



TELECOMMUNICATIONS AGREEMENT

GENERAL TERMS as of 1 November 2016

1. OUR AGREEMENT WITH YOU

- (a) This agreement (Agreement) sets out the terms on which we will supply the Services, Equipment, Software and Maintenance to you.
 - (b) This Agreement comprises the following terms:
 - (i) the Services Terms for the Services which we supply to you;
 - (ii) these General Terms which apply to all Services, Equipment, Software and Maintenance which we supply to you;
 - (iii) the following documents, which are expressly incorporated into this Agreement:
 - A. Application;
 - B. Rate Sheet;
 - C. Privacy Policy;
 - D. Acceptable Use Policy;
 - E. Fair Use Policy;
 - F. Financial Hardship Policy; and
 - G. Customer Complaints Policy,
- which to the extent of any inconsistency between their terms shall prevail in the order set out in this clause.
- (c) If you require assistance reading or understanding any part of this Agreement, you may contact:
 - (i) our customer assistance line on the number specified on the Application Form and on our webpage;
 - (ii) the National Relay Service (NRS) on 13 36 77; or
 - (iii) the Translating & Interpreting Service (TIS) on 13 14 50.

2. TERM OF AGREEMENT

- (a) This Agreement commences at the time you request us to supply Services, Equipment, Software and/or Maintenance to you in accordance with the ordering process specified by us from time to time (Application) once your Application is accepted by us, which will be at the earliest of the following dates:
 - (i) the date we notify you in writing;
 - (ii) the date your Services are activated; and
 - (iii) the date any Data & Internet Services Related Equipment or Voice Services Related Equipment is ordered.
- (b) Some Services have a fixed or minimum term. Where we supply you with a fixed length Service, this Agreement will continue:
 - (i) for the fixed term of the Service; or
 - (ii) until it is terminated in accordance with Clause 9.
- (c) If neither of us cancels a Service at the end of the fixed term, we will continue to supply the Service to you on a month to month basis in accordance with this Agreement. If you do not wish to continue to use the Service on a month to month basis after the end of the fixed term, you must give us 30 days notice in writing before the end of the minimum term informing us that you wish to cancel the Service at the end of the fixed term.
- (d) Where we supply you a Service other than a fixed length Service, this Agreement will continue until either party cancels that Service in accordance with clause 9.

TELECOMMUNICATIONS AGREEMENT

3. SERVICES AND EQUIPMENT

3.1 SUPPLY OF SERVICES AND EQUIPMENT

- (a) If we accept your Application, we will supply the relevant Services and Equipment (and other services we may agree in writing to provide to you from time to time) in accordance with the terms of this Agreement.
- (b) Equipment, Maintenance and Software is only available to you if you nominate Voice Services, Data & Internet Services, Mobile Services, or any other Services in your Application as a Package.
- (c) Our services rely on telecommunications networks, systems and services that we do not own or control. We cannot promise that our services will be continuous or fault-free.

3.2 SPECIAL MOBILE HANDSET TERMS

Where we supply you with a Mobile Handset (Device):

