

## BUDGET TELECOM PTY LTD TERMS AND CONDITIONS (SFOA)

This section outlines the basic rights and obligations for both parties in connection with the supply and use of the service. It is intended that the terms and conditions contained in this section will not be service-specific. Instead, they will apply to mobile, internet and fixed-line telephony products.

### **I. YOUR CONTRACT**

#### **1.1 This contract**

Your contract with us is made up of:

- (a) Part One - General Terms;
- (b) Part Two - Description of Your Service;

#### **1.2 If a Contract, how long does this contract last?**

If you have signed for a contract period the contract begins on the date shown on page1 of your Application for Service Form.

For contracts other than fixed-period contracts, it will continue until it is terminated in accordance with clause 9.

For fixed-period contracts, this contract will continue:

- a) for the minimum period listed on your Application for Service; or
- b) until it is terminated in accordance with clause 10; or where the minimum period has ended and you have continued to use the service in accordance with clause 1.3, on a month- to-month basis and thereafter until it is terminated in accordance with clause 9.

#### **1.3 What will happen at the end of a fixed-period contract?**

- a) If neither you nor Budget Telecom cancels the contract at the end of the contract period, we will continue to supply the service to you on a month-to-month basis.
- b) If you do not wish to continue to use the service on a month-to-month basis after the end of the contract period, you must cancel the contract in accordance with clause 10 by the termination date.
- c) If Budget Telecom will not continue to provide the service to you at the end of the contract period or if we wish to change the terms of the contract, including charges, we will inform you of this at least 30 days before the termination date.

#### **1.4 How can we change anything in this contract?**

We cannot make any changes to this contract that is to your detriment unless we:

- (a) are required to by law; or
- (b) provide you personally with detailed information on the change we are proposing (including details of how it would affect you) and a period of at least 30 days in which to terminate the contract without incurring any additional costs or charges.

#### **1.5 How can you change anything in this contract?**

You cannot make any changes to this contract without first obtaining our consent.

## **2 YOUR APPLICATION FOR THE SUPPLY OF THIS SERVICE**

### **2.1 The Service**

The service/s you have selected is detailed in the service description form accompanying your Application for Service form.

### **2.2 When can we refuse your application?**

We may refuse your application if:

- a) you do not provide satisfactory proof of identification,
- b) you do not meet the eligibility criteria for the service,
- c) the service is not available at the location where you wish to acquire the service, or
- d) you do not have an appropriate credit rating.

## **3 HOW WE DEAL WITH YOUR PERSONAL INFORMATION**

### **3.1 Collection use and disclosure**

- a) We may collect, use and disclose personal information about you, to decide whether to start, stop or limit supply to you of personal credit, the service or the products and services of other Budget Telecom companies.
- b) We may collect, use and disclose personal information about you (which may include, for example, numbers called, time of call, location of call) for purposes related to the supply of the service (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide you with information about promotions, as well as the products and services of Budget Telecom and other organisations.
- c) We may collect, use and disclose personal information about you (which may include, for example, numbers called, time of call, location of call) for the purposes in paragraphs (a) and (b) above to or from:
  - I. a credit reporting agency or credit provider,
  - II. another Budget Telecom company,
  - III. third parties who are not related to us, including our agents, dealers, contractors and franchisees,
  - IV. suppliers who need access to your personal information to provide us with services to allow supply of the service, and
  - V. joint venture partners of Budget Telecom companies.
- d) We may be permitted or required by applicable laws to collect, use or disclose personal information about you (which may include, for example, numbers called, time of call, location of call), including to:
  - I. the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
  - II. emergency services organisations, and
  - III. to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

### **3.2 Opting-out**

If you wish to only receive communications that are account-related or legally required, you may request not to receive other communications (that is, you may 'opt out'). You will need to contact Customer Service to make a request to opt-out. We will not charge you for processing a request to opt-out.

### **3.3 Gaining access to and correcting your personal information**

If you are an individual, you are entitled to:

- a) gain access to your personal information held by us, unless we are permitted or required by any applicable law to refuse such access, and
- b) correct any personal information held by us.

### **3.4 Providing your personal information**

If you do not provide part or all of the personal information we request, then we may refuse to supply, or limit the supply to you of, personal credit or the service.

