

# Master Service Agreement

## Schedule 1

In these terms and conditions, the following words have the meaning set out below unless the contrary intention clearly appears:

### Definitions

**Acceptable Use Policy** is defined as SproutTel's acceptable use policy (as modified from time to time)

**Accrued Charges** is defined as all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies SproutTel of the cancellation of a Service and any outstanding amounts that to cover installation costs or Equipment Charges where SproutTel owned equipment can be used by the Customer in connection with services provided by any third party.

**Agreement** is defined as the agreement between SproutTel and the Customer for provision of the Service which agreement is comprised in the Application and these terms and conditions.

**Business Application** is defined as the Customer's online application to SproutTel for provision of the Service which sets out the Minimum Term, Service Description, pricing plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

**Business Customer** is defined as any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes other than resale, and for who complete an application for a Business Grade Service.

**Business End User** is defined as any person:

- to whom a Business Customer asks SproutTel to supply the Service directly;
- to whom a Business Customer (with SproutTel's prior permission) re-supplies the Service or allows to distribute the Service;
- who a Business Customer allows to use the Service; or
- to whom a Business Customer supplies any goods or services which use or rely on the Service.

**Business Grade Service** is defined as a service that does carry a service level agreement, and/or that does have a guarantee of uptime (SproutTel imply and express no warranties as to its suitability or availability for any purpose).

**Cancellation Date** is defined as:

- the date thirty (30) days after the Customer notifies SproutTel that the Customer wishes to cancel the Service, unless SproutTel agrees otherwise;
- the date at least thirty (30) days after SproutTel notifies the Customer that SproutTel will be cancelling the Service; or
- as otherwise set out in the Agreement.

**Churn** is defined as to change from having a service supplied by one carrier or carriage service provider to having the service supplied by another carrier or carriage service provider in the context of ADSL1 for which the losing service provider or carrier and gaining service provider or carrier are participants of the Rapid Transfer Facility. In the context of Long Distance pre-selection for which the losing service provider or carrier and gaining service provider or carrier are participants. Consumer

**Application** is defined as the Customer's online application to SproutTel for provision of the Service which sets out the Minimum Term, Service Description, Pricing Plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled. Competition and

**Consumer Act** is defined as Competition and Consumer Act (2010).

**Consumer Customer** is defined as any Customer who is a person who acquires and uses the Service for personal, domestic or household use only and who complete an application for a Residential Grade Service.

**Customer** is defined as the person/legal entity who submits an Application to SproutTel and who acquires and uses the Service from SproutTel.

**Equipment Charge** is defined as any payment to SproutTel for use of equipment.

**SproutTel** is defined as Sprout Telecom (Australia) Pty Ltd ABN 88 629 711 182.

**Fixed-Term Agreement** is defined as an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

**Industry Participant** is defined as the Communications Alliance Limited, and the Telecommunications Industry Ombudsman

**Intellectual Property Rights** is defined as any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**Insolvency Event** is defined as:

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

**Intervening Event** is an event outside a party's reasonable control which interferes with the operation of the network SproutTel uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

**Minimum Term** is defined as the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

**Loss** is defined as any loss, cost, liability or damage, including reasonable legal costs.

**Network** is defined as any interconnected telecommunications equipment, facilities, or cabling.

**Party** is defined as a party to the Agreement.

**Personal Information** is defined as information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

**Personnel of a person** is defined as that person's employees, agents, contractors or other representatives and, in the case of SproutTel, includes the employees, agents, contractors or other representatives of SproutTel

**Premises** is defined as locations: a. at which SproutTel supply the Service, and/or b. to which SproutTel needs to have access to supply the Service. Pricing Plan is defined as the terms and conditions and prices of the plan for the Service the Customer has selected in the Application. Regulator is defined as the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority. Residential Grade Service is defined as a service that does not carry a service level agreement, or a guarantee of uptime. (SproutTel imply and express no warranties as to its suitability or availability for any purpose. SproutTel doesn't recommend residential grade services for business needs, or mission critical purposes.)

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

**Roaming** is defined as the ability to use the network of overseas mobile carriers when traveling overseas.

**Service** is defined as the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by SproutTel to the Customer in connection with that service.

**Service Description** is defined as the part of the Application which describes the Service provided or to be provided by SproutTel to the Customer.