- (a) The Device remains the property of UBT. You are responsible for any loss of or damage to the Device except for fair wear and tear. You must not attempt to repair it yourself. Report any problems with a Device as soon as practicable after they arise. Batteries in the Device are considered a consumable and you are responsible for replacement. In the event of a manufacturing fault with the Device, we will arrange prompt repairs or replacement at our sole discretion;
- (b) The Device must only be used by the approved registered user and you accept that the Device (including use of any camera) may only be used for legitimate family and business purposes and not for any inappropriate or social communication or activity. It must not be used in meeting rooms and/or their precincts. It must not be connected to any other Device or be used for entertainment;
- (c) We reserve the right to not supply a Device to students who are still attending school;
- (d) We will supply a Device to those under 25 years of age subject to the following conditions:
 - (i) they are employed and their employer is prepared to endorse their reliability and integrity
 - (ii) the account holder (as an employer or householder) takes full responsibility for their compliance with these terms;
 - (iii) they leave the Device in a secure position either in the office, with the householder or in the vehicle at night and during weekends. The Device must not be used at home;
- (e) We reserve the right to monitor any use of the Device for adherence to our Terms and policies or where required to by law and it is your responsibility to notify a user that we may do this;
- (f) The Device contains a SIM card, software and settings installed by UBT. You must not allow anyone to reset, remove, tamper with or modify these without our written consent;
- (g) Only approved applications may be loaded on a Device. No alternate application or software (e.g. music) is to be installed on the Device without our written consent;
- (h) Only the SIM card provided with the Device may be used in the Device;
- (i) You must not use the Device whilst driving except as permitted by law;
- (j) All Devices must remain connected to either the UBT BES or Streamline3 at all times to maintain the security and compliance of the Device (Mobile Device Management or MDM tools). Disconnecting the Device from the MDM is considered a serious breach of this agreement and UBT reserves the right to suspend the service upon this occurring;
- (k) If you receive a replacement Device you must immediately return the existing Device to UBT.

3.3 YOUR OBLIGATIONS

- (a) You will ensure that you comply at all times with all laws and obligations, including licence conditions, applicable to the Services or the Package, and their use.
- (b) Our Service Terms for the relevant Services, Equipment, Software and/or Maintenance may state that those items are provided for a particular purpose. You must only allow them to be used for that purpose.
- (c) You must not resupply the Services, Equipment, Software, and/or Maintenance to anyone else without our prior written consent, which we may withhold in our absolute discretion.

TELECOMMUNICATIONS AGREEMENT

- (d) You are responsible for any Equipment we supply to you that belongs to us. You must pay us for any loss or damage to our Equipment, except for fair wear and tear.
- (e) You must not use the Services, Value Added Features, Software, any of the Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment or any and all components of the Package in such a manner that may:
 - (i) menace or harass any person or intentionally cause damage or injury to any person or property or incite hatred against any person;
 - (ii) expose us or you to the risk of any legal or administrative action including prosecution under any law or which would bring either of us into disrepute;
 - (iii) involve the publication of material that is illegal or defamatory or which may promote others to engage in such acts;
 - (iv) damage our, or our Supplier's, network or systems or cause the quality of the Services to be impaired;
 - (v) infringe any person's intellectual property, personal (as set out in Privacy Act), or other rights; or
 - (vi) be unlawful.
- (f) You agree to comply with the Acceptable Use Policy for the Services in your Application, or such other acceptable use policy to which we may direct you, including as may be amended from time to time by the posting of an updated version.
- (g) You must not use the Services, Voice Services Related Equipment, Data & Internet Services Related Equipment, Value Added Features, Equipment or Software, to send unsolicited information to third parties.

3.4 CONTACT DETAILS

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

4. CHARGES AND PAYMENT

4.1 CHARGES

- (a) The most common charges that apply for each Service are set out in the Rate Sheet. For a more exhaustive list of charges please contact our customer service team.
- (b) If your Application is refused or cancelled, we may charge you an amount equal to our costs for this work.
- (c) You are liable to us for all charges in relation to the Services or the Package whether or not you authorised the use of that Service or any and all components of the Package by another person.
- (d) Charges for each Service may comprise one-off (e.g. activation), fixed recurring, usage-based and/or other charges. Charging for a particular Service will commence on the date stated in your Application.

4.2 INVOICES

- (a) We will endeavour to issue an invoice to you monthly for charges due under this Agreement however we may vary the invoice frequency at our discretion.
- (b) We may issue an interim invoice at any time.
- (c) Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for periodic or recurring charges, connection and service fees (where applicable) and in arrears for usage charges, although this may vary in certain cases.
- (d) We will endeavour to include all charges relating to a billing period in the invoice for that billing period but may include those charges in a later invoice provided that we comply with the billing requirements in the Telecommunications Consumer Protection Code (C628).

