To the full extent permitted by law and subject to clause 11.3, Pivotel Mobile excludes all liability including any Consequential Loss under or in connection with this Agreement or the supply of the Service except to the extent that You suffer direct loss or damage (excluding Consequential Loss) as a result of any negligent act or omission of Pivotel Mobile under or in connection with this Agreement.
- 11.2 Notwithstanding clause 11.1, Pivotel Mobile's maximum liability under or in connection with this Agreement or the supply of the Service will not exceed the total of the fees and charges paid by You under this Agreement:
- (a) if the time between the commencement date of this Agreement and the date of the Claim is 6 months or more - during the 6 month period immediately preceding the date of the Claim; or
 - (b) if the time between the commencement date of this Agreement and the date of the Claim is less than 6 months - during the period from the commencement date of this Agreement to the date of the Claim.
- 11.3 Non-excludable Rights
- (a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure

and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

- (b) Pivotel Mobile does not exclude any Non-excludable Rights including without limitation the guarantees set out in clause 11.3(a), but does exclude and You cannot rely on all other conditions, representations and warranties implied by custom, law or statute other than those expressly contained in this Agreement.
- (c) Pivotel Mobile's liability in respect of any Non-excludable Right is limited, at Pivotel Mobile's option, to:
 - (i) in the case of goods,
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of the goods;
 - C. the payment of the cost of replacing the goods or acquiring equivalent goods;
 - D. the payment of the cost of having the goods repaired.
 - (ii) in the case of services,
 - A. the supply of the services again; or
 - B. the payment of the cost of having the services supplied again.

12. INDEMNITY

- 12.1 You indemnify Pivotel Mobile against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which Pivotel Mobile pays, suffers or incurs, or is liable for in respect of the Your use of the Service or the Service Network.
- 12.2 Clause 12.1 does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Pivotel Mobile pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of Pivotel Mobile.
- 12.3 The indemnity in this clause 12 is a continuing obligation of You which will continue despite:
 - (a) any settlement of account;
 - (b) the termination of this Agreement; or
 - (c) the occurrence of any other thing,

and remains in full force and effect until all monies owing by You to Pivotal Mobile have been paid in full.

13. PROHIBITION & ENFORCEABILITY

- 13.1 Any provision of, or the application of any provision to, this Agreement or a right, power, authority, discretion or remedy of a party under this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 13.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of the remaining provisions in that or in any other jurisdiction. The application of this clause 13 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

14. WAIVER

- 14.1 Pivotal Mobile may not waive any right under this Agreement except in writing.
- 14.2 A waiver by Pivotal Mobile will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- 14.3 A failure or delay in enforcing a right under this Agreement does not constitute a waiver.

15. VARIATION

- 15.1 Pivotal Mobile may vary any term of this Agreement at any time in writing.
- 15.2 In circumstances where a variation of this Agreement is likely to have a material adverse change, Pivotal Mobile will notify You in advance of any such variation. The notice given by Pivotal Mobile for a material adverse change to your Service will set out Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.
- 15.3 If you do not terminate the Agreement within the material adverse change notice period, you will be deemed to have accepted the variation and be bound by the terms of the Agreement as varied.

16. STANDARD FORM OF AGREEMENT

This Agreement constitutes a Standard Form of Agreement with the meaning of the Act.

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement is governed by the laws of New South Wales.

17.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

18. AGENCY

18.1 You appoint Pivotal Mobile as Your agent for the purposes of completing a Customer Authorisation Form on Your behalf.

PART D – SERVICE SPECIFIC TERMS AND CONDITIONS

1. COMMENCEMENT AND TERMINATION

- 1.1 This Agreement starts when Your Service is first Connected to the Service Network, and terminates when Your Service is Disconnected from the Service Network.