### **3.5 Consent**

By providing your personal information to us and obtaining the service, you acknowledge and consent to the collection, use and disclosure of your personal information as set out in this clause 3 and in accordance with our privacy policy. You may obtain a copy of our privacy policy from us or on our website: [www.budgettelecom.com.au](http://www.budgettelecom.com.au)

## **4 USING THE SERVICE**

### **4.1 Connecting the service**

- a) You must reasonably co-operate with us to allow us, or a supplier, to establish and supply the service to you safely and efficiently.
- b) Services will be supplied to you through network operators ("Carriers") nominated by us and you agree that we may change Carriers at any time without reference to you. You hereby authorise us to notify any relevant Carrier to effect any such change.
- c) We do not warrant that we will be able to supply the Services and you acknowledge that we will only be able to supply the Services to the extent and to the standard that Carriers provide Services to us. We will not be liable for any failure to supply you with all or any part of the Services and you acknowledge that if the agreement between us and a Carrier is terminated and a Carrier agrees to arrange supply of Services to you, the Carrier may not be able to make those arrangements immediately and if any are made they will be on the Carrier's current retail terms and conditions.

- d) Service and Equipment charges together with Local calls will be charged to you by us monthly, and uplifted from you current carrier within 30 days of acceptance of your application for services.
- e) If you transfer services to us from another supplier, you must immediately pay amounts owing to that supplier and you authorise us to instruct that supplier on how to transfer the services.

#### **4.2 Quality of the service**

We will provide the service to you with due care and skill. In the event of unexpected faults we will use reasonable endeavours to ensure the service is restored as soon as possible.

#### **4.3 Permitted uses of the service**

- a) When you use the service, you must comply with:
  - I. all laws,
  - II. all directions by a regulator,
  - III. all notices issued by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)), and
  - IV. reasonable directions by us.
- b) You must not use, or attempt to use, the service:
  - I. to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright),
  - II. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted,
  - III. to expose us to liability, or
  - IV. in any way which damages, interferes with or interrupts the service, or a supplier's network used to supply the service.
- c) We may ask you to stop doing something which we reasonably believe is contrary to paragraph (b) above. You must immediately comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- d) You acknowledge that, where the service is a carriage service, we, or any supplier whose network is used to supply the service, may be required to intercept communications over the service and may also monitor your usage of the service and communications sent over it.

#### **4.4 Unusually high use**

We may contact you if we become aware of an unusually high use of the service by you (including to verify any costs or charges which you may have incurred) however we are under no obligation to do so. For example, if you suddenly make an unusually high volume of calls to international destinations using the service we may contact you to determine whether that use is likely to continue. If so, we may ask you to make a pre-payment usage charge under clause b). Please note that we may also be entitled to suspend the service under clause a)IV for an unusually high use of the service.

#### **4.5 Compliance with third party rules**

When you use the service it is your responsibility to comply with any rules imposed by any third party whose content or services you access using the service or whose network your data traverses.

#### **4.6 Allocation and ownership of telephone numbers, IP addresses or domain names**

To use the Service we may need to allocate to you one or more identifiers such as a telephone number, an IP address or a domain name. These are not owned and controlled by Budget Telecom and Budget Telecom must comply with the Australian Communications Authority's regulations and any directions from the administrators of domain names, We will notify you in writing at your specified address as soon as is reasonably possible if we are required at law to reallocate or reassign a telephone number; IP address or domain name.

#### **4.8 Quality of the Service**

We will provide the Service to you with due care and skill. In the event of unexpected faults outside our control we will restore the Service as soon as possible.

## **5 CUSTOMER EQUIPMENT**

### **5.1 What are your responsibilities in relation to equipment?**

- a) You must ensure that all equipment you use in connection with the service and the way you use that equipment complies with:
  - I. all laws,
  - II. all directions by a regulator,
  - III. all notices issued by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)), and
  - IV. reasonable directions by us.

- b) If you breach paragraph (a) above, we may disconnect the equipment from the service.
- c) We will try to give you reasonable notice before we disconnect the equipment under paragraph (b) above, but we may disconnect the equipment immediately if there is an emergency.

