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1. ABOUT THIS AGREEMENT

Please read this Standard Form of Agreement carefully. It applies to:

- 1.1 your use of the Services;
- 1.2 any Goods or any quotations for or offers to supply Goods; and/or
- 1.3 any Other Services,

provided to you by Rivertel Pty Ltd ABN 31 147 945 686 trading as Rivertel, LoCall Australis, MyArmidale, MyFibre (in this Agreement referred to as "our", "we", "us" or "Rivertel").

This Standard Form of Agreement forms our "contract" with you. It does not require your signature, by ordering a service or services you agree to abide by this Standard Form of Agreement.

1.4 INTERPRETATION & DEFINITIONS

1.4.1 The following definitions apply unless the context requires otherwise:

1.4.2 **ACMA** means the Australian Communications and Media Authority.

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

1.4.4 **age-restricted audio-visual service** means a service that enables an end-user to access age-restricted content other than material supplied as part of a telephone sex service.

1.4.5 **age-restricted service** means an age-restricted audio-visual service; or an age-restricted text service.

1.4.6 **age-restricted text service** means a service supplied solely or primarily by way of a text service about which it would be concluded that a majority of persons who use the text service are likely to do so with the sole or principal object of deriving sexual gratification from the service.

1.4.7 **Application and Customer Contract** has the meaning given to it in **clause 2** of this agreement.

1.4.8 **Rivertel Rate Sheet** means Rivertel standard rate sheets for the Services or any and all components of the Package as amended from time to time, copies of which are available by calling our customer service.

1.4.9 **Barring or Bar** means restricting the supply of one or more (where possible) or all eligible Services on a Service so that the customer is unable to acquire the restricted eligible Services.

1.4.10 **Business Hours** means 9am to 5pm on a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

1.4.11 **Credit Limit** means the monthly spend limit on eligible Services applied to a Customer's Service account.

1.4.12 **Credit Reporting Agency** has the meaning given in section 6 of the Privacy Act.

1.4.13 **Data & Internet Services** means our internet access, e-mail facilities, wide area networking services, web-page facilities, broadband, digital subscriber line, frame relay and any other related facility or services that we may provide from time to time, including any technical and other advice provided by us, to be provided to you under Part B and as specified in your Application.

1.4.14 **Data & Internet Services Related Equipment** means equipment that is not Equipment, Other Equipment or Voice Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services as specified in Part B.

1.4.15 **Data & Internet Equipment** means equipment which is provided to you by us or our Supplier for use in connection with the provision of Data & Internet Services and as specified in your Application.

1.4.16 **Equipment** means all or any of the Data & Internet Equipment, Mobile Equipment, Rental Equipment, Purchase Equipment, or other equipment specified in your Application but does not include Other Equipment.

1.4.17 **Equipment Charge** means the monthly charge for the Rental Equipment and/or Purchase Equipment as specified in your Application and as varied in accordance with this SFOA.

1.4.18 **GST** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.4.19 **Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including but not limited to any copyright, trade mark, domain name, business name, design, patent, circuit layout, semi-conductor or other similar proprietary rights and licences and sub-licences of such rights (irrespective of whether or not such rights are registered, or formal or informal); trade secrets, technical or non-technical data, knowledge, information or documentation; secret or confidential operations or information; business systems, business methods or business plans (whether registered, registrable, formal, informal or otherwise); customer lists, supplier lists and other proprietary lists, names, addresses or information not generally known; techniques, diagrams, data, proofs, prints, particulars, inventions and prototypes.

1.4.20 **LNP Authorisation** means the LNP Customer Authorisation in your Application on the terms of this SFOA.

1.4.21 **Maintenance** means any Maintenance we provide as specified in your Application

1.4.22 **Maintenance Agreement** means the Customer Contract with us for the supply of Maintenance under this SFOA.

1.4.23 **Maintenance Charge** means the charge for Maintenance as specified in your Application and as varied in accordance with this SFOA.

1.4.24 **Minimum Monthly Spend** means the Minimum Monthly Spend as specified in your Application and as varied from time to time in accordance with this SFOA.

1.4.25 **Minimum Term or Minimum Term Contract** means the term of this SFOA as specified in your Application.

1.4.26 **Mobile Equipment** means equipment which is provided to you by us or our supplier for use in connection with the provision of Mobile Services and as specified in your Application.

1.4.27 **Mobile Premium Service** means a premium SMS or MMS service; or a proprietary network service.

1.4.28 **Mobile Premium Services Determination** means the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) including any amendments to the determination.

1.4.29 **Mobile Services Related Equipment** means any equipment as specified in your Application that is not Equipment, Data & Internet Services Related Equipment, Voice Services Related Equipment or SIM cards, but may include handsets, accessories and equipment supplied by us.

- 1.4.30 **Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you under Part C and as specified in your Application.
- 1.4.31 **MNP Customer Authorisation** means the MNP Customer Authorisation in your Application on the terms of this SFOA.
- 1.4.32 **Numbering Plan** means the Telecommunications Numbering Plan (1997) as amended from time to time.
- 1.4.33 **Other Equipment** means equipment that is not Equipment provided by us.
- 1.4.34 **Other Software** means software that is not Software provided by us.
- 1.4.35 **Package** means a bundled offering of any or all Services, Equipment, Software and/or Maintenance and as described in your Application.
- 1.4.36 **Part** refers to any section of this SFOA so described.
- 1.4.37 **Peripheral equipment** means the peripheral equipment in your Application marked with an asterisk (*), and which is part of the Rental Equipment or Purchase Equipment, but it is not serviced by us as part of Maintenance.
- 1.4.38 **Personal Information** means any information or document referred to in section 276(1) of the Act and any personal information within the meaning given in section 6 of the Privacy Act.
- 1.4.39 **premium SMS or MMS service** means a carriage service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199; or a content service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199.
- 1.4.40 **Privacy Act** means the Privacy Act 1988 (Cth).
- 1.4.41 **proprietary network** means a telecommunications network that enables Customers to access, by way of a mobile device, a premium content service that is not otherwise generally available.
- 1.4.42 **proprietary network service** means a public mobile telecommunications service that enables customers to access a proprietary network.
- 1.4.43 **Purchase Equipment** means the equipment specified in your Application and supplied to you.
- 1.4.44 **Purchase Equipment Agreement** means the contract with us for the supply of Purchase Equipment under this SFOA.
- 1.4.45 **Purchase Equipment Charge** means the monthly charge for the Purchase Equipment as specified in your Application and as varied in accordance with this SFOA, including any residual amounts owing to us at the expiry of the Minimum Term (such amounts which must be paid by you before ownership transfers to you).
- 1.4.46 **Related Body Corporate** has the same meaning as in section 9 of the Corporations Act 2001 (Cth).
- 1.4.47 **Rental Agreement** means a contract for the rent of Equipment under this SFOA.
- 1.4.48 **Rental Equipment** means the Equipment you rent as specified in your Application
- 1.4.49 **Rental Equipment Charge** means the monthly charge for the Rental Equipment as specified in your Application and as varied in accordance with this SFOA.
- 1.4.50 **Services** means the Data & Internet Services, Mobile Services, Mobile Premium Services, Voice Services or other services specified in your Application that we supply to you under this SFOA.
- 1.4.51 **Services Agreement** means the contract with us for the supply of Services under this SFOA.
- 1.4.52 **Service Level Agreement** means the Service Level Agreement as specified in your Application and available at our website.
- 1.4.53 **Site** means the site described in your Application.
- 1.4.54 **Software** means the software we provide as specified in your Application but does not include Other Software.
- 1.4.55 **Short Message Service (SMS)** is the ability to send Short Messages and receive Short Messages in relation to GSM and in relation to CDMA.
- 1.4.56 **standard customer agreement and SFOA** mean each of the contracts described in **Clause 2** of these General Terms.
- 1.4.57 **Supplier** means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.
- 1.4.58 **Value Added Features** means any of the Mobile Services value added features as specified in your Application.
- 1.4.59 **Voice Services** means the telecommunications services to be provided to you under Part A and/or Part D and as specified in your Application.
- 1.4.60 **Voice Services Related Equipment** means equipment that is not Equipment, Other Equipment or Data & Internet Services Related Equipment, which is provided to you by us or our Supplier for use in connection with the provision of Voice Services as specified in Part A and/or Part D.
- 1.4.61 **Telephone Services** means the telecommunications services to be provided to you under Part A and/or Part D and as specified in your Application.
- 1.4.62 **we, us** means the entity referred to in **clause 1.3** of the General Terms.
- 1.4.63 **you, your** means the customer, as specified in your Application.
- 1.4.64 **Acceptable Use Policy** means our Policy which specifies our requirements in relation to your use of the Services (attached to and forming part of this Agreement);
- 1.4.65 **Agreement** means this agreement for the provision of the Supplies by us to you, which includes this Standard Form of Agreement, the Service Arrangement and Agreement Addendum (if applicable), each Service Schedule (if applicable) and your Application (if applicable, once accepted by us).
- In the event of any conflict or inconsistency between any part of:
- 1.4.65.1 each relevant Service Arrangement and Agreement Addendum (if any);
- 1.4.65.2 each relevant Service Schedules (if any);
- 1.4.65.3 each Application (if any); and
- 1.4.65.4 this Standard Form of Agreement;
- then the material mentioned in any one of clause 3 has precedence over material mentioned in a subsequent clause, to the extent of any conflict or inconsistency;

1.4.65 **Anniversary Date** means the recurring due date on which you are required to pay the Charges for any ongoing Supplies, which will occur each month, quarter, year or other period as provided on each applicable Application, each applicable Service Arrangement and Agreement Addendum or in each applicable Service Schedule, commencing on the Service Commencement Date. We may change your Anniversary Date from time to time, at our discretion, in order to align this date with the renewal dates of your active Services. Where a change to your Anniversary Date is made you may receive two distinct invoices in the monthly period when the change is implemented;

1.4.66 **Application** means each application form completed by you (either hard copy or soft copy on our Website) and sent to us requesting the Services;

1.5 Interpretation:

1.5.1 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

1.5.2 The singular includes the plural and conversely.

1.5.3 A gender includes all genders.

1.5.4 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

1.5.5 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

1.5.6 A reference to a **clause** or schedule is a reference to a clause of or a schedule to, this SFOA.

1.5.7 A reference to an agreement or document (including a reference to this SFOA) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this SFOA or that other agreement or document.

1.5.8 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

1.5.9 A reference to dollars and \$ is to Australian currency.

1.6 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

2. OUR AGREEMENT WITH YOU

2.1 By entering into this standard customer agreement ("**SFOA**") with Rivertel you contract with us for the supply of Services, Equipment, Software and Maintenance as relevant to you

2.2 You may apply for a Service by any method approved by us.

2.3 If you provide us with an Application for a Service we will assess your Application. We may refuse your Application for any reason and without being obliged to provide any reason to you.

2.4 If your Application is accepted, we will take steps to provide you with the Service, subject to the terms of this Agreement.

2.5 Upon our acceptance of your Application, or, if applicable, execution of this Agreement by us and you, a contract is formed and you become bound by this Agreement and the Term and charges associated with the Service. The contract between us remains in force until it is terminated in accordance with this Agreement.

2.6 There may be a time delay between us accepting your Application, or, if applicable, execution of this Agreement by us and you, and providing you with the Service. We are not and will not be responsible for any delays associated with provision of a Service, nor any inability by us to provide the Service to you.

2.7 This Agreement commences on the Service Commencement Date for the first Service you acquire from us and will continue until the expiration or termination of the Term in respect of the last Service you acquire from us, unless terminated earlier in accordance with this Agreement. Once you have entered into this Agreement all additional Goods, Services or Other Services that you acquire from us are acquired and supplied pursuant to this Agreement. For all additional Goods, Services or Other Services acquired and supplied to you, we will issue you with the additional relevant Service Arrangement and Agreement Addendums and/or Service Schedule(s) (if applicable) which constitute variations to this Agreement for the purpose of such additional Goods, Services or Other Services acquired.

2.8 For the avoidance of doubt, in conjunction with this with this document, the following policies also make up Rivertel's SFOA:

Customer Service Guarantee

Privacy Policy

Acceptable Usage Policy

Fair Use Policy

Financial Hardship Policy

Customer Complaints Policy

2.9 This SFOA is not legally binding on us until we accept your Application, except that we may undertake credit checking and use information supplied by you in accordance with clause 17 and 18, and we may process your Application and prepare to activate the Services, order required Purchase Equipment (if any), order required Data & Internet Services Related Equipment (if any), order required Voice Services Related Equipment, and deliver the required Rental Equipment (if any). If your Application is refused or cancelled, we may charge you an amount equal to our costs for this work. Your Application will be deemed to be accepted by us at the earlier of the date that your Services are activated, any Purchase Equipment is ordered, any Data & Internet Services Related Equipment is ordered, any Voice Services Related Equipment is ordered, or any required Rental Equipment is delivered to you.

2.10 Subject to Part 23 of the Act, we may vary any part of this SFOA, including the Service Level Agreements, Rivertel Rate Sheets and other charges, at any time given 30 days notice.

3. PROVISION OF SERVICES

3.1 We will use our reasonable commercial endeavours to provide you with the Services you request, in accordance with this Agreement.

3.2 It is not our responsibility to provide training in the use of the Services.

3.3 We will make all reasonable efforts to ensure continuity of the Services, but we make no guarantee that the Services will be either uninterrupted or error-free.

3.4 While we endeavour to take reasonable care with information that you deposit with us we cannot and do not guarantee that all such information will reach its intended destination (including electronic mail) inside or outside our network.

3.5 You acknowledge that we do not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Services and we shall not be held responsible in any way for any content or information accessed via the Services.

3.6 We disclaim all or any liability for any material viewed in connection with the Services that you find offensive, upsetting, defamatory, personally offensive or in any way unsuitable for people under the age of eighteen (18) years.

3.7 Any transmission speeds indicated refer to the maximum theoretical speeds achievable with the Services under ideal conditions, and you acknowledge that the actual achieved speeds may be substantially different from the theoretical speeds. You acknowledge and agree that the maximum theoretical speed may be reduced by factors including but not limited to:

3.7.1 the length, configuration and condition of your copper line;

3.7.2 the number and type of other services being used by other customers over telephone lines running close to yours;

3.7.3 electrical interference from outside sources;

3.7.4 the configuration of the telephone wiring within your premises;

3.7.5 the software configurations and applications on your computer;

3.7.6 your equipment and software; and

2.7.7 the capacity of, load on and access data rate of the destination host computer or server that you are accessing.

3.8 To maintain the quality of services provided to our customers, we may also prioritise the delivery of network traffic, as determined in our absolute discretion.