**Service Start Date for the Service** is defined as the date on which SproutTel starts supplying that Service to the Customer as will be notified by SproutTel to the Customer after acceptance of an Application.

**Small to Medium Business (SMB) Customer** is defined as a business Customer who is a business or not-for-profit organisation of twenty or less employees with an annual turnover under \$3,000,000 that does not operate from the owner's home that acquires and uses the Service for business purposes other than resale, and who complete an application for a SMB Service.

**Small to Medium Business (SMB) Service** is defined as a Service that is does not carry a service level agreement, or a guarantee of uptime that is provided by SproutTel to explicitly to SMB Customers. (SproutTel imply and express no warranties as to its suitability or availability for any purpose. SproutTel doesn't recommend residential grade services for business needs, or mission critical purposes.)

**Special Offer** is defined as a special promotion or offer made by SproutTel in connection with the Service, including in relation to a particular pricing plan.

**Supplier** is defined as any supplier of goods or services (including interconnection services) which are used directly or indirectly by SproutTel to supply the Service to the Customer.

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

**Telecommunications Legislation** is defined as the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act (2010).

**Unusually High Use** is defined as high usage of the Service on a short term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

## Interpretation

The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:

- Carriage service;
- Carriage service provider;
- Carrier; and
- Content service.

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

The singular includes the plural and vice versa.

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

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

A reference to A\$, \$A dollar, or \$ is to Australian currency, unless otherwise stated.

## Terms

The Agreement commences when SproutTel accepts the Application.

SproutTel will commence providing Service to the Customer under the Agreement from the Service Start Date.

If the Agreement is not a Fixed-Term Agreement, SproutTel will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

If the Agreement is a Fixed-Term Agreement, SproutTel will provide the Service to the Customer in accordance with the Agreement for the minimum term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the minimum term SproutTel will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

**CLIENT's** may order multiple services from SproutTel. Each service is supplied in accordance with its SLA, Pricing, Initial Term and other relevant conditions specified in the Service Order or Quotation which is once signed can be deemed as a Service Order. Service Orders will continue in force for the specified Initial Term.

After expiry of the Initial Term it will continue in force until terminated by either party giving 30 days written notice to the other.

Termination of a Service Order does not automatically terminate this Agreement. In the event of any inconsistency between the terms of this Agreement and Service Order in relation to a particular supply of a Service, the following order of priority applies:

1. first the Service Order, including any applicable rate cards and attachments then
2. Reseller agreement (when applicable)
3. Critical Information Summary



4. Service Schedule (for the corresponding product/service)
5. this Agreement

## Variation to Agreement

3.1 SproutTel may vary any part of the Agreement:

- with the Customer's consent; or
- without the Customer's consent provided SproutTel complies with the Telecommunications Legislation.

3.2 If SproutTel varies a Fixed-Term Agreement under clause 3.1:

- SproutTel must if the variation affects the Customer and it is not a change of a type listed in clause 3.3:
- comply with the provisions of the Telecommunications Legislation;
- giving the Customer twenty-one (21) days notice in writing of the change before the change occurs; and
- offer the Customer the right to cancel the Service (within forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.
- SproutTel must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and
- if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges.

3.3 SproutTel may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is

- required by law;
- in relation to the cost of international services or roaming;
- in relation to a fee or charge to account for a tax imposed by law;
- in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, SproutTel offers the Customer: i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to SproutTel to allow supply of the Service increases the price they charge SproutTel for the content service or premium service) provided that if the change affects the Customer, SproutTel:
- gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
- allows the Customer to elect to not use the content or premium service without attracting any additional charges;
- as a result of another carrier or service provider varying the agreement SproutTel has with it in relation to a carriage service and as a result SproutTel needs to make changes to the Agreement, provided that if the change affects the Customer, SproutTel gives the Customer:
- notice in writing of the change; and
- forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without SproutTel's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

3.6 SproutTel may give the Customer notice in writing of a changes to the Agreement by:

- delivering notice of the change to the Customer by mail; or
- sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
- by including a message or insert in an invoice sent to the Customer; or

- (in the case of a pre-paid Service) by posting the information on SproutTel's website or in SproutTel's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

## Application for the supply of the Service

4.1 SproutTel may refuse the customer's application at its sole discretion

### Privacy

5.1 SproutTel may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other SproutTel Group Companies.

5.2 SproutTel may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of SproutTel Group Companies and other organisations.