## **5.2 Who owns the equipment?**

- a) Budget Telecom owned equipment
  - I. Any Budget Telecom owned equipment remains our property or the property of our personnel.
  - II. You are responsible for any Budget Telecom owned equipment from when you receive it.
  - III. You must not mortgage or grant a charge, lien or encumbrance over any Budget Telecom owned equipment.
- b) Equipment purchased by you from us or any of our personnel
  - I. You may purchase equipment from us or any of our personnel to use in connection with the service.
  - II. You will own the equipment and be responsible for the equipment from when you receive it.

## **5.3 Installation of the equipment**

You must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the service and located on the premises.

## **5.4 Maintenance and repair of any Budget Telecom owned equipment**

Unless we both agree otherwise, you must allow our personnel (and only our personnel) to service, modify, repair or replace any Budget Telecom owned equipment.

## **5.5 Lost, stolen and damaged equipment**

- a) You are responsible for any lost, stolen or damaged Budget Telecom owned equipment, except if it is caused by us or our personnel.
- b) You will be responsible for any outstanding payments for equipment that you have purchased from us or our personnel, even when that equipment is lost, stolen or damaged.

# **6 NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION**

## **6.1 Reporting faults**

- a) We will provide a fault reporting service for you to report faults between 8:00am and 6:00pm Monday to Friday.
- b) Before you report a fault to us, you must take all reasonable steps to ensure that the fault is not caused by any equipment that is not Budget Telecom owned equipment.

## **6.2 Assisting us in investigating and repairing a fault**

You must provide all reasonable assistance to enable us or our personnel, or where necessary a supplier, to investigate and repair a fault.

## **6.3 Our responsibility for repairing faults**

- a) Unless the service description expressly provides otherwise, we are not responsible for repairing any fault in the service where the fault arises in or is caused by:
  - I. a supplier's network,
  - II. equipment that is not owned by Budget Telecom, or
  - III. facilities outside our suppliers network.
- b) Where:
  - I. the fault arises in or is caused by a supplier's network,
  - II. we become aware of the fault, and
  - III. we are not responsible for the repair of that fault,

we will notify the supplier of the fault and request that the fault be corrected promptly, but we will not bear any further liability or responsibility.
- c) Where the fault arises in or is caused by equipment that is not Budget Telecom owned equipment we are not responsible for the repair of that fault. If you ask us to investigate and repair such a fault:
  - I. we will give you an estimate of the probable cost of investigating the fault and, if you agree to pay those costs, we will undertake an investigation and we will then charge you for the cost of investigation,
  - II. if we have investigated the fault, we will use reasonable endeavours to inform you of the fault's probable cause, and
  - III. if you request us to repair the fault and we agree to repair the fault, we will give you an estimate of the probable cost of repairing the fault and we will then charge you for the cost of repairing the fault.

- d) If we investigate a fault and determine that the fault is attributable to an excluded event, then we may charge you for any costs we incur in investigating and repairing the fault.

## **7 FEES AND CHARGES**

### **7.1 What are the fees and charges for using the service?**

- a) You must pay:
- I. the fees and charges for the service, which are set out in the standard pricing table or in any applicable special, and
  - II. any additional fees and charges noted in the agreement (including in your application) or notified by us in accordance with the agreement from time to time.
- b) You must pay all fees and charges which are incurred for the service even if you did not authorise its use.
- c) You must pay the fees and charges for the service even if the service is unavailable or you are unable to access the service. However, you may be entitled to a refund or a rebate under clause 0 below.

### **7.2 Types of fees and charges (including administration charges and other charges)**

- a) In addition to the fees and charges you incur in the normal use of the service (including an access fee, where applicable), we may charge you for an administration fee and other similar charges. These costs may include billing fees, suspension fees or cancellation fees, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the standard pricing table for your service.
- b) We may also ask you to make a pre-payment usage charge or request that you make an interim good-faith payment (including, for example, if there has been an unusually high use of the service or if you want to activate roaming).

### **7.3 How do we calculate fees and charges?**

- 1 To calculate fees and charges we look at billing information generated or received by us.
- 2 If you use the services of a third party, you will be billed at the third party's applicable rates and charges. We may bill you for your use of the services of a third party, acting in our capacity as that third party's billing agent only.