TELECOMMUNICATIONS AGREEMENT

4.3 PAYMENT

- (a) You must pay the full amount set out in each invoice by the due date shown on that invoice (Due Date).
- (b) We will notify you from time to time of the payment methods which are available to pay an invoice (e.g. credit card, direct debit). We may charge you a processing fee for a payment method provided that we have given you prior notice of this processing fee.
- (c) If you pay an invoice by direct debit and that direct debit is cancelled or otherwise fails, you may be liable for a charge which will be added to your next invoice.
- (d) Supplier charges:
 - (i) Our charges to you may pass on any charges another Supplier charges to us (including increases and special or one-off charges).
 - (ii) You will pay us any charge which any other Supplier or other person renders to us:
 - A. if you approach that other Supplier or person directly, or otherwise than through us; or
 - B. for connection or initiation of any service or for cancellation of any service.
 - (iii) If you use an override code to access services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with this clause 4.3(d).
- (e) If you do not pay to us any part of the charges by the Due Date, we may impose a late payment charge of A\$5.
- (f) If you have failed to pay an invoice by the Due Date, you must pay all costs, charges and expenses that we incur in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disconnection of services costs, costs incurred in commencing legal action such as service fees and search fees.
- (g) Unless expressly stated otherwise, subject to clause 4.3(h), charges for the Services or the Package are exclusive of government taxes, duties (including stamp duty), imposts or levies, which will be your responsibility and will be itemised on your invoice.
- (h) Unless expressly stated otherwise, all fees, charges and other amounts payable (and all quotes given) under or in accordance with the terms of this Agreement (including charges for Services or the Package, repair fees, late payment charges, Services Early Termination Fee, reconnection fees, installation costs) are inclusive of GST. In addition to the consideration for the underlying supply, you must pay to us an amount equal to any GST payable on the supply of the Services or the Package. That additional amount is payable at the same time as the consideration for the Services or the Package is payable. We will issue a tax invoice to you for the supply of those Services or the Package at or before that time.
- (i) You must pay all charges without any set off, counter claim or deduction. We may set off any amount payable to you against any amount payable by you to us.
- (j) Your invoice will be calculated with reference to data recorded by us and our Suppliers. Our records are sufficient evidence of amounts payable by you unless shown to be incorrect.

4.4 SPEND LIMITS

- (a) We may from time to time set a dollar limit for the amount we will allow you to spend on the Services or the Package during a month (Spend Limit).
- (b) If you exceed your Spend Limit, we may issue an interim invoice to you or suspend or otherwise restrict use of your Service.

4.5 DISPUTING AN INVOICE

- (a) You must contact us as soon as reasonably practicable after receiving an invoice if you wish to dispute an amount which appears in that invoice.
- (b) Where in our opinion you have a reasonable claim or dispute with an invoice or a debit, we will suspend our collection or recovery processes in respect of the relevant amount until a determination of your claim or dispute has been made. We will reimburse any incorrectly debited amount as soon as reasonably practicable.

TELECOMMUNICATIONS AGREEMENT

5. CHANGES TO THIS AGREEMENT

- (a) We may change any document which forms part of this Agreement if:
 - (i) you agree to the change;
 - (ii) we reasonably consider that the change is likely to benefit or have a neutral impact on you, in which case we can make the change immediately;
 - (iii) we reasonably consider that the change will have a minor detrimental impact on you, in which case we can make the change after giving written notice to you;
 - (iv) we acquire a carriage service from a third party for resale to you and variations to this Agreement are required because of an amendment made by our third party supplier to the contract between us and our third party supplier, in which case we will provide you with prior written notice explaining the variation and its effect and that you may terminate this Agreement within 42 days of the date of the notice by giving us written notice and paying us usage or network access charges incurred up to the date of termination;
 - (v) that change is required by law, necessary for security reasons, to prevent fraud or for technical reasons provided that we give you as much prior notice as is reasonable in the circumstances; or
 - (vi) that change is of a kind not described in clauses 5(a)(i) to 5(a)(v), in which case we will provide you with at least 21 days notice and you may terminate this Agreement within 42 days of the date of the change notice by giving us written notice and paying us usage or network access charges incurred up to the date of termination.
- (b) We may withdraw a Service or Package at any time by giving you notice but any such withdrawal will only take effect from the end of any fixed term which applies to that Service or Package.