2. FEES AND CHARGES

- 2.1 Pivotal Mobile will invoice You once every month, and You must pay all outstanding amounts not more than 14 days from the date of the invoice.
- 2.2 Pivotal Mobile may bill You using a billing agent (which may be another Pivotal Group company)
- 2.3 The invoice which Pivotal Mobile provides to You will be in a standard form. If You require a different form of invoice, You must pay any applicable charges.
- 2.4 Pivotal Mobile may vary its fees and charges from time to time. You acknowledge that before entering into this Agreement You have seen a copy of Pivotal Mobile's current fees and charges. You may obtain a copy of Pivotal Mobile's current fees and charges, by contacting Pivotal Mobile at any time.
- 2.5 You must remain Connected to the Service Network for the Contract Term or pay an early termination fee set out in Part A.
- 2.6 If Pivotal Mobile imposes a Credit Limit and You exceed the Credit Limit, Pivotal Mobile may suspend or limit the Service until You pay all outstanding fees and charges.
- 2.7 Pivotal Mobile may require You to pay a security deposit if You intend to use Value-Added Services. If You pay Pivotal Mobile a security deposit, Pivotal Mobile may apply the deposit, or any part of it, in payment of any outstanding fees and charges for the Service.
- 2.8 Pivotal Mobile may require You to pay its accounts by direct debit or registered credit card for the term of this Agreement. You must not cancel that direct debit or credit card authority, without Pivotal Mobile's agreement in writing. If You cancel the direct debit or credit card authority in breach of this clause, Pivotal Mobile may exercise its rights under Part C, and You will become liable for any extra charges determined by Pivotal Mobile in accordance with Part A.
- 2.9 Pivotal Mobile may pay an Authorised Dealer or agent a commission for introducing You to the Service.

3. YOU ARE RESPONSIBLE FOR MONITORING CALL CHARGES

- 3.1 You have a personal responsibility to monitor Your use of the Services to ensure that You do not overcommit yourself financially. You are liable for all Calls made or received using Your Service.
- 3.2 To assist You to monitor Your own use of the Services, Pivotel Mobile provides a 24x7 secure online facility providing You with access to Your billed and unbilled Call usage. The facility is known as Selfcare and can be accessed at www.pivotel.com.au/selfcare.
- 3.3 Alternatively You can contact Pivotel Mobile customer care on 1300 882 448 [free call when using the Service], or by email to mail@pivotel.com.au, or by writing addressed to Pivotel Mobile Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.
- 3.4 Pivotel Mobile will use reasonable efforts to contact You when we discover abnormal usage or a significantly higher pattern of usage. In accordance with Part C and this Part D, we may suspend or limit Your Service if we cannot contact You promptly. You should not rely solely on Pivotel Mobile to contact You about high Call usage, as You have a personal responsibility to control Your financial commitment to Pivotel Mobile.
- 3.5 Call records are normally received within 48 hours of the Calls being made or received. In some circumstances, such as temporary system delays, the Call records may take longer to process and appear in Pivotel Mobile's billing system. Call records for Special Calls may take up to seven (7) days before they are available in Pivotel Mobile's billing system. You must monitor Your ongoing use of the Services, keeping in mind the normal delays in Pivotel Mobile receiving and processing Call records from the Service Networks, from premium services providers, and from overseas networks.

4. CUSTOMER DISCONNECTION FROM PIVOTEL MOBILE

- 4.1 You must not Disconnect from the Service Network until:
 - (a) the Contract Term has expired, or You have given written notice of termination and paid the early termination fee set out in Part A; and
 - (b) You have otherwise satisfied the terms of this Agreement.
- 4.2 If You wish to be Disconnected from the Service Network at the end of the Contract Term, or at any time after the Contract Term, You must provide Pivotel Mobile with formal notice. Formal notice to disconnect can be in written form or by calling Pivotel Mobile customer care on 1300 882 448. A notice to disconnect can only be made by You or a previously authorised representative. On receipt of such notice, the Connection will be Disconnected at or prior to the conclusion of the Customer's current monthly billing cycle for the Service.

5. PROHIBITION ON RESUPPLY

- 5.1 You must not resell or resupply the Service to any person.

6. USE OF THE SERVICE

6.1 You must not use the Service:

- (a) in contravention of any Law; or
- (b) in any manner that is indecent, obscene or otherwise offensive, menacing, threatening or abusive; or
- (c) in any manner that is defamatory or tortious or infringes the rights of any third party; or
- (d) in a way that interferes with the use of the Services by other customers of Pivotal Mobile, or the relevant Service Network.

6.2 You agree that the following terms and conditions apply to Your use of the relevant Service Network:

- (a) You are responsible for all equipment and software necessary to use the relevant Service Network, as well as for the security and integrity of any information You transmit or receive; and
- (b) You acknowledge that Pivotal Mobile does not check and is not obligated to monitor the content of information or material available from the relevant Service Network or the Internet, and that Pivotal Mobile is not liable for Loss suffered by You or any other person as a result of using information or material obtained using the relevant Service Network or the Internet, including, but not limited to, Loss caused by a virus.

7. IMMEDIATE DISCONNECTION OF SERVICE

7.1 You agree that Pivotal Mobile may immediately disconnect Your Service if Pivotal Mobile has reason to suspect that:

- (a) the SIM is being used in a device that is not approved by Pivotal Mobile (such as a SIM box or similar device); or
- (b) fraudulent or illegal activity is, or will be, conducted using the relevant SIM, handset or device.