### **7.4 Specials**

- a) We may offer you a special from time to time (including a special in relation to a particular pricing plan).
- b) We will notify you of any specials offered to you either through general advertising or by specifically advising you. The terms of each special will either be set out in the standard pricing table for the relevant service, in an appendix, in advertising material or you will be advised separately in writing.
- c) A special may be an offer to vary the price or the terms of supply (including the minimum term), and it may be subject to certain conditions.
- d) If you validly accept a special, the terms of the special will prevail to the extent that the terms of the special are inconsistent with the terms of the agreement. Otherwise, the terms and conditions of the agreement continue to apply.
- a) After the special expires, we may end the special and the full terms and conditions of the agreement will apply.

## **8 PAYMENTS**

### **8.1 How often will we bill you?**

We will bill you on a regular basis (either in advance or in arrears), unless otherwise set out in the service description.

### **8.2 What will appear on your bill?**

We will try to include on your bill all charges for the relevant billing period. However, this is not always possible and we may include these unbilled charges in a later bill(s).

### **8.3 We may use a billing agent to bill you**

We may bill you using a billing agent.

### **8.4 What types of payment methods may you use?**

- a) You may pay by one of the payment methods as set out in the payment notification, on the back of the bill or on our website.
- b) If your payment is not honoured (for example, in the case of insufficient funds for direct debit or credit card payment, or a dishonoured cheque), you will be charged a \$25.00 dishonour fee.

### **8.5 When must you pay your bill?**

Subject to clause 0, you must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by us.

### **8.6 What happens if you do not pay your bill by the due date?**

If you do not pay your bill by the date the payment is due, we may:

- b) charge you a late fee. Any late fee is payable until all outstanding amounts are paid,
- c) suspend or cancel the service, in accordance with clause 10 or 11 as relevant or the relevant service description. If we suspend or cancel the service, we may charge you a suspension fee, cancellation fee and/or reconnection or reactivation fee. Reconnection or reactivation of the service is subject to payment of the reconnection or reactivation fee,
- d) engage a mercantile agent to recover the money you owe us. If we engage a mercantile agent, we may charge you a recovery fee,
- e) institute legal proceedings against you to recover the money you owe us. If we institute legal proceedings, we may seek to recover our legal costs, and
- f) on-sell any unpaid amounts to a third party. If we do this, any outstanding amounts will be payable to that third party.

#### **8.7 What happens if you have overpaid as a result of a billing error?**

If you have overpaid as a result of a billing error:

- a) your account will be credited with the amount you have overpaid, or
- b) if you have stopped obtaining the service, we will use reasonable endeavours to notify you that you have overpaid and refund the over payment.

#### **8.8 Taxes (including GST)**

- a) Unless otherwise indicated, the fees and charges set out in the agreement include any amount on account of tax.
- b) Where the fees and charges do not include an amount on account of tax, if any tax is payable by us in relation to, or on any supply under or in connection with the agreement, we will increase the tax exclusive fees and charges by an additional amount on account of the tax. You must pay the additional amount at the same time you pay the fees and charges.

### **9 COMPLAINTS AND DISPUTES**

#### **9.1 Making complaints**

- a) If you have any complaints in connection with the service, you may complain in writing (including by completing our complaints form on our website: [www.budgettelecom.com.au](http://www.budgettelecom.com.au)) or by calling us.
- b) We will handle your complaint in accordance with our complaints procedure. You may obtain a copy of this procedure from us or on our website: [www.budgettelecom.com.au](http://www.budgettelecom.com.au)
- c) We will use our best endeavours to resolve your complaint, however if we are not able to resolve your complaint to your satisfaction, you can take your complaint through other avenues, such as the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in your state or territory.

#### **9.2 Suspension of payment obligations**

Where your complaint is about a fee or charge for the use of the service, we may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute are due and payable.

#### **9.3 Complaints about loss of access to the service**

Where your complaint is about a significant and sustained loss of access to, or use of, the service and the loss was not as a result of circumstances reasonably attributable to you or non Budget Telecom owned equipment, you may be entitled on request to a refund or a rebate of any access fees for the period in which your access or use was interrupted (including when an intervening event occurs). The service description may set out the way in which any rebate or refund is calculated.