5.3 SproutTel may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:

- a credit reporting agency or credit provider;
- another SproutTel Group Company;
- third parties who are not related to SproutTel, including SproutTel's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
- suppliers who need access to the Customer's personal information to provide SproutTel with services to allow supply of the Service; and
- joint venture partners of SproutTel Group Companies

5.4 SproutTel may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:

- the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- emergency services organisations; and
- to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.5 Where SproutTel will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:

- SproutTel may give information about the Customer to a credit reporting agency for the following purposes:
  1. to obtain a consumer credit report about the Customer; and/or
  2. to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
- Such information is limited to:
  1. identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
  2. the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
  3. the fact that SproutTel is a current credit provider to the Customer;
  4. loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;

5. Advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
  6. information that, in the opinion of SproutTel, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
  - vii. dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- The Customer agrees that:
    - i. SproutTel may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
    - ii. SproutTel may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
    - iii. SproutTel may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
      - to assess an application by the Customer for credit;
      - to notify other credit providers of a default by the Customer;
      - to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
      - to assess the Customer's credit worthiness; and
    - such the information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to SproutTel.

5.7 If the Customer is an individual, the Customer is entitled to:

- gain access to the Customer's personal information held by SproutTel, unless SproutTel is permitted or required by any applicable law to refuse such access; and
- correct any personal information held by SproutTel

5.8 If the Customer does not provide part or all of the personal information requested by SproutTel then SproutTel may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.

5.9 By providing the Customer's personal information to SproutTel and obtaining the Service, the Customer acknowledges and consent to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with SproutTel's privacy policy a copy of which will be made available by SproutTel on request or may be viewed on SproutTel's website.

5.10 If the Customer has authorised SproutTel to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed SproutTel of a password to be used for SproutTel's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:

- to keep confidential such password;
- that SproutTel may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to SproutTel in connection with the Service on behalf of the Customer;
- that the Customer will not hold SproutTel liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to SproutTel; and
- that all calls made to or from SproutTel's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.

5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to SproutTel's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.

## Equipment

7.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:

- all laws
- all directions by a regulator;
- all notices issued by authorisation of or under law; and
- reasonable directions by SproutTel, failing which SproutTel may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

7.2 In relation to equipment:

- any SproutTel owned equipment remains SproutTel's property;
- the Customer is responsible for any SproutTel owned equipment from the time when the Customer receives it;
- the Customer must not mortgage or grant a charge, lien or encumbrance over any SproutTel owned equipment; and
- the Customer may purchase equipment from SproutTel to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.

7.3 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

7.4 Unless otherwise agreed between the parties, the Customer must allow SproutTel's personnel (and no other person) to service, modify, repair or replace any SproutTel owned equipment.

7.5 The Customer is responsible for any lost, stolen or damaged SproutTel owned equipment, except where caused by SproutTel or SproutTel's personnel

7.6 The Customer will be responsible for any outstanding payments for equipment that the customer has purchased from SproutTel, even when that equipment is lost, stolen or damaged.

## Network Maintenance, Fault Reporting & Ratification

8.1 SproutTel may conduct maintenance on the SproutTel network and maintenance may be conducted on a supplier's network used to supply the Service. SproutTel will endeavour to conduct scheduled maintenance on the SproutTel network outside normal business hours.

8.2 SproutTel will provide a 24 hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to SproutTel, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not SproutTel owned equipment.

8.3 The Customer must provide all reasonable assistance to enable SproutTel or SproutTel personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant of the premises.

8.4 SproutTel will repair faults within the SproutTel network used to supply the Service. Unless the Service Description expressly provides otherwise, SproutTel is not responsible for repairing any fault in the Service where the fault arises in or is caused by:

- a supplier's network;
- equipment that is not SproutTel owned equipment; or
- facilities outside the SproutTel network.



8.5 Where:

- a fault arises in or is caused by a supplier's network;
- SproutTel becomes aware of the fault; and
- SproutTel is not responsible for the repair of that fault

SproutTel will notify the supplier of the fault and request that the fault be corrected promptly, but SproutTel will not bear any further liability or responsibility.

