

# STANDARD FORM OF AGREEMENT

## **CONTENTS**

- 1. The terms of our relationship with the Customer**
- 2. Using the Service**
- 3. Equipment**
- 4. The Premises**
- 5. Charges**
- 6. Billing & Payment**
- 7. GST and Other Taxes**
- 8. Credit Check**
- 9. Personal Information**
- 10. Transfer of the Service**
- 11. Suspension &/or Termination of Service**
- 12. Consequences of a Service that is Suspended or Terminated**
- 13. Our Liability to You**
- 14. Your Liability to Us**
- 15. Faults**
- 16. General**
- 17. What is the Fair Contract Guarantee?**
- 18. Fair Use Policy (FUP)**
- 19. Definitions and Interpretation**

## 1. The terms of our relationship with the Customer

- 1.1 Our relationship with you ("Agreement") is comprised in the following documents:-
- 1.1.1 the Application;
  - 1.1.2 this Standard Form of Agreement ("SFOA") – this document sets out the standard terms and conditions on which we supply our services & products to our customer . A copy of this SFOA is available on our website ([www.spinktel.com.au](http://www.spinktel.com.au)). If you are unable to access the website we will arrange for a copy to be posted to you.
  - 1.1.3 Service Descriptions each of which set out our standard service description for a particular Service and specific terms and conditions which apply to a particular Service. The Service Descriptions are found on our website.
  - 1.1.4 the Pricing Schedule which provides links to our online pricing information for each Access Plan, (including the fees and charges applicable to each Service, together with specific Service features and warranty information about each Service).
  - 1.1.5 our Fair Use Policy and our Fair Contract Guarantee.
- 1.2 Subject to our acceptance of your Application in accordance with clause 1.3, our Agreement with you commences on:
- (a) if you apply online, the date you submit the application form;
  - (b) if you sign an application form, the date you sign the application form;
  - (c) if you apply by telephone and the Material Terms are read to you, the Material Terms of our SFOA commence on the date you accept them and the remaining terms of our SFOA will commence on the Service Commencement Date in any other case, the date on which you begin using the service. We will also email a copy of the Material Terms, or mail you a copy if you do not have internet access.
- 1.3 When you request us to supply the Service to you, we decide whether to accept your Application and to supply the Service to you based on:
- (a) the particular terms for that Service;
  - (b) your eligibility for that Service;
  - (c) its availability to you;
  - (d) you meeting our credit requirements;
  - (e) the accuracy of the information provided to us by you; and
  - (f) your prior conduct or history in respect of any previous supply by us of any goods or services to you, including your compliance with the relevant terms and conditions under which we supplied those goods or services.
- 1.4 Some legislation gives customers a period in which they can cancel an agreement for goods or services. If you are entitled to a Cooling-Off Period:
- (a) you may terminate this Agreement at any time during the Cooling-Off Period by giving us notice; and
  - (b) we may choose not to provide the Service or any of Our Equipment to you until the Cooling-Off Period has expired.

(c) If you wish to cancel your Agreement with us within the cooling off period you must notify us by one of the following:-

- (1) telephone – 1300 30 21 03
- (2) email - [info@spinktel.com.au](mailto:info@spinktel.com.au)
- (3) fax - 03 9583 9430
- (4) mail - Spinktel, PO Box 7177 LPO, Brighton, 3186

1.5 How long does this Agreement last?

This Agreement begins on the date the Application is accepted by us and will continue:

- (a) until the end of the minimum term; or
- (b) until it is terminated in accordance with clause 11; or
- (c) where the minimum term has ended and you have continued to use the service in accordance with clause 1.6, on a month-to-month basis and thereafter until it is terminated in accordance with clause 11.

1.6 What will happen at the end of the minimum term of a contract?

If neither you nor we cancel the Agreement at the end of the minimum term of the Agreement we will continue to supply you the service on a month-to-month basis. If you do not wish to continue to use the service on a month-to-month basis after the end of the minimum term, you must cancel the Agreement in accordance with clause 11 at least 30 days prior to the end of the minimum term of the Agreement. If we will not continue to provide the service to you at the end of the minimum term of the Agreement we will inform you of this at least 30 days prior to the end of the minimum term.

1.7 How can you change anything in this contract?

You can make changes to this contract by requesting a variation or modification in writing. We will accept the variation or modification at our absolute discretion. If any additional charges will be incurred as a result of the requested variation or modification we will advise you, and if accepted you will be liable for the new charges.

**Changes to Our SFOA**

1.8 We may need to change the SFOA from time to time. This may be done without your agreement. If we make any change which will be more than a minor detrimental effect to you, we will notify you at least 14 days before the proposed change takes effect, by notifying you directly, in accordance with the provisions of the Telecommunications Act 1997, by:

- (a) email (to the last address that you have given to us);
- (b) email (to the last email address that you have given to us and provided you have agreed for us to tell you about changes to our SFOA by email); or
- (c) a message on your next bill.

We will also provide notice of the change on our Website.

1.9 Intentionally left blank

1.10 You acknowledge and agree that our obligation to give you 14 days notice of our proposed changes will not apply in relation to:

- (a) urgent changes we are required to make by law, for security reasons or technical reasons necessary to protect the integrity of our network;

- (b) the introduction of a new charge or an increase in an existing charge due to an additional tax or levy imposed by law;
- (c) the introduction of a new charge or an increase in an existing administrative charge for ancillary services such as credit card transaction fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original charge);
- (d) increases in charges due to increases imposed on us by other Suppliers.

Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 1.10 by one of the methods of giving notice listed in clause 1.8.

- 1.11 If we reasonably consider that a change to any term of our SFOA is likely to benefit you or have a neutral impact on you, we can make the change immediately and do not need to tell you before making the change. However we will notify you within a reasonable time after making the change by one of the methods of giving notice listed in clause 1.8. If a change to the SFOA made under this clause 1.11 has more than a minor detrimental impact on you (for example, because of your particular circumstances or pattern of usage of the Service), please contact us.

## **2. Using the Service**

### **2.1 When we will deliver the Service**

We will use all reasonable endeavours to meet the estimated delivery date on the Application but we do not represent or warrant that we will deliver the Service by this date. We shall not be liable for any delay in installation (including, but not limited to, delays in obtaining access to any property or premises) and time for delivery of the Service shall not be of the essence unless previously agreed by us in writing.

### **2.2 Where delivery of the Service is uncommercial or impractical**

We may quote installation fees for the Services based on our industry experience and assumptions about the likely costs and difficulty of performing similar installations in similar sites, and without making detailed investigations into the buildings where the Service is to be delivered. In some circumstances, due to causes such as heritage listed buildings or lack of available riser space, it may be uncommercial or impractical for us to deliver the Service. If we become aware that it is likely to be uncommercial or impractical to deliver the Service, we may reject your Application, or cancel your Service (at no cost to you) if your application has been accepted.

### **2.3 When the Service is connected**

You must reasonably co-operate with us to allow us to establish and supply the Service to you safely and efficiently. This includes assisting us liaise with your building management so that we may obtain access to your premises and following our reasonable requests to provide our Representatives with safe and prompt access to your premises and your Representatives, equipment, data and information. We will ensure that our Representatives comply with your reasonable directions while on the premises.