6. NUMBER PORTABILITY

6.1 TRANSFER OF YOUR SERVICES TO US

- (a) If in providing the Services or the Package we need to change your arrangements with your current Supplier, then:
 - (i) you authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name; and
 - (ii) you agree to give written instructions to your current Supplier to transfer your telecommunications services from your name to ours if we so request.
- (b) You will be responsible for all amounts owing to your current Supplier up to the time of transfer of your telecommunications services to our name.
- (c) If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you will be responsible for paying your previous Supplier that amount.

6.2 TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER

- (a) If you (or a Supplier acting with your authority) ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.
- (b) The provision of Services ceases on the date on which we transfer your Services to another Supplier.
- (c) We will endeavour to invoice you for Services which you transfer to another Supplier and in relation to which you have incurred charges, within the next normal billing period. If after that we become aware of other proper charges (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified, then you will immediately pay us all such amounts on receipt of our invoice.
- (d) We do not accept liability for any amounts owing by you to a Supplier or other person in connection with the transfer of your services to another Supplier. You indemnify us against any claim made by a Supplier or other person against us in relation to any such amounts.

TELECOMMUNICATIONS AGREEMENT

7. PERSONAL INFORMATION AND BUSINESS INFORMATION

- (a) You acknowledge and agree that:
 - (i) we collect, use and disclose Personal Information for the following purposes:
 - A. to assess any Application by you for Services or the Package to be provided by us;
 - B. to collect payments that are overdue in respect of any Services or the Package provided by us;
 - C. to provide the Services or the Package to you (including the investigation or resolution of disputes relating to any Services or the Package provided to you);
 - D. to provide information to you about other goods or services which we or any of our Related Body Corporate or any of our partners, associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents may offer to you; and
 - E. to do the things set out in clause 8;
 - (ii) if you do not provide us with the Personal Information we request in connection with your Application, we may not be able to do the things set out in clause 7(a);
 - (iii) we usually disclose Personal Information:
 - A. to other Suppliers for the purpose of enabling us to provide the Services or the Package to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services) and for the purpose of assisting us to do the things set out in clause 7(a)(i);
 - B. to other Suppliers about your account, including particulars of calls and call charges;
 - C. to our Related Body Corporate, our partners and associates (such as telecommunication entities, providers of products or services which are related to the Services or the Package, media entities, event organisers, equipment suppliers and the suppliers of any other product or service with whom we have engaged in a joint initiative), dealers, franchisee(s), and agents so that they can provide information to you about goods and services they offer;
 - D. to government agencies or individuals appointed by a government (including the Telecommunications Industry Ombudsman and ACMA) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services or the Package for the purpose of enabling investigation and resolution of those disputes or complaints; and
 - E. to the entities, bodies or persons set out in clause 8;
 - (iv) we are unlikely to disclose Personal Information to overseas recipients, except in very limited circumstances where your request is of a nature that requires us to refer you to a third party support capability which may field support inquiries from overseas;
 - (v) our Privacy Policy contains information about how you may access the Personal Information about you that we hold and seek the correction of that information; and
 - (vi) our Privacy Policy also contains information about how you may complain about a breach of the Australian Privacy Principles and how we will deal with such a complaint.
- (b) By providing us with your Personal Information, you consent to us using or disclosing that information as set out above in clause 7(a)(i). If you do not want us to use or disclose your Personal Information for direct marketing, you may ask us not to by contacting our privacy officer and/or customer service team by following the procedures described in our Privacy Policy].
- (c) Unless you ask us not to, you acknowledge that any calls you make to our customer call centres, the content of those calls, and any emails that you send us, may be monitored and/or recorded for quality assessment, administration and/or customer information purposes.
- (d) For the purposes of this clause 7, unless the context otherwise requires, all terms defined in the Privacy Act 1988 (Cth) have the same meaning when used in this clause.