3.9 Any general statements, maps or other indicators of service availability are only a guide and you must not rely upon such statements, maps or other indicators as a commitment to provide the Services to a particular physical location.

3.10 The Services are provided on an 'as-is' basis.

3.11 From time to time, we may vary a term in the SFOA and the Rivertel Rate Sheet where the variation results from an action taken which is detrimental to you, provided that:

3.11.1 you have nominated a Minimum Term Contract in your Application;

3.11.2 we issue you at least 30 days notice in writing prior to the date of the variation; and

3.11.3 offer you in the notice the right to terminate within 42 days of the date of the notice without incurring fees or charges other than:

3.11.4 usage or network access charges incurred up to the date of termination; and

3.11.5 any Equipment Charges and outstanding amounts that cover installation costs except when the equipment provided is solely able to be used on our network and cannot be used on another network

4. EQUIPMENT AND SOFTWARE

4.1 We may install Equipment at the Sites, and you must permit us to access the Sites for the purpose of installing that Equipment and cooperate with any reasonable request by us regarding the installation of that Equipment.

4.2 We retain ownership of the Rivertel Equipment and the Software.

4.3 You must comply with the terms and conditions of the Software licence(s) which apply to the use of any Software.

4.4 Upon the termination or expiration of this Agreement for any reason, you must provide us (and any person nominated by us) with access to each Site in order to remove the Rivertel Equipment and Software.

4.5 You are responsible for the Rivertel Equipment and the Software and must indemnify us against all loss and damage to the Rivertel Equipment and Software until it is returned to us, unless the loss and damage is due to reasonable wear and tear.

4.6 If we consider that it is necessary in provisioning a Service, on request by us you must arrange for the Non Rivertel Equipment to be supplied to us for us to approve the Non Rivertel Equipment as suitable to allow us to comply with our obligations under this Agreement.

4.7 We will test the Equipment prior to its installation, and will notify the results of those tests to you. In the event that the Equipment fails these tests, you must procure replacement Non Rivertel Equipment, and this procedure will be repeated until we obtain Non Rivertel Equipment that is satisfactory.

4.8 If required, you are responsible for obtaining, providing and maintaining all telephone access lines, telephone and computer equipment (including modem) or other access device(s) necessary to access the Services.

4.9 You agree that you will:

4.9.1 allow or procure for us (or any person nominated by us) safe, sufficient and timely access to any premises as required in connection with the provision, inspection, testing, maintenance and repair of the Services or any equipment used in the provision of the Services; and

4.9.2 permit us (or any person nominated by us) to modify any equipment used in the provision of the Services if we consider it necessary to do so.

4.10 If you do not own control or have access to premises which must be accessed in connection with the provision of the Supplies, you must indemnify us (or any person nominated by us) against a claim by the owner or occupier of those premises, or any other person, in relation to entry onto the premises by us (or any person nominated by us).

5. GOODS

If you order Goods from us:

5.1 Clause 13 will apply in respect of those Goods;

5.2 The Rivertel Equipment Warranty as detailed on the Website at the time of your order will apply to those Goods;

5.3 the Supplier of the Goods may also provide a manufacturer's warranty for those Goods, in which case you may receive notice of the terms of that warranty in the applicable Service Schedule and/or in a separate document accompanying the Goods;

5.4 it is your responsibility to review and consider the specifications and descriptions of the Goods contained in any order documentation to ensure that the goods meet your needs, and you will be deemed to have accepted these matters if you do not notify us otherwise before you pay for the Goods or we order the Goods (whichever occurs first);

5.5 we may require you to pay for the Goods in advance of us placing an order with a Supplier for the Goods. If we do not require advance payment from you before obtaining goods you have ordered and you subsequently fail to pay us for those Goods when requested, you will be liable for any resulting losses we may suffer;

5.6 we may adjust the price of the Goods at any time before delivery to you to reflect any change in the costs to us of the Goods due to any factor beyond our reasonable control. If we adjust the price of the Goods after your order you may cancel your Order before the Goods are delivered to you;

5.7 risk of damage to or loss of the Goods shall pass to you once the Goods are delivered to you;

5.8 notwithstanding Clause 5.7, if we have not received payment for the Goods the property and ownership of the Goods shall not pass to you until we have received payment in full for all indebtedness including the price of the Goods;

5.9 until such time as title to the Goods pass to you in accordance with Clause 5.8:

5.9.1 you must hold the Goods as our bailee and must keep the Goods separate from all other goods;

5.9.2 you must keep the Goods properly stored, protected and identified as our property;

5.9.3 we may at any time require you to deliver up the unpaid Goods to us and, if you fail to do so immediately, we may enter your premises or any third party's premises where the Goods are located and repossess the Goods;

5.9.4 you agree that we are authorised to enter any premises where the Goods are located and you will indemnify us in accordance with Clause 12 against all losses of whatever nature suffered by us as a result of recovering or attempting to recover the Goods.

6. NOTICES

6.1 Notices under this Agreement must be sent by prepaid ordinary post, by facsimile or by electronic mail and will be deemed given:

6.1.1 in the case of posting, three days after dispatch; or

6.1.2 in the case of facsimile and electronic mail, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

6.2 You must provide notice either in writing, or by using an online cancellation request facility provided on the Rivertel web site, of your intention to cancel any of the Supplies under Clause 23 to our accounts department.

7. YOUR OBLIGATIONS TO US

7.1 You must provide us with all information that we may reasonably require for the purposes of this Agreement. All information must be accurate, truthful and correct. Without limitation, you warrant that you are not a minor.

7.2 If applicable for the Services, you warrant that either:

7.2.1 you are the registered lessee of the Telephone Line; or

7.2.2 you have obtained the express consent of the lessee of the Telephone Line for you to obtain the Services using the Telephone Line.

7.3 You are responsible for all third party charges (eg standard landline telephone services purchased from a third party Telecommunications Company) associated with connecting to the Services. You are also responsible for all third party charges associated with disconnecting from the third party services (eg standard landline telephone service disconnection fees).

7.4 You are responsible for all third party charges for maintenance, repair or otherwise to Non-Rivertel Equipment required to connect to or use the Services, and for the fee charged by us for any relevant callout made in accordance with clause 10.8.

7.5 If you and one or more others are the customer for the Services, each of you is jointly and individually responsible for all charges and all other obligations relating to the Services.

7.6 You agree that you will not interfere with the normal operation of the Services or any equipment used in the provision of the Services, or make either unsafe.

7.7 You acknowledge that any material that you make available using the Services is your own responsibility and that we accept no liability for any such material. You indemnify us against any liability in relation to this material. You also acknowledge that we do not vet or approve any information or material available through the Services.

7.8 You must ensure that use of the Services that are accessed through your access information does not expose any minor to material that is unsuitable for minors (and you will indemnify us in accordance with Clause 12 for any liability we incur as a result of your breach of this Clause). You may obtain advice on available content filtering software which may be of assistance to you from the following web page: <http://www.iaa.net.au/index.php/initiatives/guide-for-users.html>

7.9 You acknowledge that it is your sole responsibility to comply with any rules imposed by any third party whose content or service you access using the Services.

7.10 You must not re-sell or attempt to re-sell the Services, unless you have explicit written permission from us to do so.

7.11 You acknowledge that we may take all reasonably necessary steps to ensure the efficient operation of the Services.

7.12 You are responsible for backup of all information or content associated with the Services.

7.13 You are responsible for:

7.13.1 obtaining all necessary permissions, authorisations, licences and consents in relation to the use of any third party materials used in the provision of the Services; and

7.13.2 payment of all royalties and other fees associated with the use of such third party materials, and you must indemnify us in respect of any liability arising directly or indirectly from a failure by you to observe your obligations under this Clause 7.13.

7.14 You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services or the Package, and their use.

7.15 You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited by or does not meet the requirements of any technical or interconnection standards made by the ACMA under the Act unless such connection is made in accordance with a connection permit issued under the Act or connection rules made under the Act where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.

7.16 If you change your address, phone number or other billing contact details, you must notify us before the end of your billing period. Please contact our customer service team if you do not know when the end of your billing period is.

7.17 You must not use the Services, Value Added Features, Software, any of the Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment or any and all components of the Package in such a manner that may:

7.17.1 menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person;

7.17.2 expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute;

7.17.3 involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;

7.17.4 damage our, or our Supplier's, network or systems or cause the quality of the Services to be impaired;

7.17.5 infringe any person's intellectual property, personal (as set out in Privacy Act), or other rights; or

7.17.6 be unlawful.

7.17.7 You agree to comply with the Acceptable Use Policy set out on the Rivertel website

7.18 You must not use the Services, Voice Services Related Equipment, Data & Internet Services Related Equipment, Value Added Features, Equipment or Software, to send unsolicited information to third parties.

8. SERVICE INFORMATION

8.1 We will provide you with any access information required to use the Services that we deem reasonably necessary (if any).

8.2 You will:

8.2.1 subject to disclosure permitted by us, maintain the secrecy and confidentiality of all access information required by you to access the Services, and not disclose to any other person, corporation, entity or organisation any access information, whether in use or not, nor any other confidential information relating to the Services; and

8.2.2 notify us immediately if your username and password are lost, or you think someone else is using them.

8.3 You will be liable for all Charges resulting from use of the Services accessed through your access information, whether authorised by you or not.

9. SERVICE LEVELS

9.1 If a Service Schedule provides that a Service is subject to service levels, Clause 10 applies in respect of the provision of that Service.

9.2 You must report the details of a suspected Fault to the Rivertel Help Desk as soon as possible after you become aware of the suspected Fault.

9.3 You may report a suspected Fault to us 24 hours per day. However if you make a fault report outside the Hours of Coverage for Response, the Response Time will not commence until the beginning of the Hours of Coverage for Response.

9.4 When reporting a suspected Fault to us, you must provide the following information to us:

9.4.1 Service details which identify the affected Service to such particularity as requested by us (including the location of the affected Service); and

9.4.2 contact details, including your name, your contact point(s), the Site Contact (if Site attendance is required), contacts at both ends of the Service (where appropriate) and details of the Fault systems.

10. INVESTIGATION OF FAULTS BY RIVERTEL (APPLICABLE SERVICE TYPES ONLY – REFER TO CLAUSE 9.1)

10.1 We will analyse the cause of the suspected Fault and determine if the suspected Fault is in fact a Fault.

10.2 We may be unable to provide Fault restoration under this Agreement where the fault is in a network owned or maintained by any person other than us.

10.3 Where a Fault report is lodged, we will undertake Fault restoration work during the Hours of Coverage for Restoration for the Service.

10.4 On completion of Service restoration activities, we will contact you to confirm that the Service has been completely and satisfactorily restored. Where the Service has not been completely and satisfactorily restored, we will continue the restoration process.

10.5 If you wish to escalate the Fault, as a result of either the response target or the restoration target having been exceeded, you must contact Rivertel explaining the outstanding issue.

10.6 If the escalation does not result in the restoration of the Service, you should contact your Rivertel representative, or alternatively the Rivertel Customer Services Manager and report this escalation failure.

10.7 Where an on-site visit is required, we will arrange an appropriate appointment time with the Site Contact.

10.8 Where we attend the Site in response to a Fault report and the Fault is found to be in the Non Rivertel Equipment, you will be liable for a fee charged by us for the relevant callout, and all third party charges in relation to the Non-Rivertel Equipment in accordance with clause 7.4.

10.9 If we must gain access to the Site to restore the Service, the Response Time and Restore Time will be subject to the provision of entry to the Site, and delays in the provision of such access will result in a corresponding extension of the stated Response and Repair Time commitments.

10.10 Our obligations do not extend to Faults caused as a result of:

10.10.1 any fault in equipment, software or any network not forming part of the Service or the Rivertel Equipment;

10.10.2 damage due to causes external to the Service or the Rivertel Equipment; or

10.10.3 any fault which is within the network of a Supplier. However, we will notify that Supplier of the fault and request that the fault be corrected promptly.

11. CHARGES

11.1 All quotations issued by us in respect of the Supplies, unless otherwise stated, are valid for thirty (30) days from date of issue and are subject to this Agreement.

11.2 We offer different fee structures for the provision of the Supplies and you are liable for the fees applicable to any Supplies you acquire, as specified in each Application and/or each applicable Service Schedule and/or each applicable Service Arrangement and Agreement Addendum.

11.3 If you acquire ongoing Services from us, a regular invoice/statement notification will be delivered via electronic mail, postal mail, or fax. We can charge you a processing fee for invoices delivered to you by postal mail or fax. You may also contact us during our hours of operation to verify the current financial status of your account with us. An invoice presented by us shall be deemed to be a correct statement of all Charges contained in that invoice.

11.4 If you acquire any Other Services from us that are supplied on an ongoing basis, we may require that you pay for those Other Services periodically (in which case the provisions of Clause 11.3 will apply to those Other Services) or in full prior to supplying those Other Services to you. Each Application, Service Schedule or Service Arrangement and Agreement Addendum will set out the payment requirements for the Other Services.

11.5 All Charges (unless otherwise provided in an applicable Application, Service Schedule or Service Arrangement and Agreement Addendum), except any Charges for excess usage or specified non Internet or telecommunications services, are payable in advance and must be paid prior to the supply of the Service/s and prior to the invoice due Date (as applicable). We will endeavor to bill you within the next normal billing period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods. As per 8.2.2 of ACIF CS42 - Industry Code - Billing, we will not bill charges older than 190 days from the date the charge was incurred by the customer.

11.6 All accounts must be paid by the due date specified on the invoice/statement. Any account that is outstanding beyond the due date is in default, and an overdue notice will be issued. If payments are not received by the date specified on the overdue notice, we will be entitled to recover any Goods supplied for which payment has not been made in full (in the event that we did not require advance payment for those Goods) and/or may suspend your access to the Services and/or the provision of the Other Services under Clause 21.1 until all outstanding monies are paid in full (and we may charge you an additional fee for any subsequent re-connection to the Services or resupply of the Goods) and may also:

11.6.1 terminate this Agreement (as set out in Clause 22); and/or

11.6.2 require you to pay us interest on any monies owing to us at a rate equivalent to the prime rate charged for bank overdrafts by our current bankers at that time, that interest to be computed from the date on which the relevant payment was due until all outstanding monies have been paid in full.