### **2.4 When does the minimum term commence**

The minimum term commences on delivery of the Service. The Service is deemed to have been delivered on the date of successful installation and testing of the Service or, where appropriate, transfer of the Service to us or the date you commence using the Service, whichever is earlier.

### **2.5 Quality of the Service**

We will provide the service to you with due care and skill. In the event of unexpected faults outside our control we will restore the Service as soon as possible. You acknowledge that we make no warranty in

relation to the performance or characteristics of any website or software supplied in connection with the Service.

## 2.6 Permitted uses of the Service

In using the Service, you must comply with all laws, all directions by a regulator, the terms and conditions of this SFOA, any rules, including any acceptable use conditions, imposed by any third party whose content or services you access using the Service or whose Network your data traverses and reasonable directions by us. You must not use, or attempt to use, the Service:

- (a) to break any law or to infringe another person's rights;
- (b) to expose us to liability;
- (c) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by us or a Supplier to supply the Service;
- (d) in any way which may damage any property or injure or kill any person;
- (e) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (f) in any other way which contravenes our Acceptable Use Policy;
- (g) for illegal purposes or practices
- (h) to impersonate or harass any other person;
- (i) to send any information that is abusive, threatening, false, fraudulent, misleading, or obscene that misappropriates or infringes any person's proprietary right;
- (j) to send email messages that contain any sexual, racist or discriminatory content constituting harassment of any individual or organization;
- (k) that constitutes or that violates any law, statute, ordinance or regulation within Australia;
- (l) to intercept any communications not intended for you

You acknowledge that, where the Service is a carriage service, we may be required to intercept communications over the Service and may also monitor your usage of the Service and communications sent over it. We may ask you to stop doing something that we reasonably believe is contrary to this clause. You must immediately comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with this clause or the request.

- 2.7 All use of the Service at the Premises is your responsibility. The terms of our SFOA apply to you and to anyone else who uses the Service (regardless of whether you give them permission ).
- 2.8 You must ensure that any software you use in relation to the Service is properly licensed.
- 2.9 The use of a Local Area Network (LAN) for personal use is permitted, however the set-up and configuration of a LAN connected to the modem is not supported by customer service.
- 2.10 All IP addresses provided by us for your use remain our property. Most Services include a dynamic IP address. A new IP address is usually allocated whenever the computer and modem is rebooted. The IP address remains until the next time the computer and modem is switched off. You must not configure your computer or modem to connect using a dynamic IP address. Where provided, you may configure your computer or modem to connect using a static IP address.
- 2.11 We may at any time adjust aspects of the Service for security or Network management reasons, including, without limitation:

- (a) deleting transitory data that has been stored on our servers for longer than 90 days;
  - (b) deleting stored email messages that are older than 90 days;
  - (c) rejecting any incoming email messages and attachments that exceed 10 Megabytes (including encapsulation);
  - (d) delivering access and content via proxy servers;
  - (e) limiting the number of addresses to whom an outgoing email can be sent;
  - (f) refusing to accept incoming email messages to mailboxes that have exceeded the email storage limit;
  - (g) managing the Network to prioritise certain types of Internet traffic over others; and
  - (h) blocking or filtering specific Internet ports.
- 2.12 You are solely responsible for ensuring adequate security or privacy measures for your computer networks and any data stored on those networks or accessed through the Service. We will not be liable to you in respect of any loss, damage, costs or expenses incurred by you in connection with your failure to provide that security.
- 2.13 You may request Additional Users on the Service in accordance with the Pricing Schedule
- 2.14 You must ensure that others do not gain unauthorised access to the Service through your account. You should not disclose your password to others and that you consider changing your password regularly.
- 2.15 We may monitor use of the Service to determine if a breach (or suspected breach) of that policy or upon the request of an authorised authority. We are not required to monitor use of the Service, whether by you or anyone else. If we do so, we can stop the monitoring at any time. However, we are not under any obligation to enforce any other policy that applies to anyone using services that we provide to them.
- 2.16 Where you provide your own wireless computer connection device, you are responsible for any loss caused by an unauthorised interception of the Service.
- 2.17 Your further Acknowledgements in respect of using the Service
- You acknowledge that:
- (1) the Service relies for its operation on content or services supplied by third parties, who are not controlled or authorised by us and we are not responsible for defamatory, offensive, indecent, abusive, menacing, threatening harassing or unsolicited material accessed or received by you; and
  - (2) we do not exercise any control over, authorise or make any warranty regarding:
    - (A) your right or ability to use, access or transmit any content (whether error- free, in time, or at all) using the Service;
    - (B) the accuracy or completeness of any content which you may use, access or transmit using the Service including any data which we may store as part of the Service;
    - (C) the consequences of you using, accessing or transmitting any content using the Service, including any virus or other harmful software; or
    - (D) any charges which a third party may impose on you in connection with your use of the Service.

### **3. Equipment**

#### **Our Equipment**

- 3.1 To enable you to use the Service, we may loan or lease equipment to you ("Our Equipment").
- 3.2 Where we provide Our Equipment to you in connection with the Service:
- (a) ownership or title in Our Equipment is not transferred to you;
  - (b) you are responsible for Our Equipment from the time it is delivered to you;
  - (c) you must comply with our reasonable directions relating to our rights of ownership of Our Equipment;
  - (d) you must only use Our Equipment in accordance with the manufacturer's specifications and our reasonable written directions;
  - (e) you are responsible for Our Equipment and must pay us for any loss or damage to Our Equipment, except to the extent that it is caused by us or by fair wear and tear;
  - (f) you must not part with possession of Our Equipment except to us and you must not mortgage or grant a charge, lien or encumbrance over any of Our Equipment;
  - (g) you must allow us to inspect, test, service, modify, repair, remove or replace Our Equipment, or to recover it after the Service is cancelled;
  - (h) you must ensure that Our Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by us;
  - (i) you must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install maintain and recover ( if the Service is cancelled) Our Equipment at the Premises; and
  - (j) you must provide adequate and suitable space, power supply and environment for all Our Equipment located on the Premises.
  - (k) On cancellation of the Service, for whatever reason, You will promptly return, at your cost, Our Equipment to us.

#### **Your Equipment**

- 3.3 You must ensure that all equipment you own, or which is owned by a third party and leased or licensed to you, and which you use in connection with the Service, other than Our Equipment ("Your Equipment") complies with all laws and relevant technical standards issued by a Regulatory Authority and all reasonable directions by us, including making any changes to Your Equipment to avoid any danger or interference it may cause.

#### **Disconnection of Your Equipment**

- 3.4 If you do not comply with any of your obligations under clause 3.3, we may disconnect Your Equipment from the Service or require you to do so. We will try to give you reasonable notice before disconnection but may do so immediately in an emergency.

#### **Purchased Equipment**

- 3.5 You may purchase equipment from us for use in connection with the Service ("Purchased Equipment"). New customers will be charged for the Purchased Equipment in the first account sent to you. Existing customers will be charged for the Purchased Equipment by automatic debit of the current payment details on record at the point of sale or by invoice. Title to the Purchased Equipment passes to you



when you pay for it in full. You will be responsible for the Purchased Equipment from when it is delivered to your nominated delivery address.

- 3.6 You acknowledge that we are not the manufacturer of the Purchased Equipment. Subject to clauses 13.1 and 13.2 and any terms in the Service Descriptions that expressly provide otherwise, We exclude, to the extent lawfully permitted, all warranties in relation to the Purchased Equipment.
- 3.7 If you purchase the wrong equipment, you may exchange it provided that it is returned to us undamaged and complete with all components and with the packaging intact, within 14 days of delivery to your nominated delivery address.

