

STANDARD FORM OF AGREEMENT GENERAL TERMS

BINARY NETWORKS PTY LTD
ABN 27 132 135 543
Phone: 1300 246 279

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This Customer Relationship Agreement (**SFOA**) is between you and BINARY NETWORKS PTY LTD (ACN 132 135 543) .

Capitalised words used in these General Terms have the meanings set out in clause 20.1. These General Terms must be interpreted in accordance with clause 20.2.

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This SFOA comes into effect for all customers on **17 November 2013**.

1. OUR SFOA

What is our SFOA?

1.1 Our SFOA is our standard form of agreement setting out the terms and conditions on which we supply our services and products to you. You and we must comply with our SFOA.

1.2 Our SFOA consists of the

following: (a) your

Application;

(b) Service Descriptions for each Service;

(c) these General Terms;

(d) our Pricing Schedule;

(e) our Billing Policy;

(f) any applicable Warranty Information Statement; and

(g) our Acceptable Use Policy.

If there is any inconsistency between any of the terms of our SFOA, the order of precedence will be as listed above, except that clauses 14 and 15 of the General Terms always prevail over all other terms in our SFOA.

The terms and conditions of each product or service also form part of our SFOA. Where there is an inconsistency between any of the terms, the product terms and conditions will take precedence.

Changes to our SFOA

1.3 In this fast moving industry, we may need to change the SFOA from time to time. This may be done without your agreement.

Subject to clause 1.6, if we make any change which will be detrimental to you, we will notify you at least 30 days before the proposed change takes effect by either:

(a) mail (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); and/or

(c) a message on your next bill.

We may also provide notice of the change on our website.

1.4 Subject to clause 1.6, if we make any change to our SFOA that is likely to have a detrimental impact on you that is not minor, you may cancel the affected Services by giving notice to us within 42 days after the date we give you notice under clause 1.3.

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You will not incur any Break Fee or other charges as a result of a cancellation in accordance with this clause 1.4, except for:

- (a) usage based charges or other variable charges incurred up to the date of cancellation; and
- (b) installation fees and costs of equipment we have provided to you that you have not paid for (as long as the equipment can be used in connection with services supplied by another provider).

1.5 If you give a cancellation notice to us within the notice period required by clause 1.4, the proposed change will not apply to you. We will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the change to our SFOA, credit your account with the overpayment or, if you have cancelled your Service with us, refund the overpayment promptly after deduction of any other amounts due by you in accordance with our SFOA.

1.6 We do not need to give you 30 days' notice of our proposed changes or give you a right to cancel the Service under clause 1.4 in relation to:

- (a) urgent changes we are required to make:
 - (A) by law;
 - (B) for security reasons; or
 - (C) for technical reasons necessary to protect the integrity of our network;
- (b) the introduction of a new charge or an increase in an existing charge:
 - (A) due to an additional tax or levy imposed by law; or
 - (B) 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);
- (c) increases in charges due to increases imposed on us by other Suppliers for the following types of Services and charges:
 - (A) international carriage services (including for voice and data services) the current rates for which are available on our Website;
 - (B) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party; and
 - (C) for calls made to satellite services; and
- (d) a change to or removal of any special feature of your Service that is not expressly referred to in the relevant service description.

Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 1.6 by one of the methods of giving notice listed in clause 1.3.

1.7 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

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reasonable time after making the change by providing notice of the change on our Website or by one of the other methods of giving notice listed in clause 1.3.

Legacy Services

- 1.8 Our Service plans and pricing change from time to time. After any relevant Contract Term expires, we may (at our discretion) continue to provide a Service to you in accordance with the same Service plan and pricing that applied during the Contract Term, even if we no longer offer the Service on those terms to new customers (**Legacy Service**). Details of the terms of any Legacy Service we supply to you, including pricing, will be made available to you upon request.

Authorised Persons and communicating with us about your Service

- 1.9 You may nominate another person to have the authority to exercise any of your rights under the SFOA (**Authorised Person**). Anything that Authorised Person does in relation to your Service is deemed to be done by you.
- 1.10 You may nominate another person to have the authority to communicate with us about your Service, without giving that person the authority to exercise any of your rights under the SFOA (**Contact Person**). If a Contact Person requests changes to your Service or otherwise attempts to exercise your rights under the SFOA, we may request that you or an Authorised Person contact us directly.

2. YOUR APPLICATION FOR SERVICE

Making an Application

- 2.1 You may make an application for supply of a Service by (**Application**):
- (a) completing and submitting an online application form located on our Website;
 - (b) telephone by asking our customer representative to complete the application form on your behalf and to read the Material Terms to you;
 - (c) completing a written application in the form supplied by us and submitting it to us by facsimile, or in any other manner acceptable to us; or
 - (d) any other means agreed by you and us to be an Application.
- 2.2 Each Service selected by you on your Application is described in more detail in the Service Description applicable to that Service.
- 2.3 Subject to our acceptance of your Application in accordance with clause 2.6, our SFOA 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;

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- (c) if you apply by telephone and the Material Terms are read to you, the Material Terms apply from the date you accept the Material Terms and the remaining terms of our SFOA commence on the Service Commencement Date;
- (d) in any other case the Service Commencement Date.