11.7 If we terminate this Agreement under Clause 22.1.3 as a result of your non-payment of any Charges:

11.7.1 we will be entitled to remove any Goods supplied to you to which we have title;

11.7.2 you consent to us entering the premises on which the items referred to in Clause 11.7.1 are stored or may be accessed or located, in order to enforce our rights to possess, use and sell those items;

11.7.3 we will set off any amounts we receive from the sale or use of these items against the amounts you owe to us under this Agreement; and

- 11.7.4 we will re-assign or re-transfer to you any items that remain after all amounts owed to us by you under this Agreement have been paid by you and/or set off by the sale or use of these items, in accordance with this Clause.
- 11.8 Service suspensions under Clause 11.6 (if permitted by an applicable Service Schedule) will be promptly removed on receipt of full payment of all Charges owed to us under this Agreement.
- 11.9 If you wish to query any item you have been charged for, please do so within seven (7) days of our invoice. All non-disputed amounts must be paid in full within the period described in Clause 11.6.
- 11.10 Where you request us to invoice amounts owing under this Agreement to a nominated credit card:
- 11.10.1 you will operate the credit card within terms and credit limits set in order to pay your account in full;
- 11.10.2 you will give us the authority to complete and sign on behalf of yourself, all necessary forms and documents to facilitate payments from the relevant bank, or other financial institution;
- 11.10.3 you agree to remain liable to us for all amounts owing to your account consequently billed to your credit card until all amounts outstanding have been paid in full; and
- 11.10.4 we can charge you a credit card payment processing fee.
- 11.11 The amounts payable by you to us for, or in connection with, the Services supplied under this Agreement will include any GST payable. We will provide you with invoices in the form of tax invoices.
- 11.12 If the rate of GST changes after the date of this Agreement, we may adjust the amounts payable by you to us in respect of the Services to reflect that change in the rate of GST from the date the change is effective.
- 11.13 You are responsible for any collection fees (including legal fees and any other costs) incurred by us as a result of the collection of outstanding monies owed by you to us under this Agreement.
- 11.14 We will usually invoice you monthly for charges due under this SFOA. Our first invoice will be issued either in the month that we commence provisioning Services to you or, in our discretion, the following month. We may vary invoice frequency at our discretion. We may issue interim invoices. We may bill you more often if you exceed your spend limit (see clause 14.2).
- 11.15 If an invoice is paid by cheque or direct debit from your bank account and that cheque or direct debit is dishonoured, cancelled or otherwise fails, you may be liable for a charge which will be added to your next invoice.
- 11.16 Supplier charges:
- 11.16.1 Our charges to you may pass on any charges another Supplier charges to us (including increases and special or one-off charges).
- 11.16.2 You will pay us any charge which any other Supplier or other person renders to us:
- a) if you approach that other Supplier or person directly, or otherwise than through us; or
- b) for connection or initiation of any service or for cancellation of any service.
- 11.16.3 If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with this clause 11.5.
- 11.17 If you do not pay to us any part of the charges by the due date on any invoice, we may impose a late payment charge
- 11.18 Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.

12. INDEMNITY

You release and indemnify us, our servants, agents and Suppliers from all liability arising in connection with the Supplies and/or any goods or services provided by our Suppliers (including all liability in connection with their provision or cancellation, as applicable). This indemnity includes (but is not limited to) an indemnity against all actions, claims and demands (including the cost of defending or settling any action, claim or demand) which may be instituted against us, as well as all expenses, penalties, fines (including those imposed by any regulatory or governmental body or under any statute), losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a result, whether directly or indirectly of:

- 12.1 any breach of this Agreement by you including but not limited to a breach in respect of which we elect to terminate this Agreement;
- 12.2 any use made by any person (including any minor) of the Services that are accessed through your access information (including loss of data, delays, non-deliveries, mis-deliveries, service interruptions, whether or not as a result of our negligence or our act or omission);
- 12.3 the negligence of you or your agent, employee or sub-contractor or of any other person for whose acts or omissions you are held liable;
- 12.4 any loss of or damage to any property, or injury to or death of any person, caused by any negligent act or omission or wilful misconduct of you or your officers and employees;
- 12.5 disruption to your telephone services during the installation of an ADSL Service (if applicable).

13. OUR LIABILITY

- 13.1 We make no express warranties to you except those expressly set out in this Agreement.
- 13.2 We do not exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010) to the extent that doing so would contravene that statute or cause any part of this Clause to be void.
- 13.3 Subject to clause 13.2, we exclude:

13.3.1 from this Agreement all conditions, warranties, guarantees and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this Clause to be void ("**Non Excludable Guarantee**");

13.3.2 all liability to you in contract for consequential or indirect damages arising out of or in connection with this Agreement even if we were aware they were possible or they were otherwise foreseeable including, without limitation, lost profits and damages suffered as a result of claims by any third person such as you or one of your customers; and
13.3.3 all liability to you in negligence for acts or omissions of us or our employees, agents or contractors arising out of and in connection with this Agreement.

13.4 Subject to clause 13.6, Our liability to you for breach of any express provision of this Agreement or any Non Excludable Guarantee (except a Non Excludable Guarantee implied by sections 51, 52 and 53 of Schedule 2 to the Competition and Consumer Act 2010) is limited at our option to one of supplying, replacing or repairing the Goods or supplying again the Services or Other Services in respect of which the breach occurred.

13.5 On request by you we will refund any amount paid by you for the Services in respect of which the breach occurred, rather than provide the remedy referred to above.

13.6 If you are a consumer, as defined under the Competition and Consumer Act 2010, we do not exclude liability to you for breach of any Non Excludable Guarantee in respect of goods or services ordinarily acquired for personal, domestic or household use and consumption.

13.7 Subject to Clause 13.8, you warrant that you have not relied on any representation made by us which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us (other than an applicable Service Schedule).

13.8 You acknowledge that to the extent we have made any representation which is not otherwise expressly stated in this Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation.

14. SECURITY DEPOSIT & SPEND LIMITS

14.1 We may from time to time set a dollar limit for the amount we will allow you to spend on the Services or the Package during a month ("**spend limit**"). The spend limit is only a guideline for our credit management action, which may be varied depending on the amount by which you have exceeded your spend limit, and may include the following:

14.1.1 verbal advice to you of total cumulative charges;

14.1.2 written correspondence (including transmitting the notice to your email address where you have provided consent in your Application) to you advising the value exceeding the spend limit; and

14.1.3 an interim invoice, upon which payment must be received, in order to continue supply of the Services or the Package.

14.2 We may also monitor your Service for excessive or unusual usage or your level of liability for charges for such usage, but do not promise to do so. You acknowledge and agree that in addition to our rights under clauses 21 and 22 we can suspend, cancel or Bar your Service upon reasonable verbal or written notice to you (including transmitting the notice to your email address where you have provided consent in your Application) if we have reasonable grounds for believing that you represent a credit risk in relation to the Service, including:

14.2.1 where the Services are being used in an excessive or unusual way or an unusually high volume or spend for the relevant Service when compared with previous account activity for that Service. For example, there may be excessive or unusual use if you have a call that remains connected for an unusually long period of time or where an unusually large volume of calls to premium-rate or international services start being made from your Service.

14.2.2 your failure to respond to notices from us about unusual high volume or spend;

14.2.3 your failure to pay a current bill in circumstances where your payment history indicates a series of late payments, dishonoured payments or failures to pay. If we do suspend, Bar or cancel your Service, you still have to pay for any charges incurred for any excessive or unusual usage (regardless of how caused) and the provisions relating to liability and indemnity also remain unaffected. If you wish to Bar access to premium rate services from the Services we provide you, please contact us

14.3 We will not be responsible for any equipment tampering or service fraud. Should you have any questions in relation to steps which may be taken to reduce the potential risk of fraud in relation to a Service or telecommunications equipment, please contact us and we will endeavour to provide such information or direct you to an appropriate source of information.

15. PERIOD OF AGREEMENT

This Agreement starts when you sign the Application, complete a voice recording, submit an online application, or when you first access our Services after receipt of these terms and conditions and continues until terminated.

15.1 Commencement of Services: The provision of Services commences when your accounts are transferred from your current Supplier to us and upon completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Services have been completed.

If the Agreement is a non-fixed length agreement we will provide the service to you in accordance with the Agreement until the Service is cancelled in accordance with Clauses 21 or 22 below.

15.2 (a) For fixed-length agreements, this contract will continue (i) For the fixed term of the contract; or (ii) until it is terminated in accordance with Clauses 21 or 22. (b) If the Agreement is a fixed-length agreement and neither you nor we cancel the service at the end of the fixed term the agreement becomes a non-fixed length agreement and we will continue to supply the Service to you on a month to month basis in accordance with the Agreement. If you do not wish to continue to use the Service on a month to month basis after the end of the fixed term of your Agreement you must inform

us, in accordance with clause 22 below, by giving us 30 days notice in writing, before the end of the minimum term, that you wish to cancel the service at the end of the fixed term. (c) Rivertel will not be able to automatically renew the Agreement for the same duration as the initial Contract period for a fixed term contract without your written consent.

16. TRANSFER OF YOUR SERVICES TO US

16.1 If in providing the Services or the Package we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause.

16.2 Transferring to us:

16.2.1 You authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name.

16.2.2 You agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request.

16.2.3 You will immediately pay to your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to our name.

16.3 If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.

16.4 If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you must pay your previous Supplier that amount.

17. TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER

17.1 If you (or a Supplier acting with your authority) ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.

17.2 The provision of Services ceases on the date on which we transfer your Services to another Supplier.

17.3 We will endeavour to invoice you for Services which you transfer to another Supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.

17.4 We will not accept liability for any amounts owing by you to a Supplier or other person. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.

17.5 We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer

18. PERSONAL INFORMATION AND BUSINESS INFORMATION

18.1 This clause 18 applies where you are a natural person or a business. If you are a natural person, we may collect Personal Information about you including but not limited to your electronic contact details such as email ("**your Personal Information**"). If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("**business information**").

18.2 You acknowledge and agree that:

18.2.1 if you do not supply the information we request on our Application, we may not be able to provide the Services or the Package to you;

18.2.2 we will use your Personal Information or business information:

a) to assess any Application by you for Services or the Package to be provided by us;

b) to collect payments that are overdue in respect of any Services or the Package provided by us;

c) to provide the Services or the Package to you (including the investigation or resolution of disputes relating to any Services or the Package provided to you); and

d) we may use your Personal Information or business information to send commercial electronic messages, as defined under the *Spam Act 2003* (Cth);

18.2.3 we will also disclose or transfer your Personal Information or business information:

a) to other Suppliers for the purpose of enabling us to provide the Services or the Package to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services);

b) to other Suppliers about your account, including particulars of calls and call charges;

c) to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and ACMA) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services or the Package for the purpose of enabling investigation and resolution of those disputes or complaints;

18.3 You acknowledge that in certain circumstances, we may be permitted or required by applicable laws to use or disclose Personal Information or business information about you, including your name, address, service number and other details. Such uses or disclosures may include, without limitation:

18.3.1 disclosures to the operator of the Integrated Public Number Database ("**IPND**");
18.3.2 disclosures to law enforcement agencies for purposes relating to the enforcement of criminal and other laws;
18.3.3 uses or disclosures to assist in the recovery of lost or stolen equipment;
18.3.4 uses or disclosures in accordance with orders made by a court or if required or authorised by law;
18.3.5 uses or disclosures to lessen or prevent serious threats to an individual's life, health or safety, or to public health or safety; or
18.3.6 uses to assist in our internal investigations into suspected fraud or other unlawful activities.

18.4 Unless you ask us not to, you acknowledge that any calls you make to our customer call centres, the content of those calls, and any emails that you send us, may be monitored and/or recorded for quality assessment, administration and/or customer information purposes.

18.5 Unless you ask us not to, we will use your Personal Information or business information to:

18.5.1 provide information to you about other goods or services which we or any of our partners, associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents may offer to you;

18.5.2 provide information to our partners and associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents so that they can provide information to you about goods and services they offer; and

18.5.3 send commercial electronic messages as defined under the *Spam Act 2003* (Cth).

18.6 If you do not want us to use your Personal Information or business information in this way, you may ask us not to by contacting our privacy officer and/or customer service team.

18.7 We will provide you with access to most Personal Information or business information that we have about you, but sometimes that will not be possible, in which case we will tell you why. If you want to find out what information we have about you contact our privacy officer and/or customer service team.

18.8 If you think that any Personal Information or business information we hold about you is not accurate, complete and up-to-date, you may request us to correct that information. We will take reasonable steps to correct such Personal Information or business information unless we disagree with you about whether the information is accurate, complete and up-to-date.

18.9 Clause 19 contains further information on how we may also use your Personal Information and business information to perform credit checks.

19. CONSENT TO CREDIT CHECK

19.1 If you are a company, please note that we will be performing credit checks on you.

19.2 If you are a natural person you:

19.2.1 understand that the Privacy Act allows us to give a Credit Reporting Agency certain Personal Information about you. The information we disclose to a Credit Reporting Agency includes permitted information which will allow you to be identified, the fact that you have applied for credit and the amount, the fact that we are a current credit provider to you, repayments that are overdue and for which debt collection action has started, information that in our opinion you have committed a serious credit infringement (i.e. acted fraudulently or shown an intention not to comply with your credit obligations);

19.2.2 agree to our obtaining from a Credit Reporting Agency a credit report containing information about your personal credit worthiness for the purpose of assessing your application and for the purpose of assisting in collecting overdue payments; and

19.2.3 agree to our obtaining information about your commercial activities or commercial creditworthiness from any business which provides information about the commercial credit worthiness of persons, your accountant or any other supplier to you;

19.2.4 agree to our giving to and obtaining from any credit provider named in your Application or in a credit report on you issued by a Credit Reporting Agency, information about your credit arrangements for the purposes of:

a) assessing your Application;

b) notifying a default by you;

c) allowing another credit provider to ascertain the status of your arrangements with us where you are in default with one or more other credit providers; and

d) generally assessing your credit worthiness.

19.3 You understand the information exchanged can include any information about your personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

20. SERVICE NUMBERS, CLI & IPND

20.1 You acknowledge that:

20.1.1 The Government owns service numbers such as telephone numbers and mobile numbers ("**Service Numbers**");

20.1.2 The Numbering Plan sets out rules for issuing, transferring and changing Service Numbers. You and we must comply with the Numbering Plan. Information about your rights of use of your Service Number may be obtained by calling **Rivertel**;

20.1.3 You do not own or have any legal interest or goodwill in any Service Number or PIN issued to you and:

20.1.4 you are entitled to continue to use any Service Number we issue to you except in circumstances where the Number Plan allows us to recover the Service Number from you; and

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

20.2 Caller Line Identification ("**CLI**"):

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

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

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

21. SERVICE SUSPENSION

21.1 We reserve the right to immediately and without notice (and without prejudice to our rights of termination under Clause 17) suspend your access to the Services in our discretion if we:

21.1.1 reasonably consider that you have Materially Breached this Agreement;

21.1.2 reasonably consider that you may have Materially Breached our Acceptable Use Policy;

21.1.3 receive allegations (which we reasonably believe to be genuine) which indicate that you have Materially Breached our Acceptable Use Policy; or

21.1.4 reasonably suspect that your use of the Services breaches any state or federal law.