### **10 CANCELLING THE SERVICE**

#### **10.1 Your rights to cancel the Service – contracts other than fixed-period contracts**

For contracts other than fixed-period contracts, you may cancel the service by calling us or writing to us. Your call or letter will be a notice to cancel the service and will be effective on the date on which we receive that request.

#### **10.2 Your rights to cancel the Service - fixed- period contracts**

For fixed-period contracts, in some circumstances you may cancel your Service without incurring any additional charges.

- (a) You may cancel your service immediately if:
  - I. you are unable to use the Service because of a continuing event that is reasonably outside your control; or
  - II. we breach an essential clause of this contract which isn't resolved within 14 days of your requesting us to do so or which is unable to be resolved; or
  - III. we become bankrupt, insolvent or unable to pay our debts when due; or
  - IV. your Service has been suspended for one week where there is no fault on your part, except where clause 1.9.3 applies; or
  - V. we make a change to this contract that would result in a detriment to you.

- (b) You may cancel your service by giving us 30 days notice if:
  - I. the minimum period has ended, and you have continued to use the service; or
  - II. any steps are taken to appoint a receiver or administrator for us; or
  - III. we assign our obligations to supply the Service to a third party without your consent.
- c) In addition to these rights to cancel the service, you have a general right to cancel the Service at any time, at your convenience. However; if you do so, an early termination, disconnection or cancellation fee will apply.

### **10.3 What you need to do to cancel the Service**

You can cancel the Service by calling us or writing to us. Your call or letter will be a notice to cancel the Service and will be effective on the date on which we receive that request

### **10.4 Budget Telecom's rights to cancel the Service - contracts other than fixed-period contracts**

For contracts other than fixed-period contracts, you may cancel the service by calling us or writing to us. Your call or letter will be a notice to cancel the service and will be effective on the date on which we receive that request.

### **10.5 Budget Telecom's rights to cancel the Service - fixed period contracts**

In accordance with clause 1.3 we may cancel the service at the end of the contract period by informing you 30 days before the termination date; In this case, termination will be effective on the termination date.

In addition, we may cancel your Service in the following circumstances:

- (a) immediately if:
  - I. we reasonably suspect fraud by you or anyone using your Service;
  - II. we are required to cancel the Service to comply with a law enforcement agency, or a regulatory authority such as the Australian Communications Authority; or
  - III. we are unable to supply the Service to you because of a continuing event that is reasonably outside of our control; for example, earthquake, explosion, natural disaster, sabotage or war.
- (b) by giving you 30 days notice if:
  - I. the minimum period has ended and we have continued to supply the service to you;
  - II. we are unable to supply the Service to you because a supplier has terminated its agreement with us and we cannot provide the Service to you by using an alternative supplier;
  - III. you breach an essential clause of this contract which is not resolved within 14 days of us requesting you to do so, or which is unable to be resolved.

### **10.6 Information contained in a notice to cancel the Service**

If we cancel the Service, the written notice that we give you will contain:

- a) the date on which the cancellation takes effect;
- b) detailed reasons for the cancellation;
- c) details of any outstanding charges;
- d) when these charges are due;
- e) details of any applicable refunds or rebates; and how these refunds or rebates are calculated.

### **10.7 What happens when the Service is cancelled**

Where the Service is cancelled:

- a) you will not be able to use the Service after the cancellation date;
- b) in some cases you will have the right to take your telephone number to another supplier; otherwise your rights to use any telephone numbers issued to you for the Service will stop;
- c) subject to any disputes that you have with us, you agree to pay for any charges for your use of the Service and

equipment until the cancellation date and for any equipment that you have purchased from us.

- d) any credits on your account will be applied to pay for any undisputed, outstanding charges at the cancellation date;
- e) we will refund to you any unused credits on your account and any money that you have paid in advance for that part of the Service which is being cancelled, on a pro-rata basis;
- f) you will return our equipment within 30 days of the cancellation date to us or to the nominated agent of Budget Telecom;
- g) if you cancel the contract before the end of the contract period, except where cancellation occurs in the circumstances set out in 1.8.2, you will also have to pay the early termination, disconnection or cancellation fee. Fixed line is calculated as;  $(A3) \text{ average 3 months accounts } \times (40) 40 \% \text{ of average } \times (R) \text{ remaining months of commitment} = (F) \text{ fee payable. eg. } (A3 \times 40 \times R = F)$ ; Mobile is calculated as; any monies outstanding on mobile hardware and internet is calculated as the balance of the term; and
- h) if you request reconnection and the cancellation was not at your request or because of a breach by you of an essential term, you will not have to pay any reconnection fees.