TELECOMMUNICATIONS AGREEMENT

8. CONSENT TO CREDIT CHECK

- (a) We are likely to disclose Personal Information about you to the following Credit Reporting Bodies:
- CreditorWatch (<https://creditorwatch.com.au/>)
- (b) You acknowledge that:
- (i) the Credit Reporting Bodies listed above may include your Personal Information in reports they provide to other Credit Providers to assist them in assessing your credit worthiness;
 - (ii) if you fail to meet your payment obligations in relation to Consumer Credit or commit a Serious Credit Infringement, we may be entitled to disclose this to a Credit Reporting Body;
 - (iii) we have a Credit Policy which explains how we manage credit related Personal Information (Credit Policy) which is accessible on our website at <http://ubteam.com.au/browse-catalogue/ubt-products/telecommunications/telco-critical-information.html>. You acknowledge that you can also obtain a copy of the policies explaining how each of the Credit Reporting Bodies to whom we disclose Personal Information to, manage credit related Personal Information by visiting their websites;
 - (iv) the Credit Policy contains information about how you may request access to Credit Eligibility Information about you that is held by us and information about how you may seek the correction of Credit Information or Credit Eligibility Information about you that we hold;
 - (v) the Credit Policy contains information about how you may complain about our failure to comply with the credit reporting provisions of the Privacy Act (found at Division 3 of Part IIIA of the Privacy Act) or the Credit Reporting Privacy Code and how we will deal with such a complaint;
 - (vi) you have a right to request Credit Reporting Bodies not to use your Credit Reporting Information for the purposes of pre-screening of direct marketing by a Credit Provider;
 - (vii) you have a right to request Credit Reporting Bodies not to use or disclose Credit Reporting Information about you if you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud; and
 - (viii) we are not likely to disclose Credit Information or Credit Eligibility Information to entities that do not have an Australian link.
- (c) You agree that we may:
- (i) where you are applying for Commercial Credit, obtain from any Credit Reporting Body, Credit Reporting Information about you for the purposes of assessing your application for Commercial Credit or collecting payments that are overdue in relation to Commercial Credit provided by us to you;
 - (ii) where you are applying to be guarantor, obtain from any Credit Reporting Body, Credit Reporting Information about you for the purposes of assessing whether to accept you as a guarantor in relation to:
 - A. Credit provided by us to a person other than you; or
 - B. Credit for which an application has been made to us by a person other than you (each a Credit Applicant);
 - (iii) disclose Credit Eligibility Information about you to another Credit Provider which has an Australian link and obtain Credit Eligibility Information about you from another Credit Provider for the purposes of:
 - A. assessing your Application;
 - B. notifying a default by you;
 - C. allowing another Credit Provider to ascertain the status of your Credit arrangements with us where you are in default with one or more other Credit Providers;
 - D. generally assessing your Credit Worthiness; and/or
 - E. where you are applying to be guarantor, assessing whether to accept you as guarantor for a Credit Applicant;
 - (iv) where we have provided Credit to you or where you have applied to us for Credit, disclose Credit Eligibility Information about you to a person for the purpose of that person considering whether to offer to act as guarantor in relation to the Credit or to offer property as security for the Credit and that person has an Australian link;

TELECOMMUNICATIONS AGREEMENT

- (v) disclose Credit Eligibility Information about you where the disclosure is to a person who is a guarantor in relation to Commercial Credit provided by us to you or the person has provided property as security for the Commercial Credit and that person has an Australian link; and
- (vi) collect from and exchange Personal Information (other than Credit Eligibility Information) about your commercial activities or commercial creditworthiness from any business which provides information about the commercial worthiness of persons, your accountant or any other supplier to you.
- (d) For the purposes of this clause 8, unless the context otherwise requires, all terms defined in the Privacy Act 1988 (Cth) have the same meaning when used in this clause.