21.2 If we suspend your access to the Services under Clause 21.1, we may reactivate your access to the Services if we subsequently become satisfied that you are not in breach of any provision of this Agreement.

21.3 Notwithstanding any suspension of your access to the Services under this Clause, you will remain liable for our out-of-pocket costs and any third party costs incurred by us as a result of the suspension of your access to the Services under Clause 21.1 or in relation to our reconnection or resupply of the Services to you under Clause 21.2.

21.4 You are not entitled to a credit or refund for loss of access during any suspension period in accordance with Clause 21.1 or in the event that this Agreement is terminated in accordance with clause 21.5.

21.5 Without limiting the generality of any other Clause in this Agreement, we may terminate this Agreement immediately by notice in writing if we have suspended your access to the Services under Clause 21.1 or Clause 21.6, and we have not reactivated your access to the Services within seven (7) days of this suspension.

21.6 We may from time to time on 48 hours notice, or in the event of circumstances that we reasonably consider to be serious or critical, without notice suspend your access to the Services during a technical failure (including any failure caused by a Supplier ceasing to provide us with goods or services), or where modification or maintenance is being carried out in relation to the Services. We will use all reasonable endeavours to end any such suspension of Services as soon as practicable.

21.7 We may terminate this SFOA or suspend, limit or cancel the provision of any Service or Package, without prior notice to you if:

21.7.1 we reasonably determine that such action is desirable or necessary for the purpose of network maintenance or restoration of any part of our or our Supplier's network;

21.7.2 we are unable to enter your premises to inspect or maintain any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you;

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

21.7.4 you do not provide security as required by us;

21.7.5 we reasonably suspect you of fraud or attempted fraud;

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

21.7.7 you change your address, phone number or billing contact details without notifying us in accordance with clause 7.16;

21.7.8 we reasonably believe that your usage of the Services is unusually high (as referred to in clause 14.3);

21.7.9 we are unable to supply or continue to supply you with the Services or any and all components of the Package due to the cancellation, suspension or termination of any agreement with our Suppliers, for whatever reason and we provide you notice in writing;

21.7.10 we are unable to supply or continue to supply you with the Services or any and all components of the Package due to geographical coverage, capacity or technical capability limitations;

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

21.8 We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.

21.9 If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (*except if our action resulted from our or a supplier's mistake or manifest error*).

22. TERMINATION BY US

22.1 Without limiting the generality of any other Clause in this Agreement, we may terminate this Agreement immediately by notice in writing if:

22.1.1 you are in Material Breach of this Agreement (including any Policy) and such breach is not remedied within seven (7) days of us notifying you;

22.1.2 you have provided us with false or misleading information or you have not provided us with any information that we have reasonably requested for the purposes of this Agreement;

22.1.3 your nominated payment method is refused or dishonoured, or you fail to pay the amount specified on any overdue notice as required by clause 11.6;

22.1.4 if you are a natural person, we discover or reasonably believe that you are a minor;

22.1.5 we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency administration;

22.1.6 if you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;

22.1.7 if you, being a natural person, die; or

22.1.8 you cease or threaten to cease conducting business in the normal manner, in which case Clause 29.1 will apply.

22.2 We may terminate this Agreement (otherwise than under Clause 22.1) for any reason on thirty (30) days notice in writing to you (unless the applicable Service Schedule specifies a longer notice period, in which case that longer notice period must be provided), in which case Clauses 29.2 and 29.5 will apply.

22.3 We may terminate this SFOA or suspend, limit or cancel the provision of any Service or Package, without prior notice to you if:

22.3.1 we reasonably determine that such action is desirable or necessary for the purpose of network maintenance or restoration of any part of our or our Supplier's network;

22.3.2 we are unable to enter your premises to inspect or maintain any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you;

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

22.3.4 we reasonably suspect you of fraud or attempted fraud;

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

22.3.6 you change your address, phone number or billing contact details without notifying us in accordance with clause 7.16;

22.3.7 we are unable to supply or continue to supply you with the Services or any and all components of the Package due to the cancellation, suspension or termination of any agreement with our Suppliers, for whatever reason and we provide you notice in writing;

22.3.8 we are unable to supply or continue to supply you with the Services or any and all components of the Package due to geographical coverage, capacity or technical capability limitations;

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

22.4 We may refer any debt owing to us to an external collection agent or commence legal action to recover any unpaid debt to us.

22.5 In the event that your account is terminated and monies are owed to you by us, we will notify you of these amounts. In the event you do not claim those monies within three months of being notified we will retain the money and you agree that you will have no further claim in relation to those monies.

22.6 If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (*except if our action resulted from our or a supplier's mistake or manifest error*).

23. CANCELLATION BY YOU

You may elect to terminate a Service at any time in accordance with Clause 6.2 subject to the following:

23.1 you must provide seven (7) days notice to us of the Service to be cancelled or you may transfer your service using the Churn process;

23.2 the cessation of the Services will be made as soon as practicable on or after your notified specific cessation date. In most cases this will be within seven (7) days of that date;

23.3 you will be liable for all outstanding debts incurred prior to termination for the current billing period;

23.4 you must pay the Early Termination Charges within a reasonable period, being a period not in excess of twenty-eight (28) days after the termination of this Agreement, if the Service is cancelled before the end of the Term; and

23.5 Clause 29.3 and 29.5 will apply.

24. AFTER TERMINATION

24.1 If this Agreement is terminated otherwise than for our breach, in addition to any other obligations set out in this Agreement that may apply (including without limitation clause 23.4), we may:

24.1.1 charge a reasonable sum for work performed and for which no sum has as yet been charged;

24.1.2 charge any and all amounts which any third party supplier has charged us in relation to the Service or the termination of the Service, including without limitation any service disconnection charge imposed by Telstra Corporation Limited. A reasonable administration fee may be also included in such charges passed on by Rivertel;

24.1.3 be regarded as discharged from any further obligations under this Agreement; and

24.1.4 pursue any additional or alternative remedies provided by law.

24.2 Upon the expiration or termination of this Agreement for any reason, the provisions of Clauses 4.4, 4.5, 5, 12, 13, 22, 23, 24, and 29 shall remain in force in accordance with their respective terms.

24.3 Once this Agreement has been terminated or cancelled for any reason, we may delete all of your data from any storage media, including but not limited to email addresses, personal webpage, if any.

25. CONFIDENTIALITY

25.1 We retain all intellectual property rights in any information relating to the Services, any and all components of the Package, the design or operation of the Services and any and all components of the Package and other technical information relating to the provision of the Services and any and all components of the Package ("**Confidential Information**").

25.2 You will keep the Confidential Information confidential, and will not allow any written or electronically recorded material to be copied.

25.3 On the termination of the SFOA for any reason, you will return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.

25.4 You will keep confidential the manner in which we arrange Services, any and all components of the Package, including our charges, savings, and other financial information.

25.5 You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

26. FORCE MAJEURE

No party is liable for any failure to perform or delay in its performance of its obligations under this Agreement if the failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds sixty (60) days the other party may terminate this Agreement with immediate effect by giving notice to the party. This Clause does not apply to any obligation to pay money.

26.1 We are not liable for:

26.1.1 any delay in installing any Service, any and all components of the Package, or any other equipment;

26.1.2 any delay in correcting any fault in any Service, any and all components of the Package, or any other equipment;

26.1.3 failure or incorrect operation of any Service, any and all components of the Package, or any other equipment;

26.1.4 Service outages; or

26.1.5 any other delay or default in complying with the SFOA, if it is caused directly or indirectly by any event beyond our reasonable and foreseeable control. Rivertel is not liable for failure to perform its obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of telephone service. No party is entitled to terminate this Agreement in such circumstances.

27. ASSIGNMENT

27.1 You must not assign, transfer or otherwise deal with any of your rights or obligations under this SFOA, except with our prior written consent (acting reasonably).

27.2 We may upon notice, assign, transfer, sell or otherwise deal with our rights under this SFOA and/or Equipment and/or any component of the Package, and your consent is not required.

28. VARIATIONS TO THE SERVICES, THE AGREEMENT OR OUR POLICIES

28.1 Subject to clauses 23.1 and 23.2 when requesting a change to your Services that are supplied on an ongoing basis (whether upgrading, downgrading, cancellation or otherwise), you must provide this request online (where available) or in writing. The request will be processed and actioned on the earliest date that is reasonably possible, having regard to

when it will be technically and operationally feasible for us to action it. In most cases, changes to ongoing Services will become effective within 3 to 5 working days, although we cannot guarantee this. Changes to Telephone Services will not take effect until the beginning of the next calendar month.

28.2 We may at any time in our discretion change this Agreement. However we will not make a variation that could reasonably be expected to adversely affect you without including a notice on, or with, your next invoice or statement, or sending a separate notice to you at least 3 business days before it takes effect, which:

28.2.1 is clearly identified as being about a variation to this Agreement;

28.2.2 summarises the effect of the variation; and

28.2.3 invites you to contact us for further information about the variation and its effects by visiting the Website.

28.3 You may obtain a copy of our current Standard Form of Agreement as well as the current Summary Standard Form of Agreement from our offices and/or our Website.

28.4 We may at any time in our discretion vary the available service plan(s) for and/or available feature(s) of the Service (or make available new alternative service plan(s) for the Service or new feature(s) of the Service). We will endeavour to notify you of such variations or additions in accordance with clause 6. For the avoidance of doubt we will have no other obligation to notify you of such variations and additions other than if we endeavour to notify you in accordance with clause 6. You acknowledge and agree that:

28.4.1 it is your sole responsibility to notify Rivertel in accordance with clause 28.1 if you wish to vary the service plan and/or the features of the Services (including without limitation if you wish to change to a new service plan or receive new features of the Service offered by us) in response to the notification given by us under this clause;

28.4.2 should you not notify Rivertel in accordance with this clause of your wish to expressly vary the service plan and/or the features of the Services:

(a) Rivertel is under no obligation to vary the service plan and/or features of the Services provided to you; and

(b) subject to clause 28.2, the service plan and/or the features of the Services will remain unchanged.

29. REFUND POLICY

Our refund policy is as follows:

29.1 if we terminate this Agreement under Clause 22.1, you will not be entitled to a refund in respect of the Supplies;

29.2 if we terminate this Agreement under Clause 22.2, subject to clause 29.5 we will provide you with a refund in respect of the Supplies for which you have paid in advance but which have not been supplied by us, calculated at the applicable monthly rate;

29.3 if you validly terminate this Agreement as a result of our breach, your only remedy (see Clause 13 which sets out the limitations on our liability) will be:

29.3.1 in respect of Services or Other Services, subject to clause 29.5 a refund for the services for which you have paid in advance but which have not been supplied by us, calculated at the applicable monthly rate; and/or

29.3.2 in respect of Goods, a refund of the amount you have paid for the Goods;

29.4 if you request a change in an applicable Service Schedule for the Services (for example, if you select a different Service plan) such that the new Charges for the Services payable each Due Date ("**New Charges**") differ from the previous Charges payable each Anniversary Date ("**Previous Charges**"), then:

29.4.1 if the New Charges exceed the Previous Charges, you must pay us at the time that the applicable Service Schedule is changed ("**Changeover Date**") the New Charges payable for the period until the next Anniversary Date (less any unused Previous Charges you have pre-paid to us); or

29.4.2 if the New Charges are less than the Previous Charges, we will retain a credit and will apply this amount towards the New Charges on successive Anniversary Dates until this credit has been used up; and

29.4.3 you agree to pay the New Charges (which will be deemed to be the Charges) from the Changeover Date in accordance with this Agreement;

29.5 each Service is billed in full monthly blocks from the relevant Anniversary Date for that Service. If we terminate that Service pursuant to clause 22.2, you terminate that Service pursuant to clause 23, or clause 29, we will refund you for any unused portion of that Service that you have paid for in advance in full monthly blocks. However, if you have used any part of any full monthly block for that Service we will not provide a refund in respect of that month.

30. TECHNICAL SUPPORT

Our Services include technical support services during commissioning of the Services. Once you have successfully connected to the Internet through us and/or gained any additional Services you have purchased from us, we have fulfilled our support obligations to you. Additional support may be provided, although it may be at an additional cost to you in the event that the reported problem is due to faults in your software or hardware. We cannot provide free support for faults that are outside our system or that do not relate to the Services.

31. SEVERABILITY

The parties to this Agreement agree that if any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction such determination shall not affect any other provision of this Agreement and all other provisions shall remain in full force and effect.

32. WAIVER

The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

32.1 to insist on the performance of, or claim damages for breach of, that obligation unless that party acknowledges its waiver in writing; or

32.2 at any other time to require performance of that or any other obligation under this Agreement.

33. COMPLAINTS HANDLING

Rivertel is committed to resolving customer complaints quickly and in a satisfactory manner. If you have a complaint, we request that you refer to our customer complaint handling procedures located on the Rivertel web site at <http://www.Rivertel.on.net/contact/complaints> and contact Rivertel using the contact details located on the Website. If your complaint is not resolved at the first point of contact, that is, within the department your complaint relates to, you may have the complaint reviewed at a higher level by emailing feedback@rivertel.com.au or via the website <http://www.Rivertel.on.net/contact/feedback/>. If you are not satisfied with Rivertel's review and response to your complaint you may either contact the Office of Fair Trading in your state or territory, or as a last resort, the Telecommunications Industry Ombudsman.

34. CUSTOMER SERVICE GUARANTEE

34.1 The Customer Service Guarantee under Part 5 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 prescribes mandatory performance standards for certain telecommunications services. Rivertel will comply with such standards to the extent that they apply to the Services offered, notwithstanding clause 34.2

34.2 Certain services may be offered without a Customer Service Guarantee. Services for which the Customer Service Guarantee does not apply will be indicated in their service schedule.

35. COMPLIANCE WITH LAWS

We must comply with the Telecommunications Act 1997 and other laws and directives under state or federal laws including without limitation those issued by state or federal law enforcement agencies that have jurisdiction over the use of Internet services. We will cooperate with law enforcement agencies and other service providers to control and prevent unacceptable behaviour and may implement automated mechanisms to prevent behaviour which is or may be in breach. This may include removing any content or closing or suspending your account. It may also include disclosing personal information or any other information or data held by us about you in accordance with our Privacy Policy, and/or disclosing any other information or data held by us in, or in relation to, your account provided that:

35.1 we have reason to suspect that unlawful activity has been, is being or may be engaged in, and we disclose this information as a necessary part of our investigation of the matter or in reporting our concerns to relevant persons or authorities; or

35.2 we are required or specifically permitted by or under law to provide this information to an authority or person that is duly authorised to request it; or

35.3 a court order compels us to disclose this information to a specified recipient; or

35.4 we are otherwise required or specifically permitted by law to disclose this information.