8.6 Where a fault arises in or is caused by equipment that is not SproutTel owned equipment, SproutTel is not responsible for the repair of that fault. Nevertheless:

- if the Customer asks SproutTel to investigate a fault or asks SproutTel to request a supplier to investigate a fault, SproutTel will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
- if the Customer requests SproutTel to repair the fault and SproutTel agrees, SproutTel will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.

8.7 If SproutTel investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by SproutTel in investigating.

## **Billing, Fees & Charges**

9.1 The Customer must pay:

- the fees and charges for the Service or partially delivered element thereof, which are set out in the Agreement; and
- any additional fees and charges noted in the Agreement (including in the Application) or notified by SproutTel in accordance with the Agreement from time to time.

9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.

9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.

9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee, where applicable), SproutTel may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or re-connection or reactivation fees as set out in the Agreement.

9.5 SproutTel may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).

9.6 SproutTel will calculate fees based on billing information generated or received by SproutTel which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

9.7 If the Customer uses the services of a third party, the Customer will be billed at the third party's applicable rates and charges. Where SproutTel invoices the Customer for the Customer's use of the services of a third party, it will be in SproutTel's capacity as that third party's billing agent only.

9.8 SproutTel may offer the Customer a Special Offer from time to time. In such event, SproutTel will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms

of supply (including the minimum term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.

9.9 Some fees and charges for the Service are subject to variation such as charges relating to: a. international services or roaming; and b. content or premium services The Customer should inform SproutTel before using the Service from outside Australia.

## Payments

10.1 SproutTel will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request SproutTel to send a copy of the invoice electronically.

10.2 Service usage records are obtained by SproutTel from a wholesale supplier. SproutTel will make reasonable efforts to supply these records in a timely manner to the Customer via the online Secure Users Facility or where otherwise agreed to by SproutTel and the Customer, by post or facsimile.

10.3 SproutTel may invoice the Customer using a billing agent (which may be another SproutTel Group Company).

10.4 The Customer may pay by one of the payment methods as set out in the payment notification, on the back of the invoice or on SproutTel's websites. For residential grade services, payment can only be made by direct debit or credit card.

10.5 If the Customer makes a request to SproutTel to pay by direct debit from its nominated bank or credit card account and SproutTel agrees, the Customer must comply with all terms and conditions imposed by SproutTel for the direct debit arrangement. In such event, the Customer acknowledges that the direct debit arrangement may take up to thirty (30) days from the date of the Customer's request to put in place.

10.6 If the Customer's payment is not honoured for any reason, SproutTel may charge the Customer a \$10 fee.

10.7 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by SproutTel.

10.8 If the Customer does not pay the invoice by the date the payment is due, SproutTel may:

- charge the Customer a late fee which is payable until all outstanding amounts are paid;
- require the Customer to provide reasonable security to SproutTel to secure the payment of future amounts due under the Agreement;
- suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If SproutTel suspends or cancels the Service, SproutTel may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
- engage a mercantile agent to recover the money the Customer owes SproutTel and charge the Customer a recovery fee;

- institute legal proceedings against the Customer to recover the money the Customer owes SproutTel and recover from the Customer its legal costs; and/or
- on-sell any unpaid amounts to a third party.

10.9 If the Customer has overpaid as a result of a invoicing error, the Customer's account will be credited with the amount overpaid or SproutTel will use reasonable endeavours to notify the Customer and refund the over payment.

10.10 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of tax. Where the fees and charges do not include an amount on account of tax and tax is payable by SproutTel in relation to, or on any supply under or in connection with the Agreement, SproutTel will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.

10.11 If the Customer requires a copy of any invoice sent by SproutTel in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from SproutTel's records, the Customer must pay SproutTel's reasonable administration fee for such retrieval.

## **Complaints & Disputes**

11.1 If the Customer has any complaints in connection with the Service the Customer may complain in writing or by calling SproutTel.

11.2 SproutTel will handle all complaints in accordance with its complaints procedure which is available from SproutTel on request or on SproutTel's website: <http://www.SproutTel.com>.

11.3 SproutTel will use its best endeavours to resolve all complaints, however if SproutTel is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, SproutTel may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non SproutTel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

## **Cancellation of Service**

- 12.1 The Customer may cancel the Service at any time by:
- giving SproutTel thirty (30) days notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Agreement); or

- giving SproutTel notice, if SproutTel breaches a material term of the Agreement and SproutTel either:
  1. cannot remedy that breach; or
  2. fails to remedy that breach within thirty (30) days after the Customer gives SproutTel notice requiring SproutTel to do so.