#### **4. The Premises**

##### **Access**

- 4.1 In order to provide the Service to you, we may need access to the Premises. You agree to provide us safe and prompt access to the Premises:

- (a) to install any equipment for a Service you have requested;
- (b) to inspect, test, maintain, modify, repair or replace any equipment; and
- (c) to recover Our Equipment after the Service is cancelled.

##### **Owner's permission**

- 4.2 If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install, maintain and recover Our Equipment. You must notify us immediately when you receive that permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us relating to our entering the Premises or installing or maintaining any equipment at the Premises on reliance on any representation made by you that you have obtained that permission

#### **5. Charges**

##### **Pricing Schedule**

- 5.1 The charges for the Service are set out below and in the relevant Pricing Schedule link (or in the terms of an applicable Special Offer under clauses 5.4 and 5.5) and any additional charges are set out in your Application.

You must pay all charges for the Service in accordance with any applicable provisions of the Service Description and the relevant Pricing Schedule link. Charges for the Service accrue from no later than the Service Commencement Date.

- 5.2 We may charge you an additional amount to service, modify, repair, or replace the Service or any equipment you use in connection with the Service, as a result of:
  - (a) a breach of our SFOA by you;
  - (b) a negligent or fraudulent act or omission by you, any person authorised by you or by any of your employees, agents or contractors;
  - (c) a failure of any of Your Equipment arising out of an act or omission by you, any person authorised by you or by any of your employees, agents or contractors; or
  - (d) a failure or fluctuation in electrical power supply arising out of an act or omission by you, any person authorised by you or by any of your employees, agents or contractors,

And we will provide you with details of the additional amount prior to commencing the service repair or replacement.

- 5.3 In order to provide some services to you (for example, internal calls or premium services calls), we enter into arrangements with other Suppliers. You acknowledge that our charges to you for the Service may vary as a result of a variation of a Supplier's charges to us for these types of services, and that we may pass on any additional charges to a Supplier charges to us for these types of services in accordance with clause 1.10.

#### Special Offers

- 5.4 From time to time we may make special offers ("Special Offers") in connection with the Service. These Special Offers may be notified in a general advertisement or specifically offered to you and may be subject to certain conditions, including:

- (a) a variation by us of the price or the terms of supply (including any Contract Term); or
- (b) a requirement that you acquire all relevant services for a minimum Contract Term and pay a Break Fee if you cancel the service before the end of that minimum Contract Term.

- 5.5 You may accept a Special Offer in the way notified by us (which may include completing and submitting an Application). If you validly accept a Special Offer, the terms of that Special Offer will prevail to the extent of any inconsistency over those that would otherwise apply in our SFOA, and will apply until the expiry of the Special Offer as notified by us. In all other respects, the terms and conditions of our SFOA continue to apply. After the expiry of the Special Offer, the Special Offer pricing and terms will cease to be available and, unless we give you reasonable notice otherwise, the terms of our SFOA will apply thereafter.

#### Other Charges

- 5.6 You agree to pay any charges payable to any other network operator, facilities provider or any other third party supplier whose services are required in order for us to provide the Service to you, which, for example, may include such things as cross-connect charges within data centres (Third Party Charges). We will use reasonable endeavours to ensure that you are advised of any Third Party Charges prior to you acquiring the Service. Where Third Party Charges apply to the Service you agree that you will pay the charges directly to the third party supplier. You will indemnify us from and against any claim, action or demand made against us by a third party supplier with respect to the Third Party Charges.
- 5.7 We may introduce or vary a Charge for a material ancillary to the supply of a Service (such as, without limit, a paper invoice fee, late payment fee or credit card or other payment method transaction fee).
- 5.8 Payments made by Credit Card will be subject to a surcharge of 1.50% + GST.
- 5.9 Payments made using Australia Post will be subject to a surcharge of \$1.50 + GST.
- 5.10 If you elect to receive a Paper Invoice, a charge of \$5.00 + GST will apply.
- 5.11 If you elect to pay by cheque we reserve the right to charge a fee of \$5.00 + GST to cover bank charges.
- 5.12 If you do not pay an Invoice by its Due Date, we may:
- 5.12.1 Charge you interest at the rate prescribed in the Penalty Interest Rates Act 1983 (Victoria) on overdue charges from the Due Date until paid
  - 5.12.2 Charge you a Late Payment Fee of \$15.00 + GST per Invoice or 1.5% of outstanding amount whichever is higher.
  - 5.12.3 all reasonable expenses incurred by us (including internal, legal costs and expenses and the fees of our debt recovery agents) in relation to recovering payments due;
  - 5.12.4 an amount to recoup any bank or financial institution fees incurred because your cheque, credit card payment or direct debit is not honoured.

- 5.13 Spinktel will monitor call usage against the Call Plan on a monthly basis and the Customer agrees and accepts that Spinktel monitors call type and duration.
- 5.14 Call usage is calculated based on the rates applicable to the Call Plan as set out in the Service Order or which are otherwise made available by Spinktel to the Customer. The Customer agrees and accepts that Spinktel may amend the rates at any time by giving to the Customer:
- (a) subject to clause 15.4(b), 14 days' written notice; or
  - (b) where the Customer is a reseller or wholesaler of the Service, 5 days' written notice.
- 5.15 Call charges are billed per second and rounded up to 3 decimal places. Minimum call charge is \$0.01.
- 5.16 The Customer is responsible for ensuring that all Customer Equipment is secure and Spinktel is not liable for call charges resulting from Toll Fraud and reserve the right to pass such call charges on in full to the Customer.

## **6. Billing & Payment**

### **Bills**

- 6.1 We may bill you:
- (a) for installation or set-up charges recurring or fixed charges, in advance (for example, line rental charges);
  - (b) for variable charges, in arrears (for example, call charges);
  - (c) for any equipment you purchase from us;
  - (d) for any other charges set out in your Application or the relevant Pricing Schedule link, in accordance with the Pricing Schedule link or the Service Description.
  - (e) using another invoice in the same month for billing alignment purposes where applicable; and
  - (f) for any amount owing to a Related Spinktel entity that has provided Services to you.
- 6.2 We will bill you in accordance with the billing period described in the Service Description or the relevant Pricing Schedule link. We can also issue an interim bill in the following circumstances:
- (a) you change your existing Plan;
  - (b) you request a new service to be connected;
  - (c) you relocate an existing service;
  - (d) you request to be invoiced for any "unbilled" charges.
- 6.3 Bills will be calculated by reference to data recorded, logged or received by our Suppliers and us. Our records of data as recorded, logged or received by our supplier or us will be sufficient proof that a Charge is payable unless they are shown to be incorrect.
- 6.4 We try to include all charges relating to a billing period on that bill. Where that does not happen, bills may include charges from previous billing periods. We will not bill you for any charges that are older than 190 days from the date the charge was incurred by you.
- 6.5 We may reissue any bill if any error is subsequently discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, we will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us or a Related Spinktel Entity.
- You must pay each amount billed by the due date specified in the bill and in the manner specified in the Service Description or the relevant Pricing Schedule link.