36. CARRIERS & CARRIAGE SERVICE PROVIDERS

36.1 You represent that you are not a carrier or a carriage service provider (as those terms are defined in the Act). If you are or become a carrier or carriage service provider, you must promptly notify us of that fact and we may immediately terminate this SFOA by notice to you.

37. GENERAL

37.1 If you are a business customer then you agree that if we need your consent to undertake certain actions, then provided we act in good faith, we may rely upon the authority of any of your employees, who warrants to be authorised to provide consent on your behalf.

37.2 You warrant that you have provided full and accurate Personal Information and business information to us in connection with this SFOA and your Application and you have full power and authority to enter this SFOA and Application.

37.3 Governing law:

37.3.1 This SFOA and your Application are governed by the laws of New South Wales.

37.3.2 with respect to any applicable cooling-off period legislation, the governing law will be the law of the state or territory in which the contract was formed.

37.4 This SFOA contains the whole understanding between us and supersedes all prior arrangements and understandings between us in connection with it.

37.5 From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this SFOA and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.

37.6 You authorise us to complete any blank spaces or incomplete information in your Application and including but not limited to the serial numbers and other identification details of the Equipment, any and all components of the Package and any other equipment being provided to you.

37.7 We may engage an agent, dealer, contractor or franchisee to conduct any aspect of service or equipment provision and maintenance under this SFOA. You acknowledge that we may enter into this SFOA as principal or as agent. Where we enter into this SFOA as an agent, all references to our rights are to be read as references to us and our principal. Our performance of this SFOA may, at our discretion, be carried out by a Related Body Corporate of Rivertel or any other party arranged by Rivertel or a Related Body Corporate (and your obligations under this SFOA will be owed to Rivertel or that Related Body Corporate or that other party, as relevant).

37.8 No reliance: You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement

37.9 Release: You accordingly release us and each of our officers, agents and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it

37.10 Standard Form of Agreement: These terms and conditions have been formulated under section 479 of the Telecommunications Act and filed with the Australian Communications Authority and will be referred to as the Rivertel Standard Form of Agreement.

PART A – TELEPHONE (VOICE) SERVICES

38. APPLICATION OF THIS PART

38.1 This Part A applies if you have requested in your Application that we supply you with Voice Services and sets out the terms and conditions on which we will supply you with Voice Services.

38.2 To the extent relevant, the General Terms apply to the Voice Services as though specified in full in this Part A and such terms or part of such terms will be relevant except to the extent they relate to any services or product other than voice services.

38.3 Voice Services consist of telecommunications services specified in your Application, including Local Calls, National Calls, International Calls, Fixed to Mobile Calls, Data Calls, 13 Calls, 1300 Calls and 1800 Calls, ToIP, VoIP, and other call types specified from time to time.

38.4 Voice Services do NOT include Voice Services provided via the NBN see Part D – NBN Network Services

39. SERVICE NUMBER PORTABILITY

39.1 Subject to Clause 20, provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.

39.2 Subject to Clause 20, by signing the Service Number Portability Customer Authorisation (“**LNP Authorisation**”) which forms part of your Application, you acknowledge and agree:

39.3 to your current Supplier transferring to us your Service Number;

39.3.1 that we are only transferring your Service Number not your Voice Service. This means you may lose value added services and other features provided by your current Supplier. When you are connected to the Voice Services you will use the Voice Services specified in your Application, which may be different to the service and features that you had with your current Supplier;

39.3.2 that by transferring your Service Number, the service and/or any features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;

39.3.3 that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you transfer to us;

39.3.4 that your current Supplier may or may not disconnect your existing service and/or value added services;

39.3.5 if you are transferring between different voice service platforms, you may need to purchase certain software, modems, new handset and/or Voice Equipment;

39.3.6 that you may need to purchase approved Voice Equipment to access the Voice Service;

39.3.7 that you can only withdraw your authority to transfer prior to the port cutover notification being received by us from your current Supplier. Withdrawing your LNP Authorisation does not change your contractual obligations to us under your Application and this SFOA;

39.3.8 that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to transfer the Service Number, if the information you provide is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to transfer the Service Number or dispute the rejection with your current Supplier;

39.3.9 that if your Service Number cannot be transferred to us then you may accept a new Service Number from us;

39.3.10 that your authorisation to transfer your Service Number to the Voice Services is valid for 90 days from the date of the LNP Authorisation;

39.3.11 that in the event of a withdrawal or reversal to your current Supplier, we:

a) are not responsible for any period of outage of the service or features or your current service or any value added service provided by your current Supplier;

b) do not warrant that your Service Number will be transferred to us within any specified timeframe; and

c) to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of the Service Number(s), withdrawal or reversal, including a negligent act or omission by us;

39.3.12 that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and

39.3.13 that we reserve the right to charge for transferring your Service Number to and from us.

40. PROVISION OF VOICE SERVICES

40.1 We will provide the Voice Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Voice Services have been completed or when your account with us has been established.

40.2 If you fail to nominate the required Voice Services option in your Application, we will assume you wish to select us as your full service telecommunications provider.

40.3 We will provide you with the relevant Voice Services, unless you dial another override code or, if required for access, you dial our override code as notified to you from time to time.

40.4 We will provide the Voice Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.

40.5 We will provide the required Voice Services subject to availability, geographical and technical capability. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Voice Services where capacity, geography, or technical capability, affect the application or installation of the Service to your premises. We do not warrant that the Voice Services will be free of interruption, delays, or fault.

40.6 To the extent we provide you with a standard telephone service (as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) ("CSG"). This code is available at http://www.acma.gov.au/WEB/STANDARD/pc=PC_1668. Certain specified enhanced call handling features, we may be obliged to comply with the CSG, you acknowledge and agree:

40.6.1 The CSG sets performance standards for service connection times, fault repair times and keeping appointments to provide you with these services. The CSG does not apply to customer equipment (including Equipment) or to customers who have more than five telephone lines;

40.6.2 Where you have nominated in your Application to waive (where applicable to the Voice Services nominated in your Application) in whole or part your CSG rights in relation to certain Voice Services that we are not obliged to provide you with the CSG.

40.6.3 Where applicable, if we fail to meet CSG performance standards you may be entitled to specified monetary compensation. Our CSG policy is available on our website

40.7 You acknowledge that we reserve the right to Bar access to 1900 numbers, data calls, internet service providers and any other calls as set out in clause 14.3 of the general terms or in a fair use policy or as we deem necessary from time to time. If you wish to Bar access to premium rate services from your Voice Service, please contact us.

40.8 If you are on a Minimum Term Contract:

40.8.1 the fixed minimum term of your Minimum Term Contract specified in your Application commences on the date that your service becomes active;

40.8.2 for the fixed term of your Minimum Term Contract you agree:

40.8.3 to maintain us as your carrier for, as a minimum, the voice services; and

40.8.4 to maintain the same level of business (or more) with us than as at the date that you sign your Application;

40.8.5 you agree to give us reasonable notice in advance of any significant changes in your telecommunications requirements so that we can plan for these changes; and

40.8.6 you acknowledge that the pricing available to you under the SFOA is subject to you maintaining us as your carrier for, as a minimum, the voice services.

41. VOICE SERVICES CHARGES

41.1 The charges applicable to the Voice Services are specified in the Rivertel Rate Sheets and your Application. Information on our miscellaneous charges (including the miscellaneous charges for any changes to your Voice Services) are available from us on request.

41.2 We may increase or reduce any of the charges applicable to the voice Services at any time by giving you at least 30 days notice. Unless you notify us in writing that you wish to terminate this SFOA within 30 days of the date of a notice specifying any such change in charges, then any such change in charges will apply on and from the date that is 30 days after the date of the relevant notice. If you elect to terminate this SFOA in accordance with this clause then clause 52.2 will apply

42. DEFINITIONS

42.1 In this Part A, unless the context requires otherwise:

42.1.1 **Fixed to Mobile Calls** means calls made from a PSTN or ISDN telephone service to a cellular public mobile telecommunications service provided in Australia.

42.1.2 **International Calls** means a call made from a PSTN or ISDN telephone service from Australia to another country; from Australia (excluding Norfolk Island) to Norfolk Island; from Norfolk Island to the rest of Australia; or from Australia's bases in the Antarctic to Australia and other countries.

42.1.3 **Local Calls** means a call between a telephone service and a telephone service where: the A-Party and the B-Party are in the same Standard Charging Zone; the A-Party and the B-Party are in adjoining Standard Charging Zones; or either the A-Party or the B-Party is located in a Charging Precinct and the other is in its designated Standard Charging Zone, as defined in the Act, the Numbering Plan, and the Telstra PSTN SFOA.

42.1.4 **Long Distance Preselection Option** means that we will be your default provider for your International Calls, National Calls and Fixed to Mobile Calls.

42.1.5 **National Calls** means a call made within Australia from a PSTN or ISDN telephone service to a PSTN or ISDN telephone service, which is not a Local Call or a Fixed to Mobile Call.

42.1.6 **ToIP** means Telephony over internet protocol as specified in your Application.

42.1.7 **VoIP** means Voice over internet protocol as specified in your Application.

PART B – DATA & INTERNET SERVICES

43. APPLICATION OF THIS PART

43.1 This Part B applies if you have requested in your Application that we supply you with Data & Internet Services and sets out the terms and conditions on which we will supply you with Data & Internet Services.

43.2 To the extent relevant, the General Terms apply to the Data & Internet Services as though specified in full in this Part B and such terms or part of such terms will be relevant except to the extent they relate to services other than data & Internet services.

38.4 Data & Internet do NOT include Data Services provided via the NBN see Part D – NBN Network Services

44. PROVISION OF DATA & INTERNET SERVICES

44.1 We will provide the Data & Internet Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Data & Internet Services have been completed or when your account with us has been established.

44.2 We will provide the required Data & Internet Services and its coverage subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the Data & Internet Service is connected. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with Data & Internet Services where capacity, geography or technical capability, affect the application or installation of the Service to your premises. For certain Data & Internet Services, coverage may only be available in selected metropolitan and regional areas

44.3 We do not warrant that the Data & Internet Services will be free of interruption, delays or faults. You acknowledge and agree:

44.3.1 that our Data & Internet Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and

44.3.2 that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

44.3.3 We are not obliged to provide Data & Internet Services to you if the physical infrastructure of your premises or site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.

44.4 You agree that we may not supply a 'standard telephone service' (for the purposes of the Act) under this Part B with the internet access component and as such the Data & Internet Services are not subject to the Customer Service guarantee standard administered by the ACMA.

45. PERIOD OF AGREEMENT

45.1 You must take the Data & Internet Services for the Minimum Term if specified in your Application, subject to your rights

45.2 The Minimum Term commences when:

45.2.1 if you are arranging for self installation of the required equipment and:

45.2.2 you supply the required equipment yourself, on the date we activate your Data & Internet Services; or

45.2.3 if we supply you with the required equipment, on the date of delivery of the required equipment; or

45.2.4 if we are installing equipment for you and:

45.2.5 the equipment is being installed at a single Site, the date that we install the equipment at the Site; or

45.2.7 the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.

45.3 Unless you notify us in writing prior to the expiration of the Minimum Term that you wish to cease receiving the Data & Internet Services at the expiration of the Minimum Term, the Minimum Term of this SFOA will be automatically extended from month to month ("**Holding Over Period**") at the same rate, including the same Minimum Monthly Spend, and on the same terms and conditions.

46. DATA & INTERNET SERVICES CHARGES

46.1 The charges applicable to the Data & Internet Services are specified in the Rivertel Rate Sheets and the applicable Schedule attached to your Application.

46.2 The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the Data & Internet Services in accordance with the charges specified in your Application and the Rivertel Rate Sheets and for miscellaneous charges (if relevant) as specified in the relevant Schedule attached to your Application. Your usage of the Data & Internet Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise. Information on our miscellaneous charges are available from us on request.

46.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.

46.4 We may increase or reduce any of the charges applicable to the Data & Internet Services at any time by giving you at least 30 days notice. Unless you notify us in writing that you wish to terminate this SFOA within 30 days of the date of a notice specifying any such change in charges, then any such change in charges will apply on and from the date that is 30 days after the date of the relevant notice. If you elect to terminate this SFOA in accordance with this clause then clause 52.2 will apply.

47. CHANGE OF ADDRESS / UPGRADES / DOWNGRADES

47.1 If you request your Data & Internet Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule attached to your Application. If Data & Internet Services cannot be provided at your new address, we may terminate this SFOA by notice to you.

47.2 You may be able to change your Data & Internet Service if it is specified in the applicable Schedule attached to your Application. Changes to your plan on the Data & Internet Service or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

48. INDEMNITY

48.1 Without limiting the indemnity provisions in clause 12, you indemnify us from all liability (including third party) arising from the following:

48.1.1 disruption in PSTN services and your standard telephony Services;

48.1.2 cancellation of any Data & Internet Service;

48.1.3 suspension of any Data & Internet Service, particularly IP addresses; and

48.1.4 cancellation of, or refusal to provide, all incompatible telephony services.

49. SOFTWARE

49.1 Except for Software provided as part of the Data & Internet Services Related Equipment, or Maintenance, we will not provide you with any Other Software in order to access and use the Data & Internet Services, Rental Equipment, or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the Data & Internet Services, Rental Equipment, or Purchase Equipment, but you must first get our prior written permission.

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

50. PROVISION OF DATA & INTERNET SERVICES RELATED EQUIPMENT

50.1 In order to access the Data & Internet Services, we or our Suppliers may provide you with Data & Internet Services Related Equipment or you may use your own equipment, as nominated in your Application and approved by us.

50.2 If you purchase any Data & Internet Services Related Equipment from us or our Suppliers then risk in the Data & Internet Services Related Equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery.

51. INSTALLATION OF DATA & INTERNET SERVICES RELATED EQUIPMENT

51.1 We may either install your Data & Internet Services Related Equipment at the Site or you may install the Data & Internet Services Related Equipment yourself as specified in your Application.

51.2 You are responsible for all costs of delivery (as specified in the applicable Schedule attached to your Application) and installation and for preparing the Site for installation. Our cost of installation may vary from the quotation price once we have physically inspected the Site.

51.3 If requested by us, you will execute an acknowledgment of delivery in an acceptable form.

51.4 If we are installing your Data & Internet Service Related Equipment, you must provide us or our Suppliers with reasonable access to your premises during Business Hours unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

51.5 You are responsible for all additional installation service charges where the work required on Site is greater than two hours unless otherwise stated in your Application. The installation charge is payable on commencement of the Service (pro rated where the network is delivered to you in stages).