12.2 If a Consumer Customer acquires the Service from SproutTel through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.

12.3 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.

12.4 If the Agreement is a non Fixed-Term Agreement, SproutTel may cancel the Service at any time by giving the Customer at least thirty (30) days notice.

12.5 SproutTel may cancel the Service at any time, without liability, if:

- there is an emergency;
- SproutTel reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- any amount owing to SproutTel in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after SproutTel gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
- SproutTel reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to SproutTel in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after SproutTel gives the Customer notice requiring the Customer to do so;
- SproutTel is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
- the Customer suffers an insolvency event and SproutTel reasonably believes SproutTel is unlikely to receive payment for amounts due;
- the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and SproutTel reasonably believes SproutTel is unlikely to receive payment for amounts due;
- the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
- any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
- SproutTel is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.6 SproutTel may cancel the Service under clause 12.5 as soon as SproutTel gives the Customer notice, unless otherwise set out in the Agreement. However, SproutTel may cancel the Service immediately if there is an emergency.

12.7 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service provider or service provider informs SproutTel that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to SproutTel's rights under the Agreement with respect to the Service.

12.8 If the Service is cancelled:

- the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
- the Customer authorises SproutTel to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);



- subject to clause 12.8(b) and unless otherwise set out in the Service Description, SproutTel will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer;
- if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises SproutTel to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;

12.9. No cancellation fee shall be payable by the Customer:

- if the Agreement is not a Fixed-Term Agreement; or
- if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.

12.10 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises):

- before the Service Start Date, the Customer must pay SproutTel all infrastructure and installation costs incurred by SproutTel in connection with preparations for supplying the Service to the Customer;
- during the minimum term, the Customer must pay SproutTel a cancellation fee or such higher amount as may be provided in clause 17; and c. the Customer must pay SproutTel all costs incurred to rectify the Customer's breach of the Agreement.

12.11 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to SproutTel provided that if the Service is cancelled as a result of circumstances attributable to the Customer and SproutTel reinstates the Service, then the Customer may have to pay SproutTel a re-connection or reactivation fee or such higher amount as may be provided in clause 18.

12.12 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

## **Suspending the Service**

13.1 SproutTel may suspend the Service at any time, without liability:

- in any of the circumstances described in clause 12.5;
- if it is necessary to allow SproutTel or a supplier to repair, maintain or service any part of the SproutTel network or a supplier's network used to supply the Service;
- if SproutTel reasonably believes there has been an unusually high use of the Service; or d. problems are experienced interconnecting the SproutTel network with any supplier's network used to supply the Service.

13.2 SproutTel may suspend the Service under clause 13.1 as soon as SproutTel gives the Customer notice, unless otherwise set out in the Agreement. However, SproutTel may suspend the Service immediately if there is an emergency.

13.3 If SproutTel suspends the Service, SproutTel may later cancel the Service for the same or a different reason.

13.4 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.

13.5 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non SproutTel owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.

13.6 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay SproutTel a suspension fee.

13.7 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to SproutTel provided that if the Service is suspended as a result of circumstances

attributable to the Customer and SproutTel reactivates the Service, the Customer may have to pay SproutTel a re-connection or reactivation fee or such higher amount as may be set out in clause 18.

## Liability

14.1 The Customer is liable to SproutTel for any breach of the Agreement that causes foreseeable loss to SproutTel.

14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to SproutTel for any consequential losses SproutTel suffers or for any costs, expenses, loss or charges that SproutTel incurs which are not a direct result of something the Customer has done.

14.3 SproutTel is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise).

A Business Customer must indemnify and keep SproutTel fully indemnified against any loss or damage incurred in connection with any claim against SproutTel by a Business End User in relation to:

- the use (or attempted use) of the Service; or
- the equipment used in connection with the Service.