9. TERMINATION, SUSPENSION AND CANCELLATION

9.1 YOUR TERMINATION AND CANCELLATION RIGHTS

- (a) You may terminate this Agreement or cancel the provision of any Service or Package by giving us 30 days' notice in writing.
- (b) You may cancel the provision of any Service or Package if we breach a material term of this Agreement and cannot remedy that breach, or do not remedy that breach within 30 days after you give us written notice requesting us to remedy the breach.

9.2 OUR TERMINATION, SUSPENSION AND CANCELLATION RIGHTS

- (a) We may terminate this Agreement or suspend, limit or cancel the provision of any Service or Package by notice in writing to you if:
 - (i) you fail to pay any amount due under this Agreement by the Due Date, we give you notice requiring payment of that amount (which we may not give in respect of an amount which is genuinely disputed until we have investigated the dispute) and you fail to pay that amount in full within the specified number of days after we give you that notice;
 - (ii) you breach any material provision of this Agreement;
 - (iii) you are declared bankrupt;
 - (iv) a provisional liquidator, liquidator, receiver or any other administrator of your business or assets is appointed or you enter into any arrangement with your creditors or any class of creditors;
 - (v) any Equipment, Voice Services Related Equipment, Data & Internet Services Related Equipment connected with a Service or a Package provided to you do not function because we are unable to enter your premises in order to update or rectify such equipment;
 - (vi) you cease receiving any service that we rely upon in providing the Service or Package through no fault of ours or our Suppliers;
 - (vii) you are in breach of a licence, permit or authorisation relating to the use of your telecommunications equipment, the Equipment, the Package, or the Services;
 - (viii) the supply of a product, service or right on which we rely to provide any Service or Package to you is terminated;
 - (ix) you do not provide security as required by us;
 - (x) we reasonably suspect you of fraud or attempted fraud;
 - (xi) you vacate the premises to which we had been supplying Services or a Package to you;
 - (xii) you change your address or phone number; and
 - A. you do not notify us in accordance with clause 3.4; or
 - B. the Service may not be provided at your new address or phone number through no fault of ours or our Supplier;
 - (xiii) we reasonably believe that your usage of the Services is unusually high;
 - (xiv) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy;
 - (xv) we are permitted or required to do so by law;
 - (xvi) you are in breach of the Acceptable Use Policy or the Fair Use Policy;

TELECOMMUNICATIONS AGREEMENT

- (xvii) any of our or our Supplier's Data & Internet Services Related Equipment is lost, stolen or substantially destroyed;
- (xviii) the physical infrastructure and site conditions for your service do not pass service qualification by our Supplier or if it is found to be unsuitable as a result of a feasibility study; or
- (xix) you die.
- (b) We may, without liability, suspend the provision of any Service or Package for a reasonable period for operational reasons. Where we continue to apply charges, we may provide you with a service credit if a Service or Package provided to you is suspended for an unreasonable period of time for operational reasons (other than those set out in clause 9.2(a)).
- (c) We may, without liability, suspend, limit or terminate the provision of any Service or Package if there is no Minimum Term in place, by giving 30 days notice in writing to you. In cases of suspension or limitation, where we continue to apply charges, we may provide you with a service credit if a Service or Package provided to you is suspended for an unreasonable period of time (other than for the reasons set out in clause 9.2(a)).
- (d) In addition to our rights under this clause 9, we can suspend or cancel your Service upon reasonable notice to you (including transmitting the notice to your email address) if we have reasonable grounds to believe that you represent a credit risk in relation to the Service, including:
 - (i) where the Services are being used in an excessive or unusual way or an unusually high volume or spend for the relevant Service when compared with previous account activity for that Service. For example, there may be excessive or unusual use if you have a call that remains connected for an unusually long period of time or where an unusually large volume of calls to premium-rate or international services start being made from your Service;
 - (ii) where you failure to respond to notices from us about unusual high volume or spend; or
 - (iii) where you failure to pay a current bill in circumstances where your payment history indicates a series of late payments, dishonoured payments or failures to pay. If we do suspend or cancel your Service, you still have to pay for any charges incurred for any excessive or unusual usage (regardless of how caused) and the provisions relating to liability and indemnity also remain unaffected.