51.6 You acknowledge that installation of the Data & Internet Services may cause temporary disruption to your standard telephony services.

51.7 Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Schedule attached to your Application. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application.

51.8 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the Data & Internet Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.

51.9 Telephone line configuration changes are only available for our supported modems and routers.

51.10 Changes made by you to the supplied configuration are at your risk and will not be supported by us.

52. TERMINATION

52.1 We may terminate this SFOA or suspend, limit or cancel the provision of any Data & Internet Service:

52.1.1 by giving you prior written notice;

52.1.2 if you cease receiving a standard telephony service that we rely upon to provide your Service;

52.1.3 under clauses 21, 22 and 23 of the General Terms;

52.1.4 if Data & Internet Service cannot be provided at your new address;

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

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

52.2 If we terminate this SFOA under clause 52.1.1, you must pay to us within specified number of days of our demand, an amount equal to the total of:

52.2.1 all outstanding charges payable to us under this SFOA up to the date of termination and any duty payable; and

52.2.2 either any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and making repairs that we think necessary; or

52.2.3 if we are not able to repossess such Data & Internet Services Related Equipment, an amount equivalent to our then current installation fees for that equipment as specified in the Rivertel Rate Sheets; any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment; and any interest payable.

52.3 If we terminate this SFOA you must pay to us by way of liquidated damages within specified number of days of our demand, an amount equal to the total of:

52.3.1 all outstanding charges payable to us under this SFOA up to the date of termination and any duty payable;

52.3.2 either the Minimum Monthly Spend that would have been payable during the period from the date of termination to the end of the Minimum Term or the early termination fee otherwise specified in your application and/or rate sheet;

52.3.3 any duty payable on the amounts payable; and either any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and making repairs that we think necessary; or if we are not able to repossess such Data & Internet Services Related Equipment, an amount equivalent to:

- a) our then current installation fees for that equipment as specified in the Rivertel Rate Sheets;
- b) any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment; and
- c) any interest payable.

52.4 On the termination of this SFOA for any reason, you will, if we own the equipment, and, if we request and at our option, either immediately:

52.4.1 return all of our or our Supplier's Data & Internet Services Related Equipment (at your cost); or

52.4.2 make such equipment available for our, or our Supplier's, collection.

53. DEFINITIONS

53.1 In this Part, unless the context requires otherwise:

53.1.2 **Internet Services** means that part of the Data & Internet Services which is accessible via the public internet. This includes internet access, email facilities, web-page facilities and any other related internet facility or services that we may provide from time to time. This specifically does not refer to wide area networking services that are not accessible via the public internet.

53.1.3 **Minimum Monthly Spend** means the total monthly recurring charge specified in the Rivertel Rate Sheets or your Application for the Data & Internet Service.

53.2 In this Part, any references to 'standard' or 'regional' coverage, is to such coverage as determined by us from time to time.

PART C – MOBILE SERVICES AND MOBILE EQUIPMENT

54. APPLICATION OF THIS PART

54.1 This Part C applies if you have requested in your Application that we supply you with Mobile Services, and if nominated in your Application, Mobile Equipment. This Part C sets out the terms and conditions on which we will supply you with Mobile Services and (if applicable) Mobile Equipment.

54.2 To the extent relevant, the General Terms apply to the Mobile Services and Mobile Equipment as though specified in full in this Part C and such terms or part of such terms will be relevant except to the extent they relate to Data & Internet Services, Voice Services, Rental Equipment, or Purchase Equipment.

54.3 The Minimum Term, the Minimum Monthly Spend, the Mobile Equipment, as varied in accordance with this Part C.

54.4 We will provide the Mobile Services to you, for the Minimum Term specified in your Application, when your accounts are transferred from your current Supplier to us in accordance with the MNP process and any other arrangements with another Supplier for the provision of the Mobile Services have been completed or when your account with us has been established.

54.5 We will provide the Mobile Services using such of our facilities and services or those of other Suppliers as we may determine from time to time.

54.6 We will provide the required Mobile Services subject to availability, geographical and technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G network or GPRS Network is connected. There may also be times when availability is limited due to maintenance being performed. We are not obliged to provide you with Mobile Services where capacity, geography or technical capability, physical obstructions, atmospheric and weather conditions, other causes of radio interference, lack of capacity and faults in other telecommunications networks to which the GSM Network, 3G Network or GPRS Network is connected affect the Mobile Services or Mobile Equipment. If you require a coverage map or further information you may telephone Customer Service.

54.7 We do not warrant that the Mobile Services or Mobile Equipment will be free of interruption, delays or faults. The Mobile Service is only available (as the case may be):

54.7.1 within the limitations of the GSM Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable;

54.7.2 within the limitations of the 3G Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.

54.7.3 within the limitations of the GPRS Network (over which we have no control) and within that coverage area there may be areas where coverage is limited or unavailable.

54.8 You acknowledge and agree:

54.8.1 that the Mobile Service is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and

54.8.2 that you are responsible for making your own assessment of whether you need continuous and fault free services and obtaining and implementing advice about alternative telecommunications services suitable for such purposes.

55. APPROVED EQUIPMENT

55.1 You may only access the Mobile Service and the Value Added Feature with equipment, SIM cards and other devices approved by us. You may only use the Mobile Service and the Value Added Feature with a handset or other device as being compatible with the Value Added Feature. However, you agree that:

55.1.1 we do not represent or guarantee the extent to which a handset, Mobile Equipment or other device we specify as being compatible for use with a particular Value Added Feature will be able to be used with that Value Added Feature; and

55.1.2 your ability to use a Value Added Feature and each of its features will depend upon the features and functionality of your handset or Mobile Equipment.

56. MINIMUM TERM

56.1 If you are on a Minimum Term Contract the fixed minimum term specified in your Application commences on the provision of the Mobile Services or when the SIM is activated.

56.2 The reference in this Part C to a Minimum Term Contract relates to one SIM only and (where applicable) one handset and/or other Mobile Equipment. As nominated in your Application, you may acquire as a Package more than one Minimum Term Contract by which you will enter into one or more separate contracts with us.

56.3 At the end of the Minimum Term we will continue providing the Mobile Service to you until you notify us that you no longer require the Mobile Service. After we receive your notice we will stop providing the Mobile Service from the date received or future date that you advise us. If you wish to cancel the Mobile Service before the end of the Minimum Term you must give us notice and pay all Charges under this SFOA. Subject to you having paid all Charges and complying with all other obligations under the SFOA with you, this SFOA will terminate.

57. SIM

57.1 You will receive only one SIM card for one GSM or 3G Mobile Service.

57.2 We may charge you a SIM card replacement fee or a fee for a new sim card.

57.3 You must inform us immediately if the SIM card is lost, stolen or damaged by calling Customer Service. We will then disconnect or Bar your connection (you will be responsible for all charges up to this time) until the SIM card is replaced or repaired. We may charge you a SIM replacement fee unless we were at fault.

58. VALUE ADDED FEATURES AND MOBILE PREMIUM SERVICE

58.1 The Mobile Service has the Value Added Features specified in your Application or at the time of provisioning. You agree that we may at any time, and without your consent:

58.1.1 modify or replace one or all of the Value Added Features of the Mobile Service; or

58.1.2 provide additional Value Added Features to those specified in your Application or at the time of provisioning.

58.2 The Mobile Service has the Mobile Premium Service nominated in your Application. You agree and acknowledge

58.2.1 that the amount of charges for the Mobile Premium Service component of your Mobile Service, including requests for Content from content providers and charges for Content purchased from content providers, will be included in your invoice for the Mobile Service;

58.2.2 we will not charge you for our provision of credit in relation to the Mobile Premium Service Content charges;

58.2.3 we may prevent, suspend or terminate your access to the Mobile Premium Services in certain circumstances, including in response to notices issued by ACMA under the Mobile Premium Services Determination;

58.2.4 that you must direct any queries or complaints about the Content supplied by a content provider directly to that content provider in the first instance. Alternatively, you may complain to Customer Service;

58.2.5 unless otherwise advised by us, access to age-restricted services by way of the Mobile Premium Service is not permitted or available;

58.2.6 resupply or resale of Content obtained from content providers and by using the Mobile Premium Service is prohibited;

58.2.7 unlawful use of Content obtained from content providers and by using the Mobile Premium Service is prohibited.

59. MOBILE SERVICES CHARGES

59.1 The charges applicable to the Mobile Services are specified in the Rivertel Rate Sheets and your Application. Our miscellaneous charges for any changes to your Mobile Services are available from us on request.

59.2 Only calls captured and recognized by us within the bill period are included in Minimum Monthly Spend calculation. Certain call types such as international calls may take up to 3 months to appear on your bill.

59.3 International call rates and international roaming rates are subject to variation. Please contact Customer Service to confirm any prices before calling or travelling overseas.

60. MOBILE NUMBER PORTABILITY

60.1 Subject to clause 20 provided that your Service Number is capable of being transferred, you may transfer it from your current Supplier to us if that Service Number is declared portable under the Numbering Plan and no exemption has been granted by the ACMA.

60.2 If in providing the Mobile Services to you, we need to change your arrangements with your current Supplier, then we will do so in accordance with clause 20 and this clause 60. By signing the Mobile Number Portability Customer Authorisation ("**MNP Authorisation**") which forms part of your Application, you acknowledge and agree:

60.2.1 to your current Supplier transferring to us your Service Number;

60.2.2 that we are only transferring your Service Number not your mobile service. This means you may lose value added services and/or Value Added Features provided by your current Supplier. When you are connected to the Mobile Services you will use the Mobile Services and Value Added Features specified in your Application, which may be different to the features that you had with your current Supplier;

60.2.3 that by transferring your Service Number, the Mobile Service and/or any Value Added Features associated with that Service Number may be disconnected by your current Supplier and result in finalisation of your account for those services;

60.2.4 that there may be costs and obligations associated with transferring your Service Number away from your current Supplier. You may have an ongoing contract with your current Supplier which requires the payment of cancellation and/or termination fees to your current Supplier if you transfer your Service Number to us;

60.2.5 that your current Supplier may or may not disconnect your existing service and/or value added services;

60.2.6 if you are porting between GSM and 3G or any other mobile platform, you may need to purchase new handset and/or Mobile Equipment;

60.2.7 if you intend to use your existing handset and/or Mobile Equipment, you may need to get it unlocked or reprogrammed prior to porting. You may also need to get new Mobile Equipment;

60.2.8 that you may need to purchase approved Mobile Equipment to access the Mobile Service;

60.2.9 that you have not cancelled your existing mobile service with your current Supplier;

60.2.10 that you can only withdraw your MNP Authorisation prior to the port cutover notification being received by us from your current Supplier. Withdrawing MNP Authorisation does not change your contractual obligations to us under your Application and this SFOA;

60.2.11 that we do not warrant that we can transfer your Service Number from your current Supplier. Your current Supplier may reject the request to port, if the information you provide in the MNP Authorisation is incorrect or does not match the data held by your current Supplier. In this case, we reserve the right and you authorise us to correct the information and resubmit the request to port or dispute the rejection with your current Supplier;

60.2.12 that if your Service Number cannot be transferred then you may accept a new Service Number from us; that your authorisation to transfer your Service Number to the Mobile Services is valid for 30 days from the date of the Mobile Number Portability Authorisation Form;

60.2.13 that in the event of a reversal, we:

60.2.14 are not responsible for any period of outage of Mobile Service or Value Added Features or your current service or any value added service provided by your current Supplier;

60.2.15 do not warrant that your Service Number will be transferred to us within any specified timeframe; and

60.2.16 to the extent permitted by law, including statutory warranties that apply under the Trade Practices Act, are not liable to you or any person claiming through you for any damage, loss, costs or expenses or other liability in contract, tort, or otherwise direct or indirect, for or in relation to the transfer of your Service Number to us, port, withdrawal or reversal, including a negligent act or omission by us;

60.2.17 that if you wish to transfer your Service Number from us to another Supplier then you must contact that other Supplier to implement the transfer; and

60.2.18 that we reserve the right to charge for transferring your Service Number to and from us.

60.3 We will not accept any liability for any amounts owing by you to another Supplier for services which the other Supplier provided to you prior to the commencement of the Mobile Services. You agree to indemnify us against any claims made on us by your previous Supplier in relation to such amounts.

61. MOBILE EQUIPMENT AND MOBILE PLANS

61.1 For the avoidance of doubt, this clause only applies to Mobile Equipment.

61.2 To be eligible to receive Mobile Equipment you must:

61.2.1 apply for Mobile Services in your Application;

61.2.2 apply for Mobile Equipment in your Application;

61.2.3 agree to our Minimum Term and Minimum Monthly Spend requirements;

61.2.4 use the Mobile Services and Mobile Equipment for business or personal use only; and

61.2.5 meet our minimum credit requirements.

61.3 If you purchase outright any Mobile Equipment from us, risk in the equipment passes to you on delivery to the address you nominate in your Application for the purposes of delivery. We will retain ownership in all Mobile Equipment purchased from us until you have paid for them in full in accordance with Part D. If stated in your Application, you will remain liable for any residual amount owing to us at the expiry of the Minimum Term and ownership of the Mobile Equipment will not pass to you until this residual amount is paid in accordance with your Application.

61.4 You must not do anything to give rise to an adverse claim to our rights in or ownership of the Mobile Equipment. You cannot sell or use the Mobile Equipment for a loan or deal with it in any way until you own the Mobile Equipment. If you damage or lose any Mobile Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Mobile Equipment. You are responsible for arranging your own insurance for any Mobile Equipment.

61.5 You are responsible for maintaining and repairing any Mobile Equipment supplied by us or our Supplier and complying with the manufacturer's instructions relating to the Mobile Equipment and SIM (where applicable) and its use. You indemnify us and our Supplier against any loss, damage, malfunction or failure resulting from misuse, neglect, abuse, use for a purpose for which the Mobile Equipment was not designed or is not suited, in connection with the Mobile Equipment.

61.6 Lost or stolen Mobile Equipment: If:

61.6.1 your Mobile Equipment is lost or stolen you must contact Customer Service to request that your SIM card and/or Mobile Equipment be blocked. This will prevent the Mobile Equipment being used on the GSM Network or 3G Network;

61.6.2 you obtain a handset that is lost or stolen, we or our Supplier may block your handset without your consent even if you are not aware it is stolen; and

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

62. CHANGING PLANS

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

63. ACCEPTABLE USE

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

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

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

63.4 While receiving Mobile Services, you agree to comply with our Fair Use Policy set out on the Rivertel website at our website or available from us on request.