Subject to clauses 2.3(c) and 2.3(d), you agree to the terms and conditions contained in the SFOA by making an Application.

- 2.4 You must provide us with all information that we reasonably require for the purposes of this agreement (including for the purposes of an investigation by us of a suspected misuse of the Service or breach of this SFOA by you). We rely on the information you supply being accurate, truthful and correct.
- 2.5 You must promptly advise us of any changes that are relevant to your account or the Service including changes to your account details (such as ABN/ACN, registered address or billing address) debit or credit card details (including expiry dates).

Accepting your Application

- 2.6 When you make an Application, we decide (in our absolute discretion) whether to accept your Application and to supply the Service to you based on any factors that we deem to be relevant, including:
 - (a) your eligibility for that Service;
 - (b) its availability to you;
 - (c) you meeting our credit requirements;
 - (d) the information you provide to us; and
 - (e) your prior conduct or history in respect of any previous supply by us or any related entity of any goods or services to you, including your compliance with the relevant terms and conditions under which those goods or services were supplied.

3. THE PREMISES AND CONNECTING THE SERVICE

Access

- 3.1 In order to provide the Service to you, we may need to access the Premises. You agree to provide us with, or arrange for us if required, safe and prompt access to the Premises to:
 - (a) install any equipment for a Service you have requested;
 - (b) inspect, test, maintain, modify, repair or replace any equipment;

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- (c) recover Our Equipment after the Service is cancelled; and
- (d) enforce our rights under clause 5.4.

Owner's permission

- 3.2 If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install and maintain any equipment. You must notify us prior to the commencement of any work on the Premises if you are unable to obtain the owner's permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us or against anyone working for us relating to entry on to the Premises or doing the things listed in clause 3.1 that occurs as a result of your failure to comply with this clause 3.2.

Connecting the Service

- 3.3 We will connect the Service in accordance with the relevant Service Description, or if no connection timeframe is specified, within a reasonable time.
- 3.4 There may be a time delay between us accepting your Application, and providing you with the Service. Unless the Customer Service Guarantee applies to your Service, we are not and will not be liable for any delays associated with connecting the Service, nor any inability by us to provide the Service to you. You will not be charged for a Service unless or until it is provisioned by us or our wholesale provider.
- 3.5 We decide the route and technical means to be used to provide the Service. We reserve the right to change the infrastructure used to deliver the Service at any time, so long as this does not adversely affect the performance of the Service or your use of the Service.

4. USING THE SERVICE

Compliance with all laws and reasonable directions

- 4.1 In using the Service, you must comply with all laws, all directions by a Regulatory Authority, and all reasonable directions by us.

Our Acceptable Use Policy

- 4.2 You, and any person who accesses your Service, must not use, or attempt to use, the Service in any way which breaches our Acceptable Use Policy.

Your responsibility

- 4.3 You are responsible for and must pay for any use of the Service, including:
- (a) any unauthorised use, except for any unauthorised use that has arisen as a result of our negligent or wrongful act or omission;
 - (b) any use of the Service by any person that you have expressly or impliedly allowed to use the Service; and
 - (c) if you vacate the Premises and do not either disconnect the Service or transfer legal responsibility for the Service in accordance with clause 17.1, any use of the Service after you have vacated the Premises.

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Testing and Interception

- 4.4 You authorise us to scan or conduct any assurance testing of the security of the Network and/or your Service (including Your Equipment and any IP address ranges allocated to you in connection with the Service) for the purposes of helping you improve the security of the use of your Service, but we are not obligated to do so.
- 4.5 You acknowledge that to the extent permitted by law, we may intercept communications over the Service.
- 4.6 We (or our Suppliers) may (but are not obligated to) monitor your usage of the Service and communications sent over it for the purposes of ensuring:
- (a) your compliance with our SFOA;
 - (b) compliance by us or our Suppliers with the law; or
 - (c) compliance with any request or direction of a Regulatory Authority, a law enforcement authority or other authority.

Peak and Off Peak periods

- 4.7 Peak and Off Peak periods on some Service plans are used to manage the volume of traffic on the Network at different times helps us to maximise the performance of the Network.

For plans that specify separate Peak and Off Peak allowances, your total data allowance is split into the maximum you can download during the Peak hours of the day; and the maximum you can download during the Off Peak hours of the day. The Peak and Off Peak periods are different for each product plan as described under the relevant plan in the Pricing Schedule.

Network Optimisation

- 4.8 You must not connect to our Network using a Username and Password other than those provided for your specific connection. A breach of this clause constitutes a material breach of our SFOA.
- 4.9 We reserve the right to prioritise applications and the use of those applications, in order to optimise Network performance. Network optimisation is determined by total Network usage, and is not based on your (or any other customer's) use of particular services or applications.
- 4.10 Applications will be prioritised based on whether the performance of the application is time-sensitive (i.e. the need for real-time usage of the application) and whether it requires a minimum throughput speed. Applications such as streaming video, voice, mail, web, virtual private networking (VPN), gaming, video on demand (VoD), Internet protocol television (IPTV) and other similar applications will therefore be prioritised over non-time sensitive applications such as file transfer protocol (FTP) and file Downloading. For example, your VoIP service will be prioritised over any Downloading you do, thereby maintaining the quality of your VoIP service.