14.4 SproutTel has responsibilities and obligations under the law, including under:

- the Telecommunications Legislation;
- the Trade Practices Act; and
- applicable laws, regulations and codes. Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

14.5 SproutTel may be liable to the Customer for:

- any damage to the Customer's property which has been caused by the fault, negligence or fraud by SproutTel or SproutTel's personnel during installation, repair or maintenance;
- interruptions in the Customer's use of the Service as a result of a fault or negligence of SproutTel or SproutTel's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law
- If a customer applies for a Residential Grade Service, which is supplied on the basis is solely for personal, domestic or household use and they use it for any business purposes, SproutTel is not liable for any business related losses
- death or personal injury caused by SproutTel or SproutTel's personnel; or
- breach of terms that are implied by the Trade Practices Act and other laws into contracts for the supply of goods and services.

If any condition or warranty is implied into the Agreement under the Trade Practice Act or other laws then SproutTel's liability (if any) for breach of that condition or warranty in connection with any goods or services SproutTel supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.6 Other than as provided in clauses 14.4 and 14.5, SproutTel is not liable to the Customer under this Agreement.

14.7 If the Customer has contributed to any loss or damage the Customer is claiming against SproutTel, SproutTel's liability is reduced to the extent of the Customer's contribution.

14.8 SproutTel is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something SproutTel has done.

14.9 In relation to a Business Customer, to the extent permitted by law, SproutTel's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

## **Assignment & Transfer**

15.1 SproutTel may:

- assign some or all of its rights under the Agreement to any person;
- transfer some or all of its obligations under the Agreement to any company that is able to perform those obligations; and/or
- perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Company provided SproutTel remains responsible for the performance of the obligations, and the Customer irrevocably authorises SproutTel to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

## **Confidentiality**

16.1 Confidentiality Obligation; Each party (Recipient) which receives Confidential Information of the other party (Disclosing Party) under this Agreement acknowledges that all Confidential Information provided to it or to which it is exposed is Confidential to the Disclosing Party, this includes all pricing information.

16.2 Loss suffered; the Recipient acknowledges and agrees that the Confidential Information is by virtue of its special nature valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.

16.3 Non-Disclosure; the Recipient must:

- treat all Confidential Information as Confidential and not make public or disclose to any other person that Confidential Information unless it has
- first obtained the written consent of Disclosing Party to do so;
- prevent third parties from gaining access to the Confidential Information and;
- deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it.

16.4 Disclosure Required; the Recipient may disclose Confidential Information if required to do so by a government agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

16.5 Use of Information; the Confidential Information must not be used by the Recipient or its Representative other than for the purposes of this Agreement or any use ancillary to the use contemplated by this Agreement without the prior written consent of Disclosing Party.

16.6 Reference to the Customer; SproutTel may refer to the Customer as a Customer of SproutTel in any press release, marketing, sales, or web publications

## General Provisions

17.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally reside and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

17.2 SproutTel owns all material (including intellectual property rights) developed by SproutTel or SproutTel's personnel, at SproutTel's direction.

17.3 SproutTel may permit the Customer to use this material, or other material licensed by SproutTel, as part of the Service. This permission is subject to any conditions which SproutTel may impose from time to time and will cease when the Service is cancelled.

17.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, SproutTel may suspend or cancel the Service without notice.

17.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning), the Customer authorises SproutTel to:

- inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by SproutTel or have churned to SproutTel; and
- to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning transaction.

17.6 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:

- the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.

17.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer are or become a carrier or carriage service provider, SproutTel may immediately cancel the Service by giving the Customer notice.

17.8 If the Customer breaches the Agreement and SproutTel does not exercise a right that SproutTel has because of the Customer's breach, SproutTel does not waive:

- that right unless SproutTel gives the Customer notice in writing confirming that SproutTel have waived that right; or
- SproutTel's right to insist that the Customer perform any obligation the Customer has under the Agreement.

17.9 SproutTel may pay a commission to any of SproutTel's personnel in connection with the Agreement.

17.10 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

17.11 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian



Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.

17.12 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to SproutTel in writing; and
- to SproutTel at SproutTel's latest address and facsimile number indicated on SproutTel's website at <http://www.SproutTel.com>.

Any such notice shall be deemed to be received:

- in the case of delivery, at the time of delivery;
- if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed; or
- in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error.
- in the case of an e-mail, on production of an e-mail header indicating delivery without error

17.13 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.

17.14 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

## Special Terms and Conditions

18.1 If at the time of Application the Customer does not have an existing agreement with SproutTel for the provision of asymmetric digital subscriber line (ADSL) or Wireless broadband service, then the Customer may be requested to provide SproutTel with a \$300.00 security bond to secure the Customer's obligations under the Agreement prior to the Service Start Date.