#### **Credit card and direct debit payments**

- 6.6 If you choose to pay by direct debit or credit card, you must give us at least 14 days prior notice if you no longer wish to pay by direct debit or credit card.
- 6.7 We can deliver Invoices, and you must accept them, by such means as we choose from time to time, including without limit, in electronic format sent by email or made available to you via our web site. The presentation of Invoices in electronic form may be affected by the type and quality of your equipment and, as such, We are not responsible for consequential presentation distortions.

#### **Late or non payment**

- 6.8 Except for any billing disputes you have with us, if you do not pay your bill on the due date we reserve the right to:
- (a) charge additional fees as detailed in clause 5.12;
  - (b) reduce the speed of your Service; and
  - (c) take any additional actions as allowed under this contract, including but not limited to suspension or termination.

#### **Disputing an invoice**

- 6.9 To dispute an invoice in good faith, you must notify us in writing. This notice must include the detailed reasons for the dispute, and must be issued within 60 days of the invoice date.
- 6.10 If you have notified us of your dispute by the due date for payment, you may withhold only the disputed amounts of the invoice.
- 6.11 If you fail to notify us by the due date you must pay all sums due in full.
- 6.12 We will use reasonable endeavours to resolve any such dispute quickly and efficiently. Where a dispute is determined to be baseless, you must pay us the amount withheld within 7 days of such determination. Where a dispute is determined to be properly founded and you have already paid the disputed amount, we must refund the relevant amount within 7 days of such determination.

#### **Right of set-off**

- 6.13 If you owe a Related Spinktel Entity an outstanding debt which is not the subject of a valid billing dispute and you no longer acquire a service from that Related Spinktel Entity, we may apply the debt to your current Spinktel account and bill you for it. You must pay the outstanding amount by the due date specified on your bill or we may take action in accordance with clause 6.8

### **7. GST and other taxes**

Unless otherwise expressly noted, all charges for the Services are exclusive of GST. You will pay to us at the same time when any part of the charges for the Service is payable, an amount equal to any GST payable on supply of that Service. We will issue a tax invoice to you for any supply on which GST is imposed. If any additional tariffs become payable by us in relation to or in connection with this contract we will charge an additional amount equal to the amount of the tariffs payable

### **8. Credit Check**

- 8.1 Credit approval is required:
- (a) for all new customers;
  - (b) for material increases in monthly billing, and
  - (c) from time to time to ensure we are satisfied with your credit rating.
- 8.2 To assess your credit rating, you consent to us disclosing to a credit reporting agency personal information relating to you in our possession.
- 8.3 If we requires additional information from you to properly assess your credit rating you must supply

this requested information

- 8.4 If, having conducted a creditworthiness assessment, we reasonably consider that you may not be able to pay any Charges as and when they become due and payable, we may require you to provide a Security Bond or a Pre-Payment.

## 9. Personal Information

- 9.1 We will comply with the Privacy Act when dealing with your personal information.
- 9.2 We have adopted the National Privacy Principles the details of which can be seen at [www.privacy.gov.au](http://www.privacy.gov.au)
- 9.3 You consent to allow us and Our Suppliers (and their related bodies corporate) to use your personal information in order to facilitate the supply of Services to you.

## 10. Transfer of The Service

You acknowledge that:

- 10.1 By transferring a Service from another provider to us, that service may be disconnected from the other provider's network and may result in finalisation of your account for that service;
- 10.2 By transferring a Service from another provider to us, any services that are provided to you using the same telephone line (e.g. a DSL or spectrum sharing associated with that telephone number) may be disconnected, which may result in finalisation of those services;
- 10.3 Although you may have rights to transfer, for example, a your telephone number, there may be costs and obligations associated with the transfer which may include early termination fees and transfer fees from your current provider;
- 10.4 If on termination of a Service, you request the transfer of a telephone number from us to another provider, we may charge fees in relation to that transfer;
- 10.5 We are not liable for any amounts owing by you to your current provider of telecommunications and other services prior to the commencement of Services with us.

## 11. Suspension &/or Termination of Service

### 11.1 Suspension

Subject to our obligations to give you notice, we may suspend your Service in the following circumstances:-

#### 11.1.1 for those events that relate to you:

- (a) you have failed to make a payment by the due date and you fail to make such payment within 5 business days of receipt of a notice requiring you to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;
- (b) you breach a material term (other than a breach which separately gives rise to rights under this clause 11.1) and that breach is not capable of remedy;
- (c) you breach a material term (other than a breach which separately gives rise to rights under this clause 11.1) and, where that breach is capable of remedy, you do not remedy that breach within 10 business days after we give you notice requiring you to do so;
- (d) you vacate the Premises or you die;
- (e) we are temporarily unable to supply the Service to you because of an continuing event that is reasonably out of our control; for example, earthquake, explosion, natural disaster, sabotage or war you have failed to provide a security deposit as requested;

- (f) you breach the Fair Use Policy;
- (g) we reasonably suspect fraud or other illegal conduct by you or anyone using the Service we determines that the you are in breach of the confidentiality provisions of this contract;
- (h) you become bankrupt or Insolvent or appear likely to do so and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our A we are temporarily unable to supply the Service to you because a supplier has temporarily withdrawn its carriage service from us;
- (i) you resell the Service or otherwise act as a Carriage Service Provider;
- (j) we are entitled to under another provision of our SFOA, and that entitlement arises by reason of your default or conduct under this SFOA

11.1.2 for those events that have nothing to do with you:-

- (a) it is necessary to do so to maintain or restore any part of the network( including a Supplier's network used to supply the Service), or for other operational reasons;
- (b) we are required to suspend the Service to comply with a direction from a law enforcement agency, or a regulatory authority such as the Australian Communication and Media Authority (ACMA);
- (c) we reasonably believe a threat or risk exists to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is caused directly or indirectly by you;
- (d) a Supplier terminates its agreement with us, or ceases( for any reason) to supply services to us, and we are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us;
- (e) there is an emergency;
- (f) a Force Majeure Event prevents the supply of the Service in accordance with our SFOA for more than 14 days;
- (g) we are entitled to under another provision of our SFOA, and that entitlement arises by reason of your default or conduct under this SFOA

## 11.2 Termination

Subject to our obligations to give you notice, we may suspend your Agreement in the following circumstances:-

11.2.1 any of those events described in clause 11.1 above; AND

11.2.2 any of the following events:-

- (a) if there is no Contract Term specified in your Application or the Service Description, at any time by giving 30 days notice to you;
- (b) if a Contract Term is specified in your Application or the Service Description, at any time after the end of the Contract Term by giving 30 days notice to you; or
- (c) if we reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the Service Commencement Date by giving you notice.

## 11.3 Notice

Before exercising any of our rights under clauses 11.1 and/ or 11.2, we:

- (a) will try to give you reasonable notice in any of the circumstances referred to in clauses 11.1.1 (b), (d) & (h) and 11.1.2(a), (b) and (d);
- (b) may be unable to give you notice in the event of an emergency. We will, however, try to provide as much notice as possible; and
- (c) will not be required to give you notice if we exercise our rights by reason of the circumstances referred to in clause 11.1.1 (f), (g), (i) and clause 11.1.2 (c) and (g).