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5. EQUIPMENT

Our Equipment

- 5.1 To enable you to use the Service, we may loan or Rent equipment to you (**Our Equipment**). Charges for any of Our Equipment that you Rent are invoiced in accordance with Clause 8. Our Equipment may be equipment owned by us or one of our Suppliers.
- 5.2 Where we provide Our Equipment to you in connection with the Service:
- (a) ownership or title in Our Equipment is not transferred to you; even after the expiry of any contract period;
 - (b) you are responsible for Our Equipment from the time it is delivered to you 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;
 - (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 must not part with possession of Our Equipment except to us;
 - (f) you must not grant a Security Interest over 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 is not 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 and maintain 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.

Your Equipment

- 5.3 You agree that you are responsible for:
- (a) supplying, maintaining and repairing all equipment used in connection with the Service, other than Our Equipment (**Your Equipment**) including telephone access lines, telephone and computer equipment (including modem) and other access device(s) necessary for us to provide the Service to you;
 - (b) compliance with all laws and relevant technical standards issued by a Regulatory Authority in relation to Your Equipment; and
 - (c) the proper functioning and security of Your Equipment,

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and you agree to comply with all reasonable directions given by us in relation to Your Equipment, including:

- (d) allowing us to inspect Your Equipment; and
- (e) making any necessary changes or modifications to Your Equipment to avoid any danger or interference it may cause to Our Equipment or the Service.

Disconnection of Your Equipment

- 5.4 Without limiting any of our rights under clause 12.3, if you do not comply with any of your obligations under clause 5.3, 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 immediately disconnect your Service in an emergency.

Purchased Equipment

- 5.5 You may purchase equipment from us for use in connection with the Service (**Purchased Equipment**). 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.
- 5.6 Subject to the Consumer Guarantees, 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. To help cover our costs, a restocking fee will apply as specified in the Pricing Schedule.

6. QUALITY AND MAINTENANCE

Standard of services

- 6.1 Subject to the Consumer Guarantees and to clause 14, we aim to provide, but do not guarantee, continuous or fault-free service.

Calls recorded by our customer support centre

- 6.2 You acknowledge that any calls we make to you or you make to us may be monitored or recorded and you consent to us monitoring or recording such calls. If you do not consent to having your calls monitored or recorded, you can email or communicate with us by other means as indicated on our Website.

Maintenance

- 6.3 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. We may also suspend the supply of the Service in accordance with clause 12.4(c). We may occasionally update the firmware in our network, including that on your BINARY NETWORKS supplied modem, to ensure the service performs at its optimal level.

Faults caused by You or Your Equipment

- 6.4 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

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any fault in the Service where the fault is caused by you or Your Equipment and the fault does not arise or was not caused by us or Our Equipment.

6.5 If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, we determine (in our reasonable opinion) that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, we may charge you an incorrect call-out fee (as specified in the Pricing Schedule) and, if you request us to repair Your Equipment, our reasonable charges for such repair.

6.6 We can charge you for repairing a fault if it is caused by something:

- (a) you intentionally, recklessly or negligently do (or do not do);
- (b) someone else using the Service with your express or implied authority intentionally, recklessly or negligently does (or does not do); or
- (c) someone who you have not authorised to use the Service does, or does not do (but only if that person's unauthorised use of the Service occurs due to an intentional, reckless or negligent act or omission by you).

Maintenance of Your Equipment

6.7 You are responsible for the proper functioning and security of Your Equipment. You must maintain and repair all of Your Equipment used in connection with the Service.

Spam filtering

6.8 You acknowledge that without prior notice to you, we may filter email delivery for Spam to accounts hosted by us. Due to the nature of spam filtering software, we cannot guarantee that all spam will be filtered and that all non-spam will not be filtered. You will need to monitor filtered email regularly.

Complimentary email account

6.9 We do not provide a complimentary email account.

7. CHARGES

Pricing Schedule

7.1 The charges for the Service are set out in our Pricing Schedule (or in the terms of an applicable Special Offer under clauses 7.5 and 7.6) and any additional charges are set out in your Application.

7.2 You must pay all charges for the Service in accordance with the Service Description and the Pricing Schedule. Charges for the Service accrue from no later than the Service Commencement Date, or earlier if specified in your Application or the relevant Service Description.

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- 7.3 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, a person with your express or implied authority, 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, a person with your express or implied authority, 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 with your express or implied authority, 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.

- 7.4 In order to provide some services to you (for example, international 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 a Supplier charges to us for these types of services in accordance with clause 1.6.

Special offers

- 7.5 From time to time we may make special offers (**Specials 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.
- 7.6 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 which 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.