## **11 SUSPENDING THE SERVICE**

### **11.1 Your rights to suspend the Service**

You may suspend your Service where you are unable to use the Service because:

- a) you are experiencing temporary financial hardship;
- b) you will temporarily be residing in an area where you will not be able to access and use the Service;
- c) you will temporarily be residing in an area where you will not be able to access and use the Service without incurring substantial additional charges; or
- d) an event occurs which is outside your control, for example fire/flood damage to your telecommunications device used to access the Service.

### **11.2 Our rights to suspend the service**

- a) We may suspend the service at any time, without liability, if:
  - I. there is an emergency,
  - II. doing so is necessary to allow us or a supplier to repair, maintain or service any part of a supplier's network used to supply the service,
  - III. we reasonably suspect fraud by you or any other person in connection with the service,
  - IV. we reasonably believe there has been an unusually high use of the service,
  - V. any amount owing to us in respect of the service is not paid by its due date and we give you notice requiring payment of that amount and you fail to pay that amount in full within seven (7) business days after we give you that notice, unless otherwise set out in the agreement,
  - VI. we reasonably consider you a credit risk because you have not paid amounts owing to us or any in respect of any service is not paid by its due date and you are given notice requiring payment of that amount by Budget Telecom and you fail to pay that amount in full within the required period,
  - VII. you breach a material term of the agreement (including for the avoidance of doubt, but not limited to, clauses 0 and 0 or your obligations relating to the use of the service set out in the service description or otherwise misuse either the service or breach clause 0 and you cannot remedy that breach,
  - VIII. you breach a material term of the agreement (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 0 and 0 or your obligations relating to the use of the service set out in the service description or otherwise misuse either the service or breach clause 0) and you can remedy that breach, and you do not remedy that breach within 30 days after we give you notice requiring you to do so,
  - IX. we are required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)),
  - X. problems are experienced interconnecting with any supplier's network,
  - XI. you suffer an insolvency event and we reasonably believe we are unlikely to receive payment for amounts due,

- XII. you die or if you are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due, or
  - XIII. we are otherwise entitled to do so under the agreement.
- b) We may suspend the service under paragraph (a) above as soon as we give you notice, unless otherwise set out in the agreement. However, we may suspend the service immediately if there is an emergency.
  - c) If we suspend the service, we may later cancel the service for the same or a different reason.

### **11.3 What happens when the Service is suspended**

If the Service is suspended:

- a) you will not be able to use the Service during the period of the suspension;
- b) you will have to pay access fees for the Service during the period of suspension;
- c) you will still be charged for any equipment that you have purchased from us.
- d) If the service is suspended as a result of circumstances reasonably attributable to you, you may have to pay us a suspension fee.
- e) If you wish to reactivate the service you should contact us. If the service is suspended as a result of circumstances reasonably attributable to you and we reactivate the service, you may have to pay us a reconnection or reactivation fee.

## **12 WHAT YOU AND BUDGET TELECOM ARE LIABLE FOR**

### **12.1 Your liability to us**

You are liable to us for:

- b) all charges for the use of your Service; and
- c) any damage to our equipment lent to you which is not the result of fair wear and tear or the fault or negligence of Budget Telecom, its employees, agents and contractors.

### **12.2 Budget Telecom's liability to you**

We have responsibilities and obligations under the law, including the Telecommunications Act, the Trade Practices Act and industry codes of practice. Nothing in this contract removes or limits any rights that you have under existing laws or regulations other than as set out in 10.3 and 10.4.

We are also liable to you for:

- a) any damage to your- property caused by the fault or negligence of Budget Telecom, its employees, agents and contractors during installation, repair or maintenance;
- b) interruptions in your use of the Service as a result of a fault or negligence of Budget Telecom, its employees, agents or contractors to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred; and
- c) death or personal injury caused by Budget Telecom, its employees, agents and contractors.