9.3 CONSEQUENCES OF TERMINATION OR CANCELLATION

- (a) On termination of this Agreement, you must:
 - (i) pay all charges incurred by you under this Agreement up to the time of termination, which will become immediately due and owing upon termination;
 - (ii) if we request and at our option, either immediately return all of our or our Supplier's Voice Services Related Equipment (at your cost) or make such equipment available for our, or our Suppliers, collection;
 - (iii) either pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and any costs of making repairs that we think necessary or if we are unable to repossess such Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Rate Sheets and any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment;
 - (iv) if we request and at our option, either immediately return all of our Mobile Equipment (at your cost) or make such Mobile Equipment available for our collection; and
 - (v) pay any applicable Early Termination Fee to us.

You acknowledge that this amount is a genuine pre-estimate of the loss we are likely to suffer.
- (b) On cancellation of the provision of any Service or Package, you must:
 - (i) pay all charges incurred by you under this Agreement in relation to the cancelled Service or Package up to the time of cancellation, which will become immediately due and owing upon cancellation;

TELECOMMUNICATIONS AGREEMENT

- (ii) if we request and at our option, either immediately (to the extent relating to the cancelled Service or Package) return all of our or our Supplier's Voice Services Related Equipment (at your cost) or make such equipment available for our, or our Supplier's, collection;
 - A. If you do not return our Equipment in reasonable working condition (subject to fair wear and tear) we may charge you the reasonable cost of repair or replacement having regard to its age.
- (iii) to the extent relating to the cancelled Service or Package, either pay any costs incurred by us in repossessing our or our Supplier's Data & Internet Services Related Equipment and any costs of making repairs that we think necessary or if we are unable to repossess such Data & Internet Service Related Equipment, you must pay an amount equivalent to our then current installation fees for that equipment as specified in the Rate Sheets and any costs incurred by us in attempting to repossess such Data & Internet Services Related Equipment;
- (iv) to the extent relating to the cancelled Service or Package, if we request and at our option, either immediately return all of our Mobile Equipment (at your cost) or make such Mobile Equipment available for our collection; and
- (v) pay any applicable Early Termination Fee to us.

You acknowledge that this amount is a genuine pre-estimate of the loss we are likely to suffer.
- (c) If there is credit remaining on your account at the time of termination or cancellation, we will, at our option, deduct the credit off any amount you owe us or pay you the credit or if the credit exceeds any amount you owe us, we will refund you by cheque or EFT.
- (d) If we suspend, limit or cancel the Services for unpaid charges or any other reason, subsequent reconnection may incur a reconnection fee (except if our action resulted from our or a supplier's mistake or manifest error).
- (e) If you are unable to return

10. LIABILITY AND INDEMNITIES

- (a) To the extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied by legislation, the common law, equity, trade, custom or usage or otherwise relating to the provision by us of the Services, Maintenance, Software, Equipment, or any other equipment or otherwise in connection with this Agreement are expressly excluded.
- (b) To the extent permitted by law, we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services, any and all components of the Package, or any other equipment under this Agreement or otherwise in connection with the relationship established by this Agreement, including any loss or damage caused by our negligence or any fundamental breach of this Agreement.
- (c) Subject to clause 10(b) and to the extent permitted by law, our liability, and that of our Related Body Corporate, for any direct, indirect or consequential loss or damage arising out of or otherwise in connection with this Agreement, including for any non-compliance with a statutory guarantee (which cannot be excluded), will be limited at our option to any one or more of the following:
 - (i) if the supply relates to goods, the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of having the goods repaired or replaced or of acquiring equivalent goods; and
 - (ii) if the supply relates to services, the resupply of those or equivalent services or the payment of the cost of having those services resupplied.
- (d) Exclusion of liability:
 - (i) To the extent permitted by law, we, have no liability to you or to any other person for:
 - A. acts or defaults of any Supplier or other person;
 - B. faults or defects in any facility or equipment (including the Equipment and Software) we supply to you or the Services, which are caused by or contributed to by your, or a third party's, conduct or misuse; or

TELECOMMUNICATIONS AGREEMENT

- C. faults or defects that arise in services not provided under this Agreement (even if they are connected, with our consent, to Services which we have arranged under this Agreement), which are due to incompatibility with the Services, Software or any other equipment that we or our Suppliers provide to you.
- (ii) To the extent permitted by law, our Suppliers have no liability to you in connection with this Agreement.