8. BILLING AND PAYMENT

- 8.1 We will bill you and you will pay for the Services in accordance with our Billing Policy.
- 8.2 It is a condition of us supplying a Service to you that you:

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- (a) ensure we have current and valid credit card or direct debit details at all times, and
 - (b) authorise us to direct debit your nominated credit card or bank account for the purposes of paying your bill.
- 8.3 If we do not receive payment from you by other means by the due date, you authorise us to debit your nominated credit card or bank account on the due date on your bill.
- 8.4 If you notify us that you wish to cancel a direct debit authorisation, we will process that request within 5 working days, however, if you do not provide us with a new direct debit authorisation within 5 working days after we process your direct debit authorisation cancellation, your account may be suspended until such time as you provide us with a new direct debit authorisation.

9. GST AND OTHER TAXES

Penalties and Interest

- 9.1 Where we become liable for any penalties or interest as a result of the late payment of GST due to your failure to comply with the terms of our SFOA (including this clause 9) or your obligations under any applicable law, then you must pay to us an additional amount equal to any penalties or interest payable by us.

Other fees, taxes and levies

- 9.2 We may charge you for any other applicable:
- (a) value added taxes relating to the supply of your Service; and
 - (b) taxes (including utilities taxes), levies, fees or similar charged to us (including such taxes on-charged to us by Suppliers) on a per service basis.

10. PERSONAL INFORMATION

Collection of your Personal Information

- 10.1 We may collect Personal information about you for the purposes set out in clause 10.4 and in accordance with our Privacy Policy, from:
- (a) you directly, when you provide information by phone or in application forms, or when you submit your personal details through our web sites;
 - (b) our employees, agents, contractors, or Suppliers;
 - (c) any BINARY NETWORKS Entity;
 - (d) a credit reporting agency, credit provider or fraud-checking agency;
 - (e) your representatives;

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- (f) other telecommunication and information service providers; and
- (g) publicly available sources of information.

Disclosure of Your Personal Information

- 10.2 We may disclose Personal Information about you for the purposes set out in clause 10.4 and in accordance with our Privacy Policy, to:
- (a) our employees, agents or contractors;
 - (b) any BINARY NETWORKS Entity;
 - (c) Suppliers who need access to the Personal Information to provide us with services that enable us to supply the Service to you;
 - (d) a credit reporting agency, credit provider or fraud-checking agency, our professional advisers, including our accountants, auditors and lawyers;
 - (e) other telecommunication and information service providers (for example, if you obtain services from other providers, we may need to disclose your personal information for billing purposes);
 - (f) an Authorised Person or Contact Person;
 - (g) your legal advisers (for example, when requested by you to do so); or
 - (h) government and Regulatory Authorities and other organisations, as required or authorised by law (for example, to the operator of the Integrated Public Number Database (IPND), which supplies information for telephone directories and to law enforcement agencies for purposes relating to the enforcement of criminal and other laws.

- 10.3 We may use the Service to communicate with you in relation to your account (including to notify you of your level of usage, remind you of unpaid invoices and to provide notice of Service suspension or cancellation). You acknowledge that by allowing third parties to access the Service you are consenting to the disclosure to those third parties of your Personal Information.

Use of your personal information

- 10.4 We may collect, use and disclose Personal Information about you for the purposes of:
- (a) verifying your identity;
 - (b) assessing your eligibility for our Services;
 - (c) assisting you to subscribe to the service of any BINARY NETWORKS Entity;
 - (d) providing the services you require from any BINARY NETWORKS Entity;
 - (e) administering and managing those services, including billing, account management and debt collection;

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- (f) conducting appropriate checks for credit-worthiness and for fraud;
- (g) determining whether to provide to you (or to cease or limit the provision to you of) trade, personal or commercial credit and the ongoing credit management of your account;
- (h) researching and developing our products and services and the products and services of other BINARY NETWORKS Entities;
- (i) business planning;
- (j) providing your Personal Information to the manager of the Integrated Public Number Database (IPND) for the Approved Purposes;
- (k) promoting and marketing the services, products and Special Offers of any BINARY NETWORKS Entity to you, unless you request that we do not use your personal information in this way (for example, by choosing to 'opt-out' at the time your information is collected by us, or by calling us); and
- (l) reporting to credit reporting agencies if you fail to make payments due under our SFOA by the applicable due dates.

Access to Personal Information

- 10.5 If you are a natural person (i.e. an individual), you are entitled to access your Personal Information held by us, unless we are permitted or required by law to refuse such access.

Failure to supply Personal Information

- 10.6 If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services requested by you, or we may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.
- 10.7 By providing Personal Information to us and acquiring the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause 10 and in accordance with our Privacy Policy. A copy of our Privacy Policy is available at our offices or on our Website.

11. VARIATIONS TO THE SERVICE

Variations requested by you

- 11.1 If you request a variation to the Service and we, in our discretion, make that variation, then:
- (a) different charges may apply to the varied Service in accordance with the Pricing Schedule;
 - (b) a Downgrade Fee may apply to the varied Service as notified to you by us and as set out in the relevant Service Description or in the Pricing Schedule.