### **12.3 Limits to Budget Telecom's liability**

Where it is reasonable and fair to do so, we may be able to reduce or limit our liability to you:

- a) to re-supply, repair or replace the goods or service but only where you did not purchase the goods or service for personal, domestic or household use; or
- b) where you have contributed to any loss or damage you are claiming against us, but only to the extent of your contribution.

### **12.4 Exclusion of Budget Telecom's Liability**

We may be able to exclude liability to you, where it is reasonable and fair to do so, if we are not able to perform any of our obligations under this Contract because of an event that is reasonably outside our control. This may include earthquake, explosion, natural disaster, sabotage or war.

## **12 ASSIGNING THE AGREEMENT TO A THIRD PARTY**

### **12.1 How can we assign our responsibilities to a third party**

- a) We may assign some or all of our rights under the agreement (where those rights are assignable) to any person.

- b) We may transfer some or all of our obligations under the agreement to any company that is able to perform those obligations.
- c) We may perform any of our obligations under the agreement by arranging for them to be performed by another person, including a supplier or another company.

#### 12.2 How can you assign your responsibilities to a third party

- a) You may assign your rights under the agreement (where those rights are assignable) so long as you have our prior written consent.
- b) You may transfer your obligations under the agreement if:
  - I. the person to whom you are transferring the obligations:
    - 1) provides satisfactory proof of identification,
    - 2) meets the eligibility criteria for the service,
    - 3) has an appropriate credit rating, and
  - II. the service is available at the location where they wish to acquire the service.

### 13 OTHER IMPORTANT INFORMATION

#### 13.1 How Budget Telecom can assign its responsibilities to a third party

We can assign any of our rights and obligations under this contract without first obtaining your consent.

We will assume that you have given your consent and we may rely upon this if:

- a) we give you personal notice of our intention to assign our rights and obligations; and
- b) we give you at least 30 days to object to the assignment of our rights and obligations and you do not inform us within this time that you object to the assignment.

#### 13.2 How you can assign your responsibilities to a third party

You cannot assign any of your rights and obligations under this contract without first obtaining our consent.

You may assume that we have given our consent and you may rely upon this if:

- a) you inform us in writing of your intention to assign your rights; and
- b) you give us at least 30 days to object to the assignment of your rights and obligations and we do not inform you within this time that we object to the assignment.

#### 13.3 Which State or Territory laws and courts govern this contract?

This contract is governed by the laws applicable in the State or Territory in which you live, or in which you primarily use the Service,

#### 13.4 Information about your rights

Information and advice about your rights can be obtained by contacting the Australian Communications Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in your State or Territory.

#### 13.5 Other provisions

Suppliers can include provisions that protect their own intellectual property rights in content accessed by consumers, but they should not include provisions in General Terms or service-specific sections that give the supplier ownership rights over or licences to use content that is created, uploaded or sent by consumer.

### 14 WHAT DO TERMS IN THE AGREEMENT MEAN?

#### 14.1 Definitions

**access fee** means the fixed payment for access to the service payable on a regular basis (often monthly). The access fee is payable regardless of the actual usage of the service. A minimum monthly charge and minimum monthly service charge are also access fees.

**agreement** means the terms and conditions on which we supply the service to you.

**appendices** means the appendices containing information relevant to the service.

**application** means the part of the agreement which is the written or verbal application you complete to request that we supply the service to you.

**cancel the service** means that the service is cancelled and the agreement is terminated.

**cancel the service for convenience** means to cancel the service in circumstances where you have not breached the agreement and there is no other event which triggers the right to cancel the service.

**cancellation date** means:

the date 30 days after you notify us that you wish to cancel the service, unless we agree otherwise,

the date at least 30 days after we notify you that we will be cancelling the service, or

as otherwise set out in the agreement.

**cancellation fee** means the early termination fee, cancellation fee or termination charge which may be payable on cancellation of the service. Unless otherwise indicated in the service description, any cancellation fee payable is set out in the standard pricing table.

**churn** means to change from having a service supplied by one carrier or carriage service provider to having the service supplied by another carrier or carriage service provider.

**consequential loss** means any loss of revenue or profits, loss of anticipated savings, loss of data, loss of value of equipment, any penalties or fines imposed by a regulator and any loss that is an indirect loss.