#### 11.4 Cancellation or Suspension by you

11.4.1 Except as provided otherwise in the Service Description for your Service, you may cancel the Service without liability, by giving us 30 days prior notice:

- (a) at any time, if there is no Contract Term specified in the Service Description or your Application;
- (b) if a Contract Term is specified in the Service Description or your Application, at any time after the end of the Contract Term;
- (c) if:
  - (i) we have breached a material term of our CRA and that breach is not capable of remedy; or
  - (ii) we have breached a material term of our SFOA and that breach is capable of remedy but we failed to remedy that breach within 14 days after you first gave us notice requiring us to do so, or

11.4.2 If you cancel your Service prior to the end of the Contract Term and we have supplied you with equipment under a Special Offer on the condition that you acquired the Service for the full Contract Term then:

- (a) if we supplied the equipment free of charge, you must:
  - (i) return the equipment to us; or
  - (ii) retain the equipment and pay for it in full; or
- (b) if we supplied the equipment at a discount, you must:  
retain the equipment and pay us an amount equivalent to the discount we gave you.

11.4.3 You may cancel the Service for any reason before the end of the Contract Term by giving written notice to us but you may be required to pay a Early Termination Fee in accordance with clause 12.3.2.

11.4.4 You may ask us to suspend the Service by giving notice to us. We will try to do so within a reasonable period if it is a Service for which suspension is an option. ADSL Services cannot be suspended.

## 12. Consequences of a Service that is Suspended or Terminated

### Consequences of suspension

12.1 If the Service is suspended in accordance with our SFOA, then you will not have to pay any charges for the Service while it is suspended. However, if the Service is suspended by reason of any of the circumstances referred to in clause 11.1.1, you must pay a Reconnection Fee prior to the expiration of the suspension and recommencement of the Service.

- 12.2 If we reconnect a Service that has been cancelled, you may have to pay us a reconnection charge. You will not be required to pay a reconnection charge if the Service was cancelled pursuant to clauses 11.1.2, 11.4.1(c) or due to our fault or negligence.

#### **Consequences of cancellation**

- 12.3 If the Service is cancelled in accordance with our SFOA (other than in accordance with clauses 11.1.2 or 11.4.1(c) ):

- 12.2.1 before the Service Commencement Date, we can charge you any costs reasonably incurred by us in preparing to provide it to you; and
- 12.2.2 during the Contract Term, you must pay to us the Early Termination Fee.

- 12.4 If the Service is cancelled you still have to pay all charges incurred before cancellation. We will refund any overpayment on your account and any money that you have paid in advance for the cancelled Service on a pro-rata basis to you. However, subject to clause 6 (Billing Disputes), we can deduct from your refund any amount that you owe to us, such as charges you have incurred before cancellation or any applicable Break Fee.

- 12.5 In the event that there is credit remaining on your account at the time of cancellation, you will receive the credit via direct deposit or to your listed credit card without being charged the Handling Fee. We reserve the right to charge any associated merchant fees, as they are a reflection of the costs incurred by us to prepare the refund for you.

- 12.6 On cancellation of the Service:

- 12.6.1 immediately stop using and return to us, or allow us to remove, any of Our Equipment. You must pay all outstanding amounts in a lump sum for any Purchased Equipment which you have not fully paid for at the date of cancellation,
- 12.6.2 you will, at your cost, immediately stop using and return to us, or allow us to remove, any of Our Equipment. We will refund any amounts already paid by you for any equipment which you have purchased but not fully paid for at the date of cancellation, if that equipment is not able to be used with other telecommunications providers' services. Where the equipment is able to be used with other telecommunications provider's services, no refund is applicable and you must pay all outstanding amounts in a lump sum.

For the avoidance of doubt, we will not credit you with any refund until after you have returned the equipment to us and we have assessed that the returned equipment has not been damaged by more than fair wear and tear.

- 12.6.3 unless our SFOA expressly states otherwise, each person's accrued rights and obligations are not affected; and
- 12.6.4 the parts of our SFOA which are by their nature intended to survive cancellation will continue unaffected, including clauses 3,6,7,9,12,13,14 & 16.

### **13. Our Liability To You**

#### **Terms implied by law**

- 13.1 Nothing in this SFOA removes or limits any statutory warranties which are implied into this SFOA and which we are not permitted to exclude. Otherwise, we agree to provide the Service to you subject only to the terms, conditions and warranties contained in this SFOA. We do not warrant that the Service will be free of interruptions, delays or faults.

#### **Our Liability for breach of a Consumer Guarantee**



13.2 If the Service we supply to you does not meet a Consumer Guarantee then, subject to our right to limit our liability under clause 13.3:

- (a) when the issue with the Service is minor, we can elect between providing a repair or offering you a replacement or refund;
- (b) when there is a major failure, you can:
  - (1) reject the Service within a reasonable period and either choose a refund or a replacement; or
  - (2) ask for compensation for any drop in value of the Service; and
- (c) you can ask for compensation for any reasonably foreseeable loss incurred by you as a result of the failure.

#### **Limitation of liability**

13.3 Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a term, condition or warranty, but are permitted to limit our liability for such a breach, our liability to you is limited to where the breach relates:

- (a) to the supply of Our Equipment or Purchased Equipment, the repair or replacement of the equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the equipment or supplying equivalent equipment; or
- (b) to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied.

#### **Personal injury and death and property damage**

13.4 The limitations of liability in clauses 13.2 and 13.6 do not apply to:

- (a) personal injury (including illness and disability) or death;
- (b) the loss, destruction or damage to, or loss of use of tangible property.

#### **Customer Service Guarantee**

13.5 Where it is applicable, We will comply with the Customer Service Guarantee ("CSG"), including (without limitation):

- 13.4.1 Observing minimum performance standards for the installation and repair of services, including the time frames in which We are required by the CSG to:
  - (a) Action requests for connections of a standard telephone service or an enhanced call handling feature;
  - (b) Repair faults or service difficulties; and
  - (c) Make and attend appointments with You and advise the length of the appointment 'window'.
- 13.4.2 Observing CSG requirements regarding:
  - (a) Call waiting;
  - (b) Call forwarding;
  - (c) Calling number display; and
  - (d) Calling number display blocking.

#### **Contributory Loss**

13.6 Our liability for any loss, cost, liability or damage suffered or incurred by you under or in connection with our SFOA or the Service (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or Your Equipment (or the acts, omissions or equipment of a third person,) caused or contributed to that loss, cost, liability or damage.

#### **Consequential Loss**

13.7 Subject to the statutory warranties that are expressly or impliedly incorporated into this SFOA, we exclude any liability to you for any Consequential Loss suffered or incurred by you in connection with the supply or Interruption of any goods or services (including the Service) or with a claim arising from this SFOA (whether based in contract, tort (including negligence) or otherwise).

#### **Acts of a Supplier**

13.8 To the extent permitted by law, we have no liability to you or to any other person for acts, omissions or defaults of any Supplier or any person who provides goods or services directly to you for use in connection with a Service. However, we will use reasonable endeavours to ensure that any Supplier cooperates in order to deliver the Service in a timely manner, provides and maintains the Service in a responsible fashion and rectifies any faults in relation to the Service in a timely manner.

#### **Force Majeure Event**

13.9 We are not liable for failing to comply with any of our obligations under our SFOA if a Force Majeure Event occurs which prevents us from performing those obligations.

#### **When we are not liable to you**

13.10 We are only liable to you in the cases set out in this clause 13 or otherwise as provided by law. Otherwise, we exclude any liability we might otherwise have to you in connection with our SFOA or the Service to the extent that such liability is not expressly accepted by us under this clause 13.