8. FAIR USE POLICY

8.1 It is important that all Pivotal Mobile customers are able to access the Services. Accordingly, this Fair Use Policy applies to:

- (a) use of the Services; and
- (b) any promotions or Services which are advertised by us as subject to the Fair Use Policy (Fair Use Promotion).

8.2 Pivotal Mobile reserves the right to vary the terms of the Fair Use Policy from time to time.

8.3 Pivotal Mobile may rely on the Fair Use Policy where:

- (a) Your use of Services represents Unreasonable Use; or
- (b) Your participation in a Fair Use Promotion represents Unreasonable Use.

9. UNREASONABLE USE

9.1 Unreasonable Use means the use of the Service where Your use of the Service is reasonably considered by Pivotal Mobile to be fraudulent, or to adversely affect the Service Network, or other Customers' use of or access to a Service or the Service Network.

9.2 Unreasonable Use in respect of a Fair Use Promotion is where Your participation in a Fair Use Promotion is reasonably considered by Pivotal Mobile to be fraudulent, or to adversely affect the Service Network, or another Customer's use of or access to a Service or the Service Network.

9.3 Without limitation, fraudulent use includes resupplying a Service without Pivotal Mobile's consent so that someone else may access or use the Service or take advantage of a Fair Use Promotion.

10. CONSEQUENCES OF UNREASONABLE USE

10.1 Where there is a breach by You of this Fair Use Policy, Pivotal Mobile may contact You to discuss how to change Your use of the Service so that it conforms to the Fair Use Policy.

10.2 If, after we have contacted You, and Unreasonable Use continues, Pivotal Mobile may, without further notice to You:

- (a) suspend or limit the Services (or any feature of it) for any period Pivotal Mobile believes is reasonably necessary; or
- (b) terminate the Service Agreement and Disconnect the SIM.

11. CONTENT LICENCE FROM YOU

11.1 You agree that you are solely responsible for (and that Pivotal Mobile has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and any associated software and for the consequences of your actions by doing so.

11.2 You retain copyright and any other rights you already hold in Content which you submit, post, or display on or through the Services. You acknowledge and agree that by submitting, posting or displaying the content you give Pivotal a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive licence to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content

which you submit, post or display on or through, the Services and any associated software. Furthermore, you agree that this licence includes a right for Pivotal to make such Content available to other companies, organizations or individuals as required for the provision of the Services.

- 11.3 In order to provide the Services, Pivotal may be required to transmit or distribute your content over various public networks and in various media. Pivotal may also be required to make changes to your Content if so required by the technical requirements of connecting networks, devices, services or media.

12. nbn™ SATELLITE SERVICE SPECIFIC TERMS

- 12.1 nbn™ Satellite Services are provided to you by Pivotal. You do not have a contractual relationship with nbn for the supply of any products or services to you.
- 12.2 To the full extent permitted by law, you exclude all liability of nbn, its related bodies corporate and each of their respective personnel, arising from or in connection with the nbn™ Satellite Service.
- 12.3 Notwithstanding anything else in this Agreement, you agree:
- (a) the nbn™ Satellite Service is provided 'as is' and without warranty of quality or availability;
 - (b) your use of the nbn™ Satellite Service is at your own risk;
 - (c) you are using a public, unfiltered internet connection and should take all precautions for the security and filtering (if applicable) of your information;
 - (d) you are solely responsible for any loss or damage to your equipment, device or to any information or other data that may result from your use of nbn™ Satellite Service;
 - (e) there may be interruptions, delays, omissions, inaccuracies with the nbn™ Satellite Service and that it may not be available at some times;
 - (f) subject to 12.4, and to the extent permitted by law, you release nbn and its related bodies corporate, affiliates, directors, officers, agents, employees, contractors or representatives, but excluding you, (**Released Parties**) from any and all liability that may arise in connection with the nbn™ Satellite Service or your use of the nbn™ Satellite Service; and
 - (g) Pivotal holds the benefit of this clause for and on behalf of the Released Parties, and any of the Released Parties may enforce this clause as if it were party to this agreement.
- 12.4 Clause 12.3f) does not apply to a claim by you for loss or damage suffered or incurred by you arising from or in connection with:

- (a) any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or
- (b) the death or personal injury of any person to the extent caused or contributed to by:
 - a. negligent or wilful acts or omissions of nbn, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or
 - b. any equipment or network owned, operated or controlled by nbn.