**consumer** means a person who acquires and uses the service for personal, domestic or household use only.

**consumer terms** means this document.

**content** means: all

- a) forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined, and
- b) any content service,

sent and received across a network. For the avoidance of doubt, content includes, but is not limited to, SMS and MMS.

**credit rating** means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the Privacy Act 1998 (Cth).

**equipment charges** means any payment for equipment obtained from us including, for example, phones or modems and includes the cost of any software or licences supplied to operate in conjunction with that equipment.

**excluded event** means:

- a) a breach of the agreement by you,
- b) a negligent or fraudulent act or omission by you or any of your personnel, or
- c) a failure of any of your equipment.

**fixed-length agreement** means an agreement that has a minimum term, during which time neither you nor we are free to change the terms of the agreement or to cancel the service, other than as specifically provided for in the agreement. A fixed-length agreement does not include a month-to-month agreement.

**insolvency event** means:

- a) bankruptcy proceedings are commenced against you, or you are declared bankrupt,
- b) any step is taken to enter into any scheme of arrangement between you and your creditors,
- c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of your assets or business,
- d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to you or to the whole or any part of your assets or business,
- e) you suspend payment of your debts generally, or
- f) you are, or become, unable to pay your debts when they are due or you are, or are presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

**intellectual property rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**intervening event** is an event outside your or our reasonable control which interferes with the operation of the network we use to supply the service and results in ongoing disruption to the service. An intervening event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

**minimum term** means the period of time for which you have agreed to receive the service under a fixed-length agreement. The minimum term begins on the service start date and runs for the period of time stated on the application, unless otherwise set out in the agreement. For a non fixed-length agreement, there is no minimum term.

**loss** means any loss, cost, liability or damage, including reasonable legal costs.

**network** means any interconnected telecommunications equipment, facilities, or cabling.

**non fixed-length agreement** means an agreement that does not have a minimum term, or a fixed-length agreement where the minimum term has expired. A non fixed-length agreement includes a month-to-month agreement.

**Budget Telecom owned equipment** means any equipment or cabling we, or our personnel, may provide or lease to you to use in connection with the service.

**personal information** means information about you from which your identity is apparent or can reasonably be ascertained. Personal information includes your name, address and other details, and your personal or commercial credit rating.

**personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of us, includes the employees, agents, contractors or other representatives of Budget Telecom.

**premises** means locations:

- a) at which we supply the service, and/or
- b) to which we need to have access to supply the service.

**pricing plan** contains information about the terms and conditions and prices of the plan you have selected in your application. You may also hear a pricing plan referred to as a 'rate plan'.

**regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman or any other relevant government or statutory body or authority.

**related corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).

**roaming** means the ability to use the network of overseas mobile carriers when travelling overseas.

**service** means the service, with the features requested in the application as described in the service description, and any related goods (including equipment) and ancillary services which we supply to you in connection with that service.

**service description** means the part of the agreement entitled 'service description', which is our standard service description for consumers describing the service.

**service start date** for the service means the date on which we start supplying that service to you, unless otherwise specified in the service description.

**special** means a special promotion or offer made by us in connection with the service.

**standard pricing table** means the part of the agreement entitled 'standard pricing table', which is our standard rate plan, pricing and charges list for consumers for the service.

**supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by us to supply the service to you. Where a supplier supplies goods or services to you directly, that supplier is not acting in its capacity as supplier, but rather is a third party providing services directly to you.

**tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

**Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Trade Practices Act.

**Trade Practices Act** means the Trade Practices Act 1974 (Cth).

**you** means the person who fills out the application (and **your** and **yours** is to be construed accordingly). Only one person may fill out the application.

**we** means the Budget Telecom business unit specified in the service description as supplying the service (and **us** and **ours** is to be construed accordingly).

**unusually high use** means high out of pattern usage of the service on a short term basis or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar special.

## 14.2 Interpretation

The following words have the same means in the agreement as they have in the Telecommunications Legislation:

- carriage service,
- carriage service provider,
- carrier,
- content service, and
- facility.

A term which is defined in any part of the agreement has the same meaning in every other part of the agreement.

The singular includes the plural and vice versa.

Different grammatical forms of the same word(s) have the same meaning.

Examples or words of inclusion are illustrative only and do not limit what else might be included.

A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.