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12. CANCELLING OR SUSPENDING THE SERVICE

Cancellation by us with notice

12.1 We may, without liability, cancel the Service:

- (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, commercially or operationally feasible to supply the Service to you, at any time prior to the Service Commencement Date by giving you notice.

12.2 DELETED

Suspension events caused by your default or conduct

12.3 We may immediately suspend, cancel or restrict the supply of the Service to you if:

- (a) you fail to pay any amount owing to us by the due date and you fail to pay that amount within 7 days after we give you notice requiring payment of that amount, except that we will not give you such notice in respect of an amount which is validly disputed in accordance with our Billing Policy until after we have completed our investigations in accordance with our Billing Policy;
- (b) without limiting any other rights we have under this clause 12.3, you breach a material term that is capable of remedy and you do not remedy that breach within 14 days after we give you notice requiring you to do so;
- (c) you breach a material term (other than a breach which separately gives rise to rights under this clause 12.3) and that breach is not capable of remedy;
- (d) you breach any of clauses 3.1, 3.2, 4.1, 4.2, 4.8, or 5.3 or any of your obligations relating to the use of the Service specified in the Service Description;
- (e) we reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
- (f) 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;
- (g) you resell the Service or otherwise act as a Carriage Service Provider;
- (h) we reasonably consider you to be an unacceptably high credit risk;

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- (i) we are entitled to under another provision of our SFOA;
- (j) an Insolvency Event occurs in relation to you, your business, or one of your Related Bodies Corporate;
- (k) you vacate the Premises or you die;
- (l) in the case of a partnership, on dissolution or on the filing of an application to dissolve the partnership, we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our SFOA; or
- (m) you are a business customer and you cease or state that you intend to cease conducting your business in the manner in which your business was being conducted as at the Service Commencement Date.

Suspension events not caused by your default or conduct

12.4 Without limiting any other provision of this SFOA, we may immediately suspend, cancel or restrict the supply of the Service to you if:

- (a) there is an emergency;
- (b) a Supplier terminates its agreement with us, or ceases 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;
- (c) doing so is necessary to maintain, repair or restore any part of our Network or a Supplier's Network used to supply the Service, or for other operational reasons;
- (d) we are required by law or in order to comply with an order, direction or request of a Regulatory Authority or an emergency services organisation;
- (e) the ACCC issues us with a competition notice (as that term is used in the *Competition and Consumer Act 2010*) in respect of the Service or we reasonably anticipate that it may do so;
- (f) providing the Service to you may be illegal or we reasonably anticipate that it may become illegal;
- (g) a Force Majeure Event prevents us from supplying the Service in accordance with our SFOA for more than 14 days; or
- (h) we reasonably believe that there is a threat or risk to the security of the Service or the integrity of our Network or a Supplier's Network and that threat or risk is not caused directly or indirectly by you.

12.5 In the event that we decide to suspend, cancel or restrict the supply of a Service to you under clause 12.4, we will endeavour to provide you with as much notice as is reasonably possible in the circumstances.

12.6 If we suspend the Service under clauses 12.3 or 12.4, we may later cancel the Service for the same or a different reason (subject to the relevant provisions of our SFOA).

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Cancellation or suspension by you

- 12.7 Except as provided otherwise in the Service Description for your Service, you may cancel the Service without liability, by giving us 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:
 - (A) we have breached a material term of our SFOA and that breach is not capable of remedy; or
 - (B) we have breached a material term of our SFOA and that breach is capable of remedy but we failed to remedy that breach within 30 days after you first gave us notice requiring us to do so, or
 - (d) of at least 14 days where there has been a prolonged full Interruption to the Service lasting for more than 10 days, or more than 12 reported Interruptions in a 12 month period. This clause 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 clause 12.3;
 - (B) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed at clause 12.4;
 - (C) a fault or other event which may reasonably be attributed directly or indirectly to Your Equipment;
 - (D) your acts or omissions;
 - (E) electrical or data cabling within your premises.
- 12.8 You may cancel the Service for any reason before the end of the Contract Term by giving notice to us but you may be required to pay a Break Fee in accordance with clause 13.2(b).
- 12.9 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. Any charges applicable during a suspension under this clause 12.9 are set out in the Service Description for that Service. We can reasonably limit the length of time that a Service can be suspended by you. Some services cannot be suspended.

13. CONSEQUENCES OF SUSPENSION AND CANCELLATION

Consequences of suspension

- 13.1 If we reconnect a Service that has been cancelled, you may have to pay us a reconnection fee. You will not be required to pay a reconnection fee if the Service was cancelled or suspended pursuant to clauses 12.4, 12.7(c) or 12.7(d) or due to our fault or negligence.