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

63.5.1 the media contained in MMS Messages;

63.5.2 WAP Data and Packet Data media limitations; and

63.5.3 Wireless Device type, software version and capabilities.

64. DEFINITIONS

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

64.1.1 **3G** means 3rd generation mobile network on the 900Mhz or 2100Mhz spectrum

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

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

64.1.4 **GSM** means Global System for Mobiles as defined by ETSI and the GSM Memorandum of Understanding and as applied in Australia.

64.1.5 **GSM Network** means the GSM mobile telephone network in the 900 MHz and 1800 MHz spectrum range.

64.1.6 **GPRS** means general packet radio service and as specified in your Application.

64.1.7 **GPRS Network** means the general packet radio service.

64.1.8 **Internet** means the International network of data networks utilising the TCP/IP protocol suite of which the SMS Network forms part.

64.1.9 **International Calls** means a call from a cellular public mobile telecommunications service from Australia to another country.

64.1.10 **Mobile to Local Calls** means calls made from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN number which if made from a PSTN or ISDN number would be a Local Call.

64.1.11 **MNP Code** means the code entitled ACIF C570:2003 Mobile Number Portability registered by the ACA under section 117 of the Act, as at 1 February 2003 or as otherwise agreed in writing between the parties.

64.1.12 **Mobile Equipment** means any equipment purchased from us as specified in your Application that is not Data & Internet Equipment, or Data & Internet Services Related Equipment, and may include handsets, accessories, and equipment supplied by us but does not include the SIM.

64.1.13 **Mobile Number Portability** or **MNP** has the meaning given to it by the Industry Code: Mobile Number Portability registered by the ACMA under Part 6 of the Act.

64.1.14 **Mobile Services** means the GSM digital public mobile telecommunications service or the CDMA cellular telecommunications service and the Value Added Features which we provide you on the terms and conditions of this SFOA and as specified in your Application.

64.1.15 **National Calls** means a call made within Australia from a cellular public mobile telecommunications service provided in Australia to a PSTN or ISDN telephone service that is not a Mobile to Local Call.

64.1.16 **SMS Code of Conduct** means the SMS Code of Conduct developed by the Australian Communications Industry Forum and registered or published by the ACMA under Part 6 of the Act.

64.1.17 **SIM** means the subscriber identity module owned by us and we issue to you which enables you to access the Mobile Service.

64.1.18 **WAP** means Wireless Application Protocol which is a protocol that enables internet services to be delivered to small-screen mobile devices.

64.1.19 **Wireless Packet Data** means MMS Messages, VPN Services, Packet Data, WAP Data, WAP content, Internet content and other application data uploaded or downloaded using the Mobile Service.

PART D – NBN NETWORK SERVICES

65. APPLICATION OF THIS PART

65.1 This Part D applies if you have requested in your Application that we supply you with Data Services and/ or Telephone Services provided via the NBN Co Network and sets out the terms and conditions on which we will supply you with NBN Network Services.

65.2 To the extent relevant, the General Terms apply to the NBN Network Services as though specified in full in this Part D and such terms or part of such terms will be relevant except to the extent they relate to services other than data & Internet services.

66. PROVISION OF NBN NETWORK SERVICES

66.1 We will provide the NBN Network Services to you, as specified in your Application, when your accounts are transferred from your current Supplier to us and upon (the later of) completion of installation of any necessary equipment and any other arrangements with another Supplier for the provision of the Data & Internet Services have been completed or when your account with us has been established.

66.2 We will provide the required Data & Internet Services and its coverage subject to availability, geographical and technical capability, lack of capacity and faults in other telecommunications networks to which the NBN Network Services is connected. There may also be times when maintenance being performed on the Services limits availability. We are not obliged to provide you with NBN Network Services where capacity, geography or technical capability, affect the application or installation of the Service to your premises. For certain NBN Network Services, coverage may only be available in selected metropolitan and regional areas

66.3 We do not warrant that the NBN Network Services will be free of interruption, delays or faults. You acknowledge and agree:

66.3.1 that our NBN Network Services is not suitable for (and is not supplied for the purpose of) supporting any application which needs continuous fault free service; and

66.3.2 that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

66.3.3 We are not obliged to provide NBN Network Services to you if the physical infrastructure of your premises or site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.

66.4 You agree that we may not supply a 'standard telephone service' (for the purposes of the Act) under this Part B with the internet access component and as such the NBN Network Services are not subject to the Customer Service guarantee standard administered by the ACMA.

67. PERIOD OF AGREEMENT

67.1 You must take the NBN Network Services for the Minimum Term if specified in your Application, subject to your rights

67.2 The Minimum Term commences when:

67.2.1 if you are arranging for self installation of the required equipment and:

67.2.2 you supply the required equipment yourself, on the date we activate your NBN Network Services; or

67.2.3 if we supply you with the required equipment, on the date of delivery of the required equipment; or

67.2.4 if we are installing equipment for you and:

67.2.5 the equipment is being installed at a single Site, the date that we install the equipment at the Site; or

67.2.7 the equipment is being installed at multiple Sites, the date we install the equipment at the second Site.

67.3 Unless you notify us in writing prior to the expiration of the Minimum Term that you wish to cease receiving the NBN Network Services at the expiration of the Minimum Term, the Minimum Term of this SFOA will be automatically extended from month to month ("**Holding Over Period**") at the same rate, including the same Minimum Monthly Spend, and on the same terms and conditions.

68. NBN NETWORK SERVICES CHARGES

68.1 The charges applicable to the NBN Network Services are specified in the Rivertel Rate Sheets and the applicable Schedule attached to your Application.

68.2 The Minimum Monthly Spend is payable in advance. In addition, you will be charged in arrears for your usage of the NBN Network Services in accordance with the charges specified in your Application and the Rivertel Rate Sheets and for miscellaneous charges (if relevant) as specified in the relevant Schedule attached to your Application. Your usage of the NBN Network Services will be calculated based on the data uploaded and downloaded, unless your Application states otherwise. Information on our miscellaneous charges are available from us on request.

68.3 The first and last month's Minimum Monthly Spend will be pro-rated based on the number of days of service supply in the relevant month.

68.4 We may increase or reduce any of the charges applicable to the NBN Network Services at any time by giving you at least 30 days notice. Unless you notify us in writing that you wish to terminate this SFOA within 30 days of the date of a notice specifying any such change in charges, then any such change in charges will apply on and from the date that is 30 days after the date of the relevant notice. If you elect to terminate this SFOA in accordance with this clause then clause 51.2 will apply.

68.5 If you have a fixed term contract or the minimum term of your contract has not yet expired, we will not change the minimum monthly charge you pay until after the fixed term or the minimum term has expired unless NBN Co starts to charge for existing pricing components (e.g. Connectivity Virtual Circuit rebates, applicable to a POI to which your services are connected, become unavailable), increases the pricing of existing services or adds new pricing components that affect your services, in which case we may increase the price to include the additional cost component applicable to your services on 30 days prior notice to you.

69. CHANGE OF ADDRESS / UPGRADES / DOWNGRADES

69.1 If you request your NBN Network Services to be moved to a new address at any time, there may be a charge payable in accordance with the relevant Schedule attached to your Application. If NBN Network Services cannot be provided at your new address, we may terminate this SFOA by notice to you.

69.2 You may be able to change your NBN Network Services if it is specified in the applicable Schedule attached to your Application. Changes to your plan on the NBN Network Services or value of the Minimum Monthly Spend, may require you to commit to a new Minimum Term on all or part of your Service, from the date of change, equivalent to your current Minimum Term and a fee may apply.

69.3 Upgrades are available anytime during the term of the contract but are limited to one instance per billing month. Downgrades are also available anytime during the term of the contract and limited to one instance per billing month and cannot be for a monthly fee and quota less than the original contracted plan.

70. INDEMNITY

70.1 Without limiting the indemnity provisions in clause 12, you indemnify us from all liability (including third party) arising from the following:

70.1.1 disruption in PSTN services and your standard telephony Services;

70.1.2 cancellation of any Data & Internet Service;

70.1.3 suspension of any Data & Internet Service, particularly IP addresses; and

70.1.4 cancellation of, or refusal to provide, all incompatible telephony services.

71. SOFTWARE

71.1 Except for Software provided as part of the NBN Network Services Related Equipment, or Maintenance, we will not provide you with any Other Software in order to access and use the NBN Network Services, Rental Equipment, or Purchase Equipment. You will be responsible for obtaining such Other Software necessary to access and use the NBN Network Services, Rental Equipment, or Purchase Equipment, but you must first get our prior written permission.

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

72. PROVISION OF NBN NETWORK SERVICES RELATED EQUIPMENT

72.1 In order to access the NBN Network Services, we or our Suppliers will provide you with NBN Network Services Related Equipment.

72.2 If we are installing your NBN Network Services Related Equipment, you must provide us or our Suppliers, including NBN Co., their respective agents, contractors and consultants with reasonable access to your premises during Business Hours unless otherwise stated in your Application. We reserve the right to charge you in accordance with the applicable Schedule attached to your Application, if we or our Supplier are unable to obtain access to your premises at the agreed appointment time.

72.3 Access provided must be safe, as generally understood, and an authorised person 18 years of age or greater must be present at all times

72.4 Safe and timely access to NBN Co equipment must be provided for delivery, installation, connection, inspection, modification, replacement, maintenance, repair, service & disconnection of the services, from time to time as may be required by us or our Suppliers.

72.5 You must ;

72.5.1 take reasonable care of any part of networks, systems, equipment or facilities of our Suppliers or NBN Co located at premises owned, controlled or occupied by you;

72.5.2 not cause any damage or deterioration to, threaten the integrity, interfere with or degrade the operation or performance of the networks, systems, equipment or facilities of our Suppliers or NBN Co;

72.5.3 not interfere with, alter or deface any labelling, identification or trade mark affixed to any equipment of our Suppliers or NBN Co; or

72.5.4 not create or allow to be created any security interest, encumbrance, lien, charge or mortgage over the networks, systems, equipment or facilities of our Suppliers or NBN Co.

72.6 non-standard installation by NBN Co. or their representatives is chargeable and will be billed by us to you

72.7 Changes to the configuration of the equipment not requiring a Site visit that are requested after the order is recognised as received by us may be subject to a configuration charge as specified in the relevant Schedule attached to your Application. Configuration changes requiring a Site visit will be subject to a standard or regional installation fee, as specified in the relevant Schedule attached to your Application.

72.8 We will use reasonable endeavours to configure the equipment such that it works with your network based on the information supplied by you about your network. We will also endeavour to provide telephone support to assist you where possible. However, as there are many possible network configurations, we cannot guarantee the NBN Network Services will work in conjunction with your network, modem, router and/or site conditions. Local network configuration remains your responsibility.

72.9 Battery Backup units. You are responsible for replacing batteries in the battery backup unit as per specification provided by NBNCo. We will pass through all alarms it receives from NBN Co to you. You are aware of the need to replace batteries. If the battery is not replaced when replacement is required then we take no responsibility for the loss of service during power failure.

73. TERMINATION

73.1 We may terminate this SFOA or suspend, limit or cancel the provision of any NBN Network Services:

73.1.1 by giving you prior written notice;

73.1.2 if NBN Co. relocates a POI and NBN Network Services are no longer available;

73.1.3 under clause 22.1 of the General Terms;

73.1.4 if NBN Network Services cannot be provided at your new address;

73.1.5 if any of our or our Supplier's NBN Network Services Related Equipment is lost, stolen or substantially destroyed;

or

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

73.2 If we terminate this SFOA under clause 59.1.1, you must pay to us within specified number of days of our demand, an amount equal to the total of:

73.2.1 all outstanding charges payable to us under this SFOA up to the date of termination and any duty payable; and

73.2.2 either any costs incurred by us in repossessing our or our Supplier's NBN Network Services Related Equipment and making repairs that we think necessary; or

73.2.3 if we are not able to repossess such NBN Network Services Related Equipment, an amount equivalent to our then current installation fees for that equipment as specified in the Rivertel Rate Sheets; any costs incurred by us in attempting to repossess such NBN Network Services Related Equipment; and any interest payable.

73.3 If we terminate this SFOA you must pay to us by way of liquidated damages within specified number of days of our demand, an amount equal to the total of:

73.3.1 all outstanding charges payable to us under this SFOA up to the date of termination and any duty payable;

73.3.2 either the Minimum Monthly Spend that would have been payable during the period from the date of termination to the end of the Minimum Term or the early termination fee otherwise specified in your application and/or rate sheet;

73.3.3 any duty payable on the amounts payable; and either any costs incurred by us in repossessing our or our Supplier's NBN Network Services Related Equipment and making repairs that we think necessary; or if we are not able to repossess such NBN Network Services Related Equipment, an amount equivalent to:

- a) our then current installation fees for that equipment as specified in the Rivertel Rate Sheets;
- b) any costs incurred by us in attempting to repossess such NBN Network Services Related Equipment; and
- c) any interest payable.

73.4 On the termination of this SFOA for any reason, you will, if we own the equipment, and, if we request and at our option, either immediately:

73.4.1 return all of our or our Supplier's NBN Network Services Related Equipment (at your cost); or

73.4.2 make such equipment available for our, or our Supplier's, collection.

74. INDEMNITY

You release and indemnify us, our servants, agents and Suppliers from all liability arising in connection with the Supplies and/or any goods or services provided by our Suppliers (including all liability in connection with their provision or cancellation, as applicable). You also release and indemnify any related bodies corporate or personnel of us, our suppliers or NBN Co. This indemnity includes (but is not limited to) an indemnity against all actions, claims and demands (including the cost of defending or settling any action, claim or demand) which may be instituted against us, as well as all expenses, penalties, fines (including those imposed by any regulatory or governmental body or under any statute), losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a result, whether directly or indirectly of:

74.1 any breach of this Agreement by you including but not limited to a breach in respect of which we elect to terminate this Agreement;

74.2 any use made by any person (including any minor) of the Services that are accessed through your access information (including loss of data, delays, non-deliveries, mis-deliveries, service interruptions, whether or not as a result of our negligence or our act or omission);

74.3 the negligence of you or your agent, employee or sub-contractor or of any other person for whose acts or omissions you are held liable;

74.4 any loss of or damage to any property, or injury to or death of any person, caused by any negligent act or omission or wilful misconduct of you or your officers and employees;

74.5 disruption to your telephone services during the installation of a Service (if applicable).

74.6 failure to supply goods, services or facilities.

75. CUSTOMER SUPPLIED EQUIPMENT

75.1. must only connect to the supplier network customer equipment that is;

75.1.1 compatible with the supplier network.;

75.1.2 and has all necessary regulatory approvals;

75.1.3 not prohibited by any regulator;

75.1.4 compliant with all applicable laws; and

75.1.5 maintained in good repair and working condition.