#### **Interruption to the Service**

13.11 Subject to clause 13.12, we accept liability to you for Interruptions to the Service, but only to the extent of:

- (a) a refund or rebate for the period of the Interruption (calculated in accordance with the Service Description for the Service); and
- (b) where the Interruption is caused by our breach of a Consumer Guarantee, compensation for any reasonably foreseeable loss incurred.

13.12 The refund or rebate in clause 13.11 (a) does not apply to Interruptions which occur because of:

- (a) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in clauses 11.1 or 11.2;
- (b) a fault or other event which may reasonably be attributed directly or indirectly to Your Equipment;
- (c) your acts or omissions; or
- (d) scheduled maintenance to our Network, a Supplier's Network, Our Equipment or Purchased Equipment.

#### **Our Total liability**

13.13 To the extent permitted by law and without limitation to any part of this clause 13 our total liability in respect of all claims in connection with this Agreement (whether in contract, negligence, ant tort, or under any statute or otherwise) will be the sum of all charges paid by you under the Agreement in the 6 month period preceding the date of the event that gave rise to the last claim.

#### 14. Your Liability To Us

##### Joint customers

- 14.1 If you and one or more others are the customer for a Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.

##### Indemnity

- 14.2 You must pay us for any loss, damage, cost or liability including reasonable legal costs (but excluding any Consequential Loss) we suffer or incur relating to:

- (a) the use (or attempted use) of the Service; or
- (b) equipment used in connection with the Service, and arising out of your (or any person authorised by you) breach of this SFOA or negligent acts or omissions.

- 14.3 You must ensure that any person who you allow to use the Service, or to whom you ask us to supply the Service directly, complies with our SFOA as if they were you. This includes and is not limited to Voice calls, excess data and any other variable charges and fixed charges.

- 14.4 You must pay to us any charges incurred by where by your service is used by another party without your knowledge, you are solely responsible for any costs by us or third parties.

#### 15. Faults

- 15.1 You must immediately report to us (preferably by phone on the number displayed on your bill) any faults in relation to;

- 15.1.1 The Services,
- 15.1.2 Our Equipment; or
- 15.1.3 Our Network.

- 15.2 We will use reasonable endeavours to correct faults for which we are responsible.

- 15.3 In the event of any fault which is in the network of a Supplier, we will notify the Supplier of the fault as soon as a practically possible.

- 15.4 A charge will apply if a visit is required to repair a network fault and the fault is found to be in Your Equipment. This charge may also come directly from another network Supplier if another network Supplier is used.

- 15.5 You will promptly correct faults in Your Equipment that may affect any of the Services.

- 15.6 Our remediation of any faults is restricted to the resolution of the fault condition itself irrespective of any damage or loss suffered by you or any third party.

- 15.7 Subject to the statutory warranties referred in clause 13.1 and your rights under clause 13.10, we aim to provide, but do not guarantee, continuous or fault-free service.

- 15.8 We may conduct maintenance on any of our Network, Our Equipment or facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so.

##### Faults caused by You, Your Equipment or by other Suppliers

- 15.9 Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where the fault arises in or is caused by another Supplier's Network or by Your Equipment and the fault does not arise or was not caused by us or Our Equipment.

#### 16. General

##### Confidentiality

16.1 You and we each agree to keep confidential the other's Confidential Information. You and we will not use or disclose the other's Confidential Information for any purpose, other than:

- (a) to the extent necessary to perform obligations or exercise rights under our SFOA;
- (b) to the extent disclosure is required by law or the listing rules of a stock exchange or a direction by a Regulatory Authority; or
- (c) to professional advisors in connection with our SFOA.

16.2 For clarity, we may refer to you as a customer of ours in our press releases, or in our marketing sales or financial material or reports.

#### **Notices**

16.3 Any notice or other communication to or by a party under this Agreement:

- 16.1.1 may be given by personal service, post, facsimile or electronically by e-mail;
- 16.1.2 must be in writing, legible and in English;
- 16.1.3 a person (Sender) may take the address, facsimile number and e-mail address of another party (Recipient) to be:
  - (a) the address and numbers set out in this Agreement; or
  - (b) the last address or numbers notified by the Recipient to the Sender.
- 16.1.4 in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- 16.1.5 is taken to be given by the Sender and received by the Recipient:
  - (a) if delivered in person, when delivered to the Recipient;
  - (b) if posted, 2 Business Days (or 6 days if addressed or posted outside Australia) after the date of posting to the Recipient whether delivered or not;
  - (c) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the Recipient notified for the purposes of this clause; or
  - (d) if sent electronically by e-mail and confirmation is received from the relevant internet service provider that the transmission was successfully received in full by the end Recipient and without error on the day of the transmission:

but if the delivery, receipt or if sent by email, the transmission is completed, on a day which is not a Business Day or is after 5.00pm ( addressee's time), it is taken to have been received at 9.00am on the next Business Day.

16.4 Without limiting other methods by which we may give notices to you, you consent to us sending to you by email to the email address allocated by us for use by you (or if we agree, to another email address notified by you) notices under the Agreement or information relating to Services, including invoices.

16.5 A notice from us need not be signed and may be incorporated on or enclosed with an invoice.

#### **Waiver**

16.6 If we have a right arising out of a breach by you of our SFOA and we do not exercise that right, we do not waive that right, unless we do so in writing signed by us, or our right to insist on performance of that or any other obligation at any other time.

#### **Severance**

16.7 If a provision of SFOA is void, voidable or unenforceable in any jurisdiction, it will be severed and the remainder of our SFOA will not be affected.

#### **Intellectual Property**

16.8 You do not own or have any legal interest in any of our intellectual property or in any telephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you.

#### **Authority**

16.9 If you have a business Service, 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 tell us that they are authorised to provide that consent on your behalf. For residential Services, you must inform us if you want another person to have authority to access or make changes to your Service or account. We will not let another person access your account unless we have received your authority to do so.

#### **Entire Agreement**

16.10 The Agreement contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties in connection with it.

#### **No Reliance**

16.11 You acknowledge that:

- (e) you are obtaining the Services 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 SFOA;
- (f) advice from our staff is given in good faith and with the best of intention, however we do not represent that our staff are experts in the operation of your computer hardware or software. You undertake to act on any advice given by any of our staff member at your own risk;
- (g) we make reasonable efforts to ensure that the information on our Website is correct and up to date. However, we do not warrant the accuracy of that material.

#### **Third Party Providers of Services**

16.12 We may engage third parties (including Spinktel Related Parties) to provide any part of the Services. All our rights & benefits (including indemnities) under the Agreement are also for the benefit of those third parties and may be exercised by them.

#### **Assignment**

16.13 You may not assign, novate, mortgage, charge, sublicense or subcontract or otherwise delegate any of your obligations under the Agreement without our prior written consent (such consent not to be unreasonably withheld). We may assign, novate or otherwise delegate all or any of our rights and obligations under the Agreement to a related body corporate or any other person or entity.

16.14 Interpretation of documents if there is an inconsistency

16.15 Unless stated otherwise, if there is any inconsistency between any of the terms of our Agreement with you, the order of precedence will be your Application, the Service Description, the SFOA and the

relevant Pricing Schedule website area, except that clauses 13 and 14 of the SFOA always prevail over all other terms in our Agreement with you.