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Consequences of cancellation

- 13.2 If the Service is cancelled in accordance with our SFOA (other than in accordance with clauses 12.1(c), 12.2, 12.4, 12.7(c) or 12.7(d)):
- (a) before the Service Commencement Date, we can charge you any costs reasonably incurred by us in preparing to provide it to you; and
 - (b) during the Contract Term, you must pay to us the Break Fee.
- 13.3 If the Service is cancelled you still have to pay all charges incurred before cancellation.
- 13.4 Subject to clause 13.3 and our Billing Policy, in the event that there is credit remaining on your account at the time of cancellation, you will receive the credit via 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. If a cheque or other method of refund is required, a Handling Fee is payable.
- 13.5 On cancellation of the Service:
- (a) because of any of the circumstances listed at clauses 12.3, 12.7(a) or 12.7(b), you will, at your cost, 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;
 - (b) because of any of the circumstances listed at clauses 12.4, 12.7(c) or 12.7(d), you will 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 that you have purchased but not fully paid for at the date of cancellation, if that equipment cannot be used with other telecommunications providers' services. Where the equipment can be used with other telecommunications providers' services, no refund is applicable and you must pay all outstanding amounts in a lump sum. 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;
 - (c) under clause 12.8 where we have supplied you with equipment on the condition that you acquire 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:
 - (i) return the equipment to us and we will reimburse you the purchase price paid by you, or
 - (ii) retain the equipment and pay us an amount equivalent to the discount we gave you;

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- (d) you will, at your cost, return to us all other material of ours (including any software) on the Premises or in your possession or control;
- (e) unless our SFOA expressly states otherwise, each person's accrued rights and obligations are not affected;
- (f) you must immediately stop using the Service; and
- (g) the parts of our SFOA which are by their nature intended to survive cancellation will continue unaffected, including clause 3.1 (Access), clause 3.2 (Owner's permission), clauses 5.2 to 5.4 (Equipment), clause 8 (Billing and Payment) and our Billing Policy, clause 9 (GST and Other Taxes), clause 10 (Personal Information), this clause 13 (Consequences of Suspension and Cancellation), clause 14 (Our liability to You), clause 15 (Your Liability to Us), clause 16 (Telephone Numbers and Public Addressing Identifiers), clause 17 (Assignment and Subcontracting), clause 18 (General) and clause 20 (Definitions and Interpretation).

Deletion of Data

- 13.6 Once this agreement has been terminated or cancelled for any reason, we may delete all of your data from any storage media. You are solely responsible for backing up your data.

14. OUR LIABILITY TO YOU

Consumer Guarantees

- 14.1 We agree to provide the Service to you subject only to the terms, conditions and warranties contained in the SFOA and any non-excludable rights you have under the Australian Consumer Law, including in particular under any applicable Consumer Guarantees. Any liability that we might otherwise have to you in connection with our SFOA or Service is expressly excluded.

For example, there are Consumer Guarantees that we will provide the Service to you with due care and skill, and that Our Equipment and Purchased Equipment will be of acceptable quality. Certain remedies are available to you under the Australian Consumer Law if the Service or equipment we supply to you fails to meet the standard required by applicable Consumer Guarantees.

Limitation of liability

- 14.2 Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a Consumer Guarantee, but are permitted to limit our liability for such a breach, then, unless you are able to establish that it is not fair and reasonable for us to do so, our liability to you is limited to:

- (a) if the breach relates 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) if the breach relates to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied.

- 14.3 The limitations of liability in clause 14.2 do not apply to:

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- (a) a breach of the Consumer Guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of the Australian Consumer Law;
- (b) a breach of any Consumer Guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;
- (c) personal injury (including illness and disability) or death; or
- (d) the loss, destruction or damage to, or loss of use of tangible property.

Interruption to the Service

14.4 Subject to clause 14.6, in the case of Interruptions to the Service, we may offer you a refund or rebate for the period of the Interruption if a rebate/refund formula for Interruptions is specified in the Service Description for the Service.

14.5 DELETED

14.6 The refund or rebate in clause 14.4 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 clause 12.3;
- (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 for less than 1 hour.

14.7 Except for liability which is expressly accepted by us under this clause 14 and any liability we have under the Australian Consumer Law (including the Consumer Guarantees) that cannot be excluded, we exclude all other liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending, cancelling or restricting the Service where we do so in accordance with our SFOA.

14.8 To receive the rebate or compensation set out in clause 14.4, you must call us and inform us of the Interruption.

Contributory Loss

14.9 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.

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Consequential Loss

- 14.10 We exclude any liability to you for any Consequential Loss suffered or incurred by you, except to the extent that you are entitled to recover your reasonably foreseeable loss under the Australian Consumer Law.

Acts of a Supplier

- 14.11 We accept liability to you for the acts of our agents in accordance with the principles of vicarious liability at common law. The Australian Consumer Law (including the Consumer Guarantees) imposes obligations on us that cannot be excluded, including obligations on us that arise as a result of the acts or omissions of our Suppliers.
- 14.12 Other than as expressly stated under clause 14.11, we have no liability to you or to any other person for the acts, omissions or defaults of any Supplier who is not acting as our agent, or any person who provides goods or services directly to you for use in connection with a Service.

Force Majeure Event

- 14.13 Subject to your rights under the Australian Consumer Law, which we do not exclude, 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.