Such security bond:

- may be paid to SproutTel by direct debit from the Customer's nominated bank or credit card account if the Customer has a direct debit arrangement in place with SproutTel; and
- may be used by SproutTel from time to time and at any time to pay any amounts due from the Customer under the Agreement in which event the Customer must immediately pay SproutTel such amount as may be necessary to maintain the amount of security bond at \$300.00; and
- will be released by SproutTel to the Customer within five (5) business days after the earlier of:
  1. the end of six (6) months from the Service Start Date provided the Customer has been making all payments due to SproutTel under the Agreement on time; or
  2. the date the Agreement is cancelled (provided all amounts due from the Customer SproutTel under the Agreement have been fully paid).

18.2 Provision of the Service and the Customer's ability to use the Service is conditional upon the Customer having an internet connection of at least 512Kbps/128Kbps (per two concurrent VoIP/SIP Channels) and either:

- a voice over internet protocol (VOIP) telephone handset connected to an Internet connection as described in 18.2; or
- a soft phone capability on the Customer's computer.

18.3 The Customer acknowledges and agrees that:

- The telephone lines (for DSL) used for the Customer's internet connection that will carry VOIP traffic to and from SproutTel switches are not provided by SproutTel under the Agreement and
  1. under the Agreement SproutTel does not provide a maintenance service for the Customer's line; and
  2. SproutTel does not have any control over the quality or availability of those lines;
- any person who the Customer allows to make telephone calls using the Service is deemed to be authorised by the Customer to make those calls and the Customer will be responsible for all charges incurred by such person;
- as SproutTel may calculate fees based on billing information generated by third parties, any delay by such third parties in providing the relevant billing information which causes a delay by SproutTel in issuing an invoice for the Service does not in any way affect SproutTel's right to payment of such invoice;
- if the Customer does not pay an invoice by the date payment is due, SproutTel may charge the Customer late payment interest on the amount payable under the invoice calculated at the rate of three percent (3%) per annum above the base lending rate of SproutTel's bank until the amount is paid in full; and
- SproutTel may from time to time and at any time (including, for example, if there has been an unusually high use of the Service) in addition to SproutTel's right to request for a pre-payment usage charge under clause 9.5:
  1. impose a credit limit on the Customer's account; and/or
  2. require the Customer to provide within a reasonable time and maintain with SproutTel a cash security bond of a reasonable amount to secure the Customer's obligations under the Agreement which security bond:
    - may be used by SproutTel from time to time and at any time to pay any amounts due from the Customer under the Agreement in which event the Customer must immediately pay SproutTel such amount as may be necessary to maintain the amount of security bond at the original amount; and
    - will be released by SproutTel to the Customer within five (5) business days after the date the Agreement is cancelled (provided all amounts due from the Customer SproutTel under the Agreement have been fully paid).
    - a failure to comply with this provision is a material breach of the Agreement and SproutTel shall be entitled to:
      1. cancel the Service under clause 12.5(e) and charge the Customer a cancellation fee under clause 12.9(b); or
      2. suspend the Service under clause 13.1(a).

18.4 The Acceptable Use Policy does not apply to the Service.

18.5 Payment for VoIP services

- Payment for VoIP services is due on the first business day of each calendar month unless otherwise specified by SproutTel. This is for the period of the first to last of the previous calendar month.
- For customers who were sent an e-mail dated 14th February 2011 advising them of the change to their billable period. Payment for this VoIP services is due on the 28th of the month. This is for the period 28th of the last month to the 27th of the current month.

18.6 If any SproutTel customer assigned a VoIP number (DID) does not connect and configure the DID within 30 days of allocation, SproutTel has the right to re-issue or cancel it.

18.7 SproutTel may charge an amount of one dollar (\$1.00) to the Customer's bank account or credit card to make reasonably sure that the Customer has legal control over one or more of his or her payment methods.

This charge will be applied in full as a credit to the first invoice of the Customer, or as soon as is practicable thereafter.

If the Customer cancels the service prior to the issue of the first invoice and no other fees or charges have been levied, then SproutTel will refund the verification charge in full.

## **Force Majeure**

SproutTel is not liable for any delay or failure to perform its obligations under this Agreement or any Service Order to the extent that the delay or failure is due to a Force Majeure Event.