#### **Governing Law**

16.16 The Agreement is governed by and subject to the laws of Victoria, Australia. Each party submits to the jurisdiction of courts and tribunals in Victoria, Australia.

#### **17. What is the fair contract guarantee?**

- 17.1 When you agree to a fixed term contract, you are agreeing to retain your service for a set period of time called the Contract Term. However, our Fair Contract Guarantee ensures you always have access to our best plans
- 17.2 The Fair Contract Guarantee allows you change up and down between plans at any time without breaking your Contract Term
- 17.3 If you upgrade your plan we will absorb the administration costs. However if you downgrade to a plan of equal or lesser value, then a Downgrade Fee as set out in the Pricing Schedule will apply.
- 17.4 If you break your Agreement before the Contract Term you will be required to pay the Early Termination Fee.

#### **18. Fair Use Policy (FUP)**

- 18.1 Our FUP is to ensure that you do not use our services in an excessive or unreasonable manner. Our Fair Use Policy is intended to ensure all active customers have access to services that are continuously of high quality. It also includes any plan based on special conditions in favour of the customer. Our Fair use policy covers both voice and data services.
- 18.2 Excessive Use: If your usage of the Services is deemed excessive, we may contact you and request that you decrease your usage.
- 18.3 We consider excessive use thresholds to be any one of but not limited to the following:
  - (a) Landline Local calls – more than 500 calls in any calendar month
  - (b) Landline National calls – 500 minutes per month
  - (c) Landline Calls to Mobile – 500 minutes per month
  - (d) Mobile Service – 500 minutes per month
  - (e) Inbound Service – 500 minutes per month
  - (f) Data services – Unusual excessive use deemed solely by spinktel
- 18.4 After contact from us, should your usage continue to be excessive, we may, without further notice to you:
  - (f) Suspend or limit your Service, or service feature, for a length of time we consider necessary.
  - (g) Terminate your Agreement
  - (h) Charge your account for usage over and above the excessive use threshold at the ex GST rates listed here;
    - (i) Calls to mobile 24c per minute with a 10c flag fall
    - (ii) National calls 10c per minute with a 10c flag fall
    - (iii) Local calls 14c per call
    - (iv) 13/1300 calls 33c per call

(v) Mobile to mobile 80c per min 35c flag fall

(vi) Data \$0.40 per GB at a point that is over and above the average monthly usage for the previous 6 month period

18.5 We reserve the right to review or amend this policy from time to time.

## 19. Definitions & Interpretations

In our SFOA:

**Access Plan** means the plan selected by you in your Application;

**Additional User** means a person (other than you) whom you nominate and authorise to use the Service.

**ADSL Modem** means an approved ADSL Modem.

**ADSL Line Completion** means the date we notify you that your ADSL Phone Line is upgraded to utilise the Service, as determined by us.

**ADSL Phone Line** means your nominated telephone line used to deliver the Service.

**ADSL Pricing Plan** means a pricing plan for the ADSL Service identified in the Pricing Schedule.

**Application** has the meaning set out in clause 1.3;

**Approved Purposes** means:

- (a) providing directory assistance services;
- (b) providing operator services or operator assistance services;
- (c) publishing and maintaining public number directories;
- (d) providing location dependent carriage services;
- (e) the operation of emergency call services or assisting emergency services under Part 8 of the Telecommunications (Consumer Protection and Service Standards) Act 1997;
- (f) assisting enforcement agencies or safeguarding national security under Parts 14 and 15 of the Telecommunications Act 1997 or any other applicable legal requirement;
- (g) verifying the accuracy of information provided by the data provider and held in the Integrated Public Number Database against the information the data provider holds;
- (h) undertaking research of a kind specified in the Telecommunications IPND - Permitted Research Purposes Instrument 2007;
- (i) assisting the Australian Communications and Media Authority, or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (j) any other purposes where permitted by the Telecommunications Act 1997, and any other applicable laws.

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

**Carriage Service Provider** has the meaning given by section 87 of the Telecommunications Act 1997.

**Confidential Information** of a person means all information of that person ("Owner") of a confidential nature, which another person ("Recipient") first becomes aware, whether before or after the date of the original Application, either through disclosure by the Owner to the Recipient or otherwise through the Recipient's involvement with the Owner. Confidential Information does not include information:

- (a) the Recipient creates (whether alone or jointly with any person) independently of the Owner's Confidential Information;
- (b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source.
- (d) In respect of us, "Owner" and "Recipient" includes us and each Related Spinktel Entity.

**Consequential Loss** means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any penalties or fines imposed by a Regulatory Authority.

**Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Competition and Consumer Act (Cth)..

**Contract Term** means the minimum contract term specified in your Application, which commences on the Service Commencement Date, or, if no contract term is specified in the Application or our SFOA, then there will be no minimum contract term.

**Credit Information** means:

- (a) personal identifying particulars including your name, gender, current address (and your previous two addresses), date of birth, telephone number, mobile number, banking details, credit card details, name of employer and drivers licence number;
- (b) your application for credit or commercial credit – the fact that you have applied for credit and the amount;
- (c) the fact that we are a current credit provider to you and any credit limit on your account;
- (d) payments which are overdue by more than 60 days and/or for which debt collection action has started;
- (e) advice that your payments are no longer overdue in respect of any default that has been listed;
- (f) the fact that, in our opinion, you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations);
- (g) information about any payments, including cheques, credit cards and direct debits, which have been dishonoured;
- (h) court judgments or bankruptcy orders made against you; and
- (i) the fact that we have ceased providing the Service to you (and the timing of that cessation of service).

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

**Customer Service Guarantee or CSG** means any performance standards issued under Part 5 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).



**Downgrade** means a variation to the Service which reduces the capacity, use or utility of that Service and results in a change in the charges payable for the Service to an equal or lesser value.

**Downgrade Charge** means the charge of \$29 to Downgrade any service

**Download or Downstream** means data that is inbound (i.e. incoming to your internet connection).

**DSL** means Digital Subscriber Line.

**Early Termination Fee ("ETF")** means the relevant cancellation fee or termination charge (if any) that will apply if your Agreement with us is subject to a Minimum Term arrangement and this Agreement is cancelled or is disconnected for any reason or you switch carriers before the expiry of the Minimum Term.

The Early Termination Fee that applies is the total of the following:

(i) An administration fee of \$225

plus;

(ii) A. For PSTN,, and 1300/1800 services - 45% of the monthly line rental expense multiplied by the number of whole months remaining on the Agreement

OR

B, For VODSL, VPN, ISDN , Broadband, Web, mobile telephony services & Email Hosting products - the minimum monthly commitment multiplied by the number of months remaining in your Agreement.

plus;

(iii) the total of any discounts that have been extended to you during the Contracted Term including , without limitation, any Equipment provided to you.

plus;

(iv) any charges under the Agreement that remain unpaid at time of disconnection

plus;

(v) any charges from our Suppliers that are incurred by us due to your early termination of the Agreement.

You agree that the above is a genuine estimate of the loss we will incur from the early termination of this Agreement.

**Excess Usage** means Usage over and above the Monthly Usage Allowance

**Excess Usage Charges** means the fees payable for internet Usage over and above the Monthly Usage Allowance.

**Fair Use Policy** means the policy set out in clause 18;

**Force Majeure Event** means any event outside that person's reasonable control, and may include a failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party (including any Regulatory Authority or Supplier).