15. YOUR LIABILITY TO US

Joint customers

- 15.1 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

- 15.2 You must pay us for any loss, damage, cost or liability including reasonable legal costs (but excluding any Consequential Loss) (**Losses**) we suffer or incur relating to:
- (a) the use (or attempted use) of the Service; or
 - (b) equipment used in connection with the Service,
- arising out of your (or any person acting with your express or implied authority) breach of this SFOA or negligent acts or omissions.
- 15.3 You must pay us for any Losses we suffer or incur as a result of or in connection with the suspension or disconnection of your Service (unless the suspension or disconnection occurred under clause 12.4), including Losses suffered or incurred by us as a result of a claim against us by any third party that relates to our suspension or disconnection of your Service.
- 15.4 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.

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16. TELEPHONE NUMBERS AND PUBLIC ADDRESSING IDENTIFIERS

- 16.1 The Telecommunications Number Plan 1997 (Cth) sets out rules for issuing, transferring and changing telephone numbers. You and we must comply with the Telecommunications Number Plan.
- 16.2 In addition to telephone numbers, the Service may use other identifiers such as an IP address or domain name (**Public Addressing Identifiers**). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- 16.3 You are entitled to continue to use any telephone number we issue to you, except in circumstances where the Telecommunications Number Plan allows us to recover the number from you.
- 16.4 You acknowledge and agree that:
- (a) we do not control the allocation of Public Addressing Identifiers;
 - (b) we are not liable to you if we are required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
 - (c) on cancellation of the Service, your right to use a Public Addressing Identifier may cease.

17. ASSIGNMENT AND SUBCONTRACTING

- 17.1 You must not assign or transfer or otherwise deal with any of your rights or obligations under this SFOA without our prior written consent.
- 17.2 We may assign some or all of our rights under our SFOA to any person.
- 17.3 We may transfer some or all of our obligations under this SFOA to:
- (a) another BINARY NETWORKS Entity; or
 - (b) a purchaser of our business,
- on condition that the transferee agrees to provide the Service to you on materially the same terms and conditions of our SFOA.
- 17.4 We may perform any of our obligations under the SFOA by arranging for them to be performed by another person. We will still be responsible for the performance of the obligations.
- 17.5 Otherwise, we may transfer or deal with our obligations under our SFOA on terms to which you consent.

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18. GENERAL

Notices

18.1 A notice, approval or consent to be issued under the SFOA must be in writing, except for variations by us, for which notice can be given in accordance with the *Telecommunications Act* (set out in clause 1.3). In the absence of evidence to the contrary, such notice, approval or consent will be taken to be received:

- (a) if left at the address of the addressee, at the time it was left;
- (b) if sent by ordinary post, on the third day after posting;
- (c) if sent by express post, on the next day; and
- (d) if sent by facsimile or electronic transmission, at the time when the system on which the notice is sent, records that the notice has been transmitted,

provided that:

- (e) if the notice is sent by you, it is sent using the contact details that appear on our website at the time you send the notice; and
- (f) if the notice is sent by us, it is sent using the contact details that we have recorded for your account at the time we send the notice.

Waiver

18.2 If we have a right arising out of your breach of our SFOA and we do not exercise that right, we do not waive that right or any other obligation unless we do so in writing signed by us.

Severance

18.3 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

18.4 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.

Software

18.5 You must comply with the terms and conditions of the software licences which apply to the use of any software supplied by us in connection with a Service (including software supplied with Our Equipment, such as modems).

Authority

18.6 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

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will not let another person access your account unless we have received your authority to do so.

No Reliance

18.7 You acknowledge that:

- (a) 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. Subject to your rights under the Australian Consumer Law and the general law relating to misleading or deceptive conduct (which we do not exclude), you undertake to act on any advice given by any of our staff members at your own risk;
- (b) 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.

Governing Law

18.8 Our SFOA is governed by the laws of the Commonwealth of Australia and the laws of the State or Territory:

- (a) in which you ordinarily reside; or
- (b) of your main business location, if you are a business customer,

(as stated in your Application) (**Your State**). You and we agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Australia and Your State, and any courts of appeal from these courts.

19. WHAT IS THE FAIR CONTRACT GUARANTEE?

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.

The fair contract guarantee allows you to change up between plans at any time without breaking your Contract Term.

However if you downgrade to a plan of equal or lesser value, then a Downgrade Fee or Break Fee will apply.

If you break your contract before the Contract Term you will be required to pay a Break Fee.

20. DEFINITIONS AND INTERPRETATION

20.1 In our SFOA:

Acceptable Use Policy means the document forming part of this SFOA that describes our policy on excessive, unreasonable, prohibited or otherwise unacceptable use of the Service.

Application has the meaning given to it in clause 2.1.

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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.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010*.

Authorised Person has the meaning given to that term in clause 1.10.

Billing Policy means the billing policy provided in the Pricing Schedule, or at our website <http://www.binarynetworks.com.au/legal/sfoa/>.

Break Fee means the relevant cancellation fee or termination charge (if any) calculated in accordance with the Application, Billing Policy, Pricing Schedule, a Service Description or any appendix to the Service Description.