76. POINTS OF INTERCONNECTION

76.1 You acknowledge and agree that NBN Co may:

76.1.2 relocate or close a POI; and

76.1.3 decommission and replace a temporary POI at any time and for any reason. If NBN Co does so, then we may elect at our sole option to terminate your services connected to any such POI without liability to you on at least six month's prior notice, except where NBN Co relocates, closes or decommissions and replaces a POI in an emergency, in which case we will give you as much notice as we are reasonably able to provide.

76.2 Where we do not elect to terminate your services connected to a POI in the circumstances in clause 76.1, we will provide you with:

76.2.1. at least six months' prior notice of the relocation or closure of a POI, except in an emergency, when we will give you notice before (if reasonably practicable to do so) or as soon as reasonably practicable after the commencement of that relocation or closure;

76.2.2 at least six months' prior notice of the decommissioning and replacement of a temporary POI; and

76.2.3 at least six months prior notice of the location of any new POI.

76.3 In addition to our rights of suspension under clause 30 of the core terms, we may suspend the services if NBN Co relocates, closes, decommissions or replaces any POI pursuant to this clause. Suspension pursuant to this clause will be a scheduled outage, not a fault, for the purposes of the service level agreement.

76.4 You are not entitled to dispute a decision by NBN Co to relocate, close, decommission or replace any POI pursuant to this clause, and you acknowledge and agree that NBN Co may proceed with the upgrade of the supplier network regardless of any objection by you, or any end users to that relocation, closure or decommissioning and replacement.

76.5 Subject to any applicable service credits, your obligations under this agreement, including payment of any charges, will not be affected or waived by any relocation, closure or decommissioning and replacement of a POI.

77. NBN Co.

77.1 NBN Co is not providing any services to you;

77.2 NBN Network Services require mains power to operate in the ordinary course; and

77.3 NBN Co does not have a contractual relationship with you in regards to the supply of services.

78. VOICE SERVICES PROVIDED BY NBN NETWORK SERVICES

78.1 We do not warrant that the NBN Network Services will be free of interruption, delays or faults. You acknowledge and agree:

78.1.1 that our NBN Network Services is not suitable for (and is not supplied for the purpose of) supporting any application or service which needs continuous fault free service; and

78.1.2 that you are responsible for making your own assessment of whether you need continuous fault free services and obtaining and implementing advice about alternative telecommunication services suitable for such purposes.

78.1.3 We are not obliged to provide NBN Network Services to you if the physical infrastructure of your premises or site does not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study.

78.1.4 You agree that the NBN Network Voice Service is not a 'standard telephone service' (for the purposes of the Act) under this Part D with the internet access component and as such the NBN Network Voice Services are not subject to the Customer Service guarantee standard administered by the ACMA.

79. DEFINITIONS

79.1 In this Part, unless the context requires otherwise:

79.1.1 **customer equipment** any equipment that you, or any end users use in connection with the supplier network or the services

78.1.2 **emergency** an actual or potential state of danger requiring immediate action to avoid or mitigate any loss, damage or personal injury

78.1.3 **emergency upgrade** an upgrade to the supplier network in response to an emergency

78.1.4 **major upgrade** an upgrade to the supplier network that will:

(a) require you to take particular action to continue to use a service after the implementation of the upgrade;

(b) result in a service no longer being supplied by reason of the upgrade; or

(c) which is not an emergency upgrade

78.1.5 **minor upgrade** an upgrade to the supplier network that is not a major upgrade or an emergency upgrade and which we reasonably determine will not have, or is not likely to have, a material adverse impact on you

78.1.6 **NBN Co** is NBN Co Limited

78.1.7 **POI** a point of interconnection between the supplier network and your network

78.1.8 **POI Connect** is an NBN Connect MPLS service which provides customers who engage directly with NBN Co as access providers with connectivity from the customer's points of presence to the POIs on NBN Co's network

78.1.9 **supplier equipment** any equipment that is owned, operated or controlled by us or NBN Co:

(a) that is provided to you for use as part of, or in connection with, a service; or

(b) which you or any end users are permitted to access as part of, or in connection with, a service supplier network any network, system, equipment or facility used by us or NBN Co in connection with the supply of the services

ACCEPTABLE USE POLICY

1. Introduction

This is Rivertel's Acceptable Use Policy, which forms part of Rivertel's Standard Form of Agreement or Rivertel's Master Services Agreement (as applicable). Definitions for the terms used in this Policy are contained in Rivertel's Standard Form of Agreement or Rivertel's Master Service Agreement (as applicable). This Policy only applies to the extent that is relevant to a Service you have acquired from us.

Our policy is to provide quality services for the family, home user and small business at reasonable prices right around Australia.

Our services are designed to be shared by members in a fair and equitable manner and not to be monopolized or abused by individuals at the expense of others.

The Acceptable **Use Policy** has been implemented to ensure that each subscriber's use of the Service:

1. Meets legal requirements;
2. does not unreasonably interfere with other subscribers;
3. and does not unreasonably impact on our ability to provide the Service.

It's about being giving everybody a fair go at it and hope you understand and operate accordingly.

2. Legal translations

For legal clarification the following words have these meanings:

2.1 You means a subscriber to the Rivertel Pty Ltd service, or any person who accesses the Rivertel Pty Ltd service using the subscriber's access details;

2.2 Policy means this document, as may be amended by Rivertel Pty Ltd from time to time on 14 days notice;

2.3 Rivertel Pty Ltd service means a service provided by Rivertel Pty Ltd, together with associated services and customer support. These services may be provided under any of our trading names, including, but not limited to, Rivertel, LoCall Australis, MyFibre, MyArmidale.

2.4 This Policy comes into effect immediately if you are a new subscriber to the Service. If any changes are made to this Rivertel Pty Ltd policy, these changes come into effect 7 days after the revised policy is posted on the Rivertel Pty Ltd website.

3 Illegal and infringing use

3.1 You must not use the Service to breach any applicable criminal laws or to infringe on the rights of a third party. This includes, without limitation:

3.1.1 fraudulent, deceptive or illegal activity, including but not limited to material that is classified or would be classified as RC or X under the National Classification Code set out in Schedule 5 of the Classification (Publications, Films and Computer Games) Act 1995 (SA), nor will you use the Services to provide unrestricted access to material that is unsuitable for minors.

3.1.2 infringement of copyright, trademarks or other intellectual property rights;

3.1.3 infringement of laws relating to censorship and classification of material;

3.1.3 using the Service to create, forward or distribute defamatory statements.

3.1.4 You will not act through the Services, or use the Services, to block or disrupt access by other users, service providers, their computers, software or hardware. Such actions include, but are not limited to attempting to gain unauthorised access to another computer system, unauthorised copying, monitoring, modification or destruction of information held on another computer system, unauthorised copying or dissemination of material protected by copyright or propagating computer viruses, worms and other types of malicious programs, probing, scanning or testing the vulnerability of a system or network, breaching any security or authentication measures for a system or network, accessing the account or private information of any other user, accessing any server in violation of any acceptable use policy of that server, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host.

3.1.5 You must not use the Services to transmit or display (nor permit any other party to use the Services to transmit or display) threatening, obscene, offensive or abusive materials, or engage in any form of harassment when using the Services (or when permitting any other party to use the Services).

3.1.6 The Services must not be used to send messages to any individual who has indicated that he/she does not wish to receive messages from you.

3.1.7 You must respect the privacy of others when accessing and using the Services.

3.1.8 You must, in accessing and using the Services, only use software that you are legally entitled to use and such use

must not infringe any third party intellectual property rights.

3.1.9 You must not use the Services for pyramid or other illegal soliciting schemes.

3.1.10 You must not use the Services for any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

3.1.11 You must not use (or attempt to use) or distribute tools designed for compromising security (such as password guessing programs, cracking tools, packet sniffers or network probing tools).

4. Inappropriate use of resources

Some of our plans are designed for domestic use and others for commercial use. We believe that it is Unreasonable Use for domestic plans to be used by businesses whose activities include heavy incoming or outgoing telephone traffic.

4.1 Spam

The following applies in relation to Spam:

In this clause, "Spam" includes one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act 2003, and derivations of the word "Spam" have corresponding meanings.

4.1.1 Acceptable use in relation to Spam

You may not use the Service to:

4.1.2 send, allow to be sent, or assist in the sending of Spam;

4.1.3 use or distribute any software designed to harvest email addresses; or otherwise breach the Spam Act 2003 or the Spam Regulations 2004 of the Commonwealth.

4.1.4 You must not allow the Service provided to you to be used to host any device or service that allows email to be sent between third parties not under your authority and control.

4.1.5 Customer to minimise risk of breach

You agree to use your reasonable best endeavours to secure any device or network within your control against being used in breach of clause 12.2 above by third parties, including where appropriate:

(a) the installation and maintenance of antivirus software;

(b) the installation and maintenance of firewall software; and

(c) the application of operating system and application software patches and updates.

4.1.6 Our right to suspend your account applies regardless of whether the open service is provided or the breach is committed intentionally, through misconfiguration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.

4.1.7 Our right to scan for misconfigurations

We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.

4.2 Commercial & Fraudulent Use

4.2.1 Commercial use includes the following activities:

4.2.2 running a telemarketing business or call centre;

4.2.3 re-supplying or reselling the service; or

4.2.4 other similar activities.

4.2.5 We consider the use of a service to be unreasonable if you make or receive calls on our Network other than for your own personal use. We may give or withhold our consent, or make our consent subject to conditions, at our discretion.

4.2.6 We consider your use of Rivertel Pty Ltd to be **Unreasonable Use** if your use is considered fraudulent by Rivertel Pty Ltd or to adversely affect the Rivertel Pty Ltd Network or another customer's use of, or access to, a Rivertel Pty Ltd Service or Network.

4.2.7 Among other things, "fraudulent" use includes resupplying a Rivertel Pty Ltd Service without the consent of Rivertel Pty Ltd so that a third party may access or use Rivertel Pty Ltd Services or take advantage of Rivertel Pty Ltd free calls.

4.2.8 In addition, where we consider your use of Rivertel Pty Ltd free calls to be **Unreasonable Use** or that your use does not comply with the terms and conditions of the Service, then we may suspend your access to that or any other promotion or offer immediately, without notice to you.

5. Damage to Equipment

5.1 If we, or our supplier, provides you with equipment, you shall not interfere with, or cause damage to, this equipment.

6. Loss of Life or Injury

You shall not damage any property or injure (including death) any person.

7. Our Rights

7.1 We reserve the right to remove any information or materials, in whole or in part, that we, in our sole discretion, deem to be offensive, obscene, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.

7.2 We are under no obligation to monitor transmissions or published content on the Services. However, we or our agents have the right to monitor such transmissions or published content from time to time.

8. In the event of a policy breach.

If Rivertel Pty Ltd believes on reasonable grounds that you have breached this Policy, Rivertel Pty Ltd may (but is not obliged to) take one or more of the following steps;

8.1 suspend your access to the Service indefinitely or for a specific period;

8.2 terminate your access to the Service and refuse to provide the Service to you or your associates in the future.

PRIVACY POLICY

Your privacy is as important to us as it is to you.

This is Rivertel's Privacy Policy, which forms part of Rivertel's Standard Form of Agreement or Rivertel's Master Services Agreement, as applicable. Definitions for the terms used in this Policy are contained in Rivertel's Standard Form of agreement or Rivertel's Master Service Agreement, as applicable.

We only collect personal information where it is necessary to perform our functions and activities and provide the Supplies to you. We would like to reassure customers that we will only disclose your personal information as set out in this Policy.

1. We may, in our discretion, retain and access any data or information concerning your use of the Supplies.
2. Where we hold information that you lodge with us (for transmission or web hosting) we will make back-up copies of your information. However, we do not guarantee successful restoration of your information lodged on our servers in the unlikely event of loss of that information (due, for instance, to a catastrophic hardware failure). It is your responsibility to ensure that you keep back-up copies of all information that you lodge with us.
3. We will not disclose personal information or any other information or data held by us about you to a third party unless:
 - 3.1 we have reason to suspect that unlawful activity has been, is being or may be engaged in, and we disclose this information as a necessary part of our investigation of the matter or in reporting our concerns to relevant persons or authorities; or
 - 3.2 we are required or specifically permitted by or under law to provide this information to an authority or person that is duly authorised to request it; or
 - 3.3 a court order compels us to disclose this information to a specified recipient; or
 - 3.4 we are otherwise required or specifically permitted by law to disclose this information (including disclosure permitted under the Privacy Act 1988). Such disclosure includes any disclosure necessary to provide the Supplies to you (including for example possible disclosure to our suppliers).
4. You expressly consent to us:
 - 4.1 using any data or information that you provide to us in connection with provision of the Supplies:
 - 4.1.1 to provide you with information (whether by email, post or any other form of communication) about other goods and services offered by Rivertel (or a related entity of Rivertel), about Rivertel (and/or a related entity of Rivertel) and/or about any other topic which we consider would be of interest to you based on the Supplies we currently provide to you unless you let us know in writing that you do not wish to receive such information;
 - 4.1.2 to contact you (whether by email, post or any other form of communication) about any matter in connection with the Supplies or the provision of the Supplies; and
 - 4.1.3 for any other purpose related to the provision of the Supplies (including for example in billing and account management, business planning and product development or to verify your identity); and
 - 4.2 disclosing any data or information that you provide to us in connection with provision of the Supplies to:
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 - 4.2.1 our suppliers;
 - 4.2.2 other service providers, or specialist advisers who provide us with administrative, financial, research or other services; and
 - 4.2.3 insurers, credit providers, credit reporting or references agencies or insurance investigators, to the extent it is necessary to enable the Supplies to be provisioned to you.
5. We will not use or disclose your credit report or any personal information derived from that report unless we are required or specifically permitted to do so under Part A of the Privacy Act 1988 or the Credit Reporting: Code of Conduct.
6. You acknowledge that we must cooperate with the lawful requests of members of the police force or any other person duly authorised to investigate breaches of the law, and that we may disclose any information held by us in relation to your account to such authorities if compelled or required to do so.
7. You may by written request to us access to the personal information we hold about you, and we will grant you access unless we are required or permitted to refuse such a request. We may charge a reasonable fee for such access in accordance with the Privacy Act 1988. You may also by written request to us ask that personal information we hold about you be corrected if you consider it is not accurate.
8. We draw your attention to the ACIF Calling Number Display Code of Practice, which can be viewed at http://www.acma.gov.au/ACMAINTER.393554:STANDARD:550353612:pc=PC_2096. In particular:
 - 8.1 this Industry Code requires carriage service providers to inform their customers that they receive Calling Line Identification ("CLI") information in many circumstances where the customer would expect this to not occur; and
 - 8.2 Rivertel receives this CLI information in most cases which means we know the phone number you call us from when you make a modem or ISDN call to connect to the Internet even if you have a silent number or use „per call blocking“.