**Handling Fee** means a fee incurred by us to provide you with a refund.

**Hardware and/or Equipment** means a kit containing all Required Equipment and Software ordered by you in your Application needed to connect to the Service

**Insolvent includes** having a receiver, manager, administrator, provisional liquidator or liquidator appointed to you, you entering into any scheme of arrangement with your creditors, a mortgagee entering into possession or disposing of the whole or any part of your assets or business.

**ISDN** means an Integrated Services Digital Network service supporting high-speed digital transmission of voice, image and facsimile traffic and TSO14 and ESTI protocol standards.

**ISDN Service** means an integrated digital access to voice and data networks. This essentially consists of a digital transmission circuit between the NT1 at Customer premises and the local ISDN exchange.

**Interruption** in the supply of goods or a service means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that service.

**Material Terms** means, in the context of clause 1.2 only, those terms and conditions we read out to you over the telephone.

**Megabyte** means a unit of data storage capacity equal to 10 to the power of 6.

**Modem Software** means the software used and installed on a new customer's computer during installation, as updated from time to time (including upgrades and manuals), and which is included when you purchase an ADSL Modem from us.

**Monthly Service Fees** means the monthly fee due to us from you for the Service, excluding Set-up Fees, Usage Fees and Excess Usage Charges.

**Monthly Usage Allowance** means the Usage that is provided per month in accordance with the Access Plan selected by you.

**Network** means a telecommunications network, including equipment, facilities or cabling.

**Our Equipment** has the meaning set out in clause 3.1.

**Personal Information** means information or opinion about you from which your identity is apparent or can reasonably be ascertained and includes your name, current and previous addresses, service number, date of birth, email address, bank account or credit card details, occupation, driver's licence number and your Credit Information and Credit Rating.

**Personnel** means that person's employees, agents, contractors or other representatives.

**Purchased Equipment** has the meaning set out in clause 3.5.

**Pricing Schedule** means the schedule setting out our pricing for the Services, not otherwise set out in this SFOA & published on our website.

**Premises** means locations at which we supply the Service, and locations to which we need to have access to supply the Service.

**PSTN** means the Public Switched Telephone Network service which is an analogue based service supporting voice, facsimile and dialup modem traffic.

**Registry** means the relevant domain names Registry.

**Regulatory Authority** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, Communications Alliance, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

**Related Spinktel Entity** means an entity that is related to The Spinktel Group Pty Ltd (ACN 146 289 054) in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).

**Required Equipment** means:

- (a) an ADSL modem;
- (b) an Ethernet port/card to connect your computer to the ADSL Modem;
- (c) a telephone wall socket to connect the ADSL Modem to your ADSL Phone Line;
- (d) an approved filter for each telephony device; and
- (e) any additional equipment that may be required for your particular computer and telephone requirements.

**Service** means the service requested by you in your Application and described in the relevant Service Description and Pricing Schedule link, and any related goods (including Our Equipment and Purchased Equipment) and ancillary services provided to you by us in connection with that service.

**Service Commencement Date** means the date on which we notify you that the Service is ready for use.

**Service Description** means schedule setting out our description of Services and setting out specific terms and conditions for those Services, not otherwise set out in this SFOA & published on our website.

**Set-up Fee** means a once-off initial fee for setting up the Service.

**Shaping** means, where your Usage exceeds the Monthly Usage Allowance in any given billing month, the Download speed from the Internet will be slowed to the maximum speed applicable to the Service option selected by you, as specified in the relevant Pricing Schedule link.

**Software** means the Modem Software and any other software we supply to you for use in conjunction with the Service which may change from time to time, including any upgrades and manuals.

**Special Offer** has the meaning set out in clause 8.5.

**Supplier** means any supplier of goods or services (including interconnection services) which may be used directly or indirectly by us to supply the Service.

**System Requirements** means the pre-requisite computer hardware and operating systems software required for installation and customer support as specified on our support page on our Website.

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

**Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provisions of the Trade Practices Act 1974 (Cth), each as amended or replaced from time to time.

**Traffic** means all data that is Downloaded or Uploaded. Traffic may take the form of emails, web requests and web data, File Transfer Protocol (FTP) and other services. If you are connected to the internet then you are using Traffic. The Service option and/or ADSL Pricing Plan you select will determine how your Traffic with us is calculated and billed.

**Upload or Upstream** means data that is outbound (i.e. outgoing from your Internet connection)

**Usage** means the amount of time generated or data Downloaded by your Internet access.

**Usage Charges** means the fees payable for Usage of the Service.

**VODSL means** voice over DSL and enables DSL lines to be used over copper wire infrastructure to transport voice.

**you** means the customer who makes the Application and where two or more persons have applied, means those persons individually and every two or more of them jointly (and you will have a corresponding meaning).

**Your Equipment** has the meaning set out in clause 3.3.

**We, we, us** means Spinktel Pty Ltd, Spinktel Comms Pty Ltd and/or any Related Spinktel Entity which supplies the Service to you (and “our” will have a corresponding meaning).

**Website** means the website located at [www.spinktel.com.au](http://www.spinktel.com.au)

Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) a reference to a party in a document includes that party’s directors, officers, employees and invitees, their permitted assigns, executors, successors, substitutes and legal personal representatives;
- (d) the word party includes a firm, body corporate or politic, unincorporated association or an authority;
- (e) a reference to a “clause”, “background”, “recital”, “schedule”, “annexure” or “appendix” is a reference to a clause, background recital, background schedule, annexure or appendix of this Agreement;
- (f) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (g) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (h) a reference to a document includes any variation or replacement of it, any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (i) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (j) the words “in writing” include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (k) a reference to any thing ( including any amount) is a reference to the whole and each part of it ;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them ;
- (m) wherever “include”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind);
- (n) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (o) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body;
- (p) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision; and

- (q) all obligations must be performed duly and punctually;
- (r) words importing "do" include do, permit, omit, or cause to be done or omitted;
- (s) where a party is prohibited from acting or omitting to act in a certain way that party must ensure that each of its employees, agents and contractors complies with such prohibition;
- (t) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement;
- (u) a reference to "conduct" includes any omission, statement or undertaking; and
- (v) a right includes a remedy, authority or power.
- (w) An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (x) An agreement, representation or warranty by two or more persons binds them jointly and severally;
- (y) A reference to a group of persons or things is a reference to any two or more of them jointly and severally.
- (z) "reasonable" notice period means a period which is reasonable in the circumstances taking into account technical, operational and commercial issues.

#### **Calculations of Time**

- (a) Unless the context otherwise requires a reference to:
  - (i) a time of day means that time of day in Melbourne;
  - (ii) day means a period of time commencing at midnight and ending twenty four (24) hours later; and
  - (iii) month means a calendar month which is a period commencing at the beginning of a day of one of the twelve (12) months of the year and ending immediately before the beginning of the corresponding day of the next month, or if there is no such corresponding day, ending at the expiration of the next month,
- (b) Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
- (c) Where something is done or received after 5.00 pm on any day it will be deemed to have been done or received on the following day;
- (d) A provision of this document which has the effect of requiring anything to be done on or by a date which is not a Business Day must unless the context otherwise requires be interpreted as if it required it to be so done on or by the immediately preceding Business Day.