Business Further Terms and Conditions means the document of that name available on request from us to some business customers who receive certain business Services that contains service level targets (including an availability guarantee) in the relevant Service Description provided for such Services.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in the capital city of the State or Territory of Australia in which the Service is provided.

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

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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,

in connection with or arising under this SFOA, whether based in contract, tort (including negligence) or otherwise.

Consumer Guarantee has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law.

Contact Person has the meaning given to that term in clause 1.11.

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.

Corporations Act means the *Corporations Act 2001* (Cth).

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).

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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 reduction in the charges payable for the Service.

Downgrade Fee means the relevant downgrade charge (if any) specified in the Pricing Schedule or Billing Policy.

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

Excess Usage Charges means the fees payable for Internet Usage over and above the Monthly Usage Allowance as specified in the Billing Policy or Pricing Schedule.

Facility means the equipment, infrastructure and or devices that are not any part of Your Equipment by which the Service is provided to you.

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.

BINARY NETWORKS Entity means BINARY NETWORKS PTY LTD (ACN 132 135 543) or an entity that is related to BINARY NETWORKS PTY LTD in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

BINARY NETWORKS, we, us, our means the BINARY NETWORKS Entity named in your Application.

Insolvency Event means you:

- (a) become insolvent or are under administration (each as defined in the Corporations Act); or
- (b) have a controller or administrator appointed (each as defined in the Corporations Act), or
- (c) are in liquidation, in provisional liquidation, or have a receiver appointed to any part of your property (as defined in the Corporations Act); or
- (d) suspend payment of any of your debts;
- (e) become unable to pay your debts as and when they are due; or

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(f) become bankrupt.

Interruption in the supply of goods or a service means a material delay in supplying, a failure to supply for a significant period or a major error or defect in the supply of, those goods or that service.

Legal Lessee the person or entity that has a direct agreement with a supplier of telephone services to receive such a service, assumes all liability in respect of such service, and holds the ultimate authority to act in regards to such service.

Material Terms means, in the context of clause 2 only, those terms and conditions we read out to you over the telephone.

Monthly Usage Allowance means the Usage that is provided per month in accordance with the plan selected by you in your Application.

NBN Co means NBN Co Limited (ACN 136 533 741) or any entity that is related to NBN Co Limited in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

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

Our Equipment has the meaning set out in clause 5.1.

Off Peak means the hours of the day when your data usage is counted towards your Off Peak quota allowance.

Peak means the hours of the day when your data usage is counted towards your Peak quota allowance.

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.

PPSA means:

- (a) Personal Property Securities Act 2009 (Cth) and any regulations made at any time under it;
- (b) any amendment to either of the above, made at any time.

PPSA Security Interest means a security interest within the meaning of the PPSA.

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

Pricing Schedule means table of charges which appears on our website or in the service application provided to you.

Privacy Policy means the privacy policy that appears on our Website, as updated from time to time.

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Purchased Equipment has the meaning set out in clause 5.5.

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 Body Corporate has the meaning given to that term in the Corporations Act.

Rent means to pay an amount for the use of a product for an agreed period of time during which, ownership of the product is not passed. The product is returned at the end of the period.

Security Interest means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention agreement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or flawed-asset arrangement) having the same or equivalent commercial effect as a grant of a security;
- (b) to the extent not included within paragraph (a), a PPSA Security Interest; or
- (c) an agreement to create or give any arrangement referred to in paragraph (a) or (b) of this definition.

Service means the service requested by you in your Application and described in the relevant Service Description and Pricing Schedule, 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 the Service is ready for use.

Service Description means the document forming part of this SFOA describing the Service and setting out specific terms and conditions for 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 a maximum of the applicable shaped speed as specified in the Pricing Schedule.

Special Offer has the meaning set out in clause 7.5.

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

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 *Competition and Consumer Act 2010* (Cth), each as amended or replaced from time to time.

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

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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 your will have a corresponding meaning).

Your Equipment has the meaning set out in clause 5.3.

Warranty Information Statement means the document forming part of this SFOA which describes your rights with respect to some equipment we supply to you, the warranty periods that apply and how to claim under the warranty.

Website means the website of the BINARY NETWORKS Entity named on your Application, as follows; www.binarynetworks.com.au

20.2 Unless the context otherwise requires:

- (a) undefined words and expressions have the same meaning as in the Telecommunications Legislation.
- (b) the expressions "we", "us", "our", "you" or "your" will include their respective successors and permitted assigns and novatees.
- (c) a reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (d) a term which is defined in any part of our SFOA has the same meaning in every other part of our SFOA.
- (e) the singular includes the plural and vice versa.
- (f) different grammatical forms of the same word have the corresponding meaning.
- (g) a reference to a clause is to a clause in the General Terms, unless otherwise stated.
- (h) the words 'including', 'includes' or 'for example' or similar expressions are not words of limitation,
- (i) a "reasonable" notice period means a period which is reasonable in the circumstances taking into account technical, operational and commercial issues.