11. YOUR INDEMNITY

- (a) You indemnify us and will keep us, and our Related Body Corporate, indemnified against any loss, cost, expense, damage or other liability (including legal costs on a solicitor/client basis) arising out of:
 - (i) your breach of this Agreement;
 - (ii) any claim or demand against us (including for negligence) by any person other than you, which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
 - (iii) any claim or demand (including for negligence) which you or any other person make against any of our Suppliers which arises from or is connected with our supply of the Services, any and all components of the Package, or any other equipment;
 - (iv) any damage which you or your employees, agents or contractors cause to our, or our Supplier's, network, equipment or other property;
 - (v) the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by you; or
 - (vi) any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving the use of the Services, or any and all components of the Package, or any other equipment by you.

12. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- (a) We retain all intellectual property rights in any information relating to the Services, any and all components of the Package, the design or operation of the Services and any and all components of the Package and other technical information relating to the provision of the Services and any and all components of the Package (Confidential Information).
- (b) You will keep the Confidential Information confidential, and will not allow any written or electronically recorded material to be copied.
- (c) On the termination of the Agreement for any reason, you will return the Confidential Information and all copies of it to us. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand.
- (d) You will keep confidential the manner in which we arrange Services, any and all components of the Package, including our charges, savings, and other financial information.
- (e) You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

13. FORCE MAJEURE

- (a) We are not liable for:
 - (i) any delay in installing any Service, any and all components of the Package, or any other equipment;
 - (ii) any delay in correcting any fault in any Service, any and all components of the Package, or any other equipment;
 - (iii) failure or incorrect operation of any Service, any and all components of the Package, or any other equipment;
 - (iv) Service outages; or

TELECOMMUNICATIONS AGREEMENT

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

14. ASSIGNMENT

- (a) You must not assign, transfer or otherwise deal with any of your rights or obligations under this Agreement, except with our prior written consent (acting reasonably).
- (b) We may upon notice, assign, transfer, sell or otherwise deal with our rights under this Agreement and/or Equipment and/or any component of the Package, and your consent is not required.

15. REGULATORY

15.1 CUSTOMER SERVICE GUARANTEE

- (a) If you wish to acquire a Service from us (including as part of a Package) which includes a standard telephone service, you must agree to waive the CSG and complete the CSG waiver in your Application.
- (b) If you give a CSG waiver and withdraw that waiver within 5 working days after giving it, the CSG waiver will not be effective and you agree that we may terminate this Agreement or cancel the supply of any standard telephone service to you.

15.2 SUPPLY CONDITIONS

- (a) You represent that you are not a carrier or a carriage service provider (as those terms are defined in the Telecommunications Act). If you are or become a carrier or carriage service provider, you must promptly notify us of that fact and we may immediately terminate this Agreement by notice to you.
- (b) You must use reasonable endeavours to ensure that you do not establish, maintain or permit a connection to another person's network, equipment or cabling that is prohibited by or does not comply with the Telecommunications Act or any technical or interconnection standards made under the Telecommunications Act.

16. GENERAL

- (a) If you are a business customer then you agree that if we need your consent to undertake certain actions, then provided we act in good faith, we may rely upon the authority of any of your employees, who warrants to be authorised to provide consent on your behalf.
- (b) You warrant that you have provided full and accurate Personal Information and business information to us in connection with this Agreement and your Application and you have full power and authority to enter this Agreement and Application.
- (c) Governing law:
 - (i) This Agreement and your Application are governed by the laws of the Commonwealth of Australia and the laws of the state of New South Wales.

This Agreement contains the whole understanding between us and supersedes all prior arrangements and understandings between us in connection with it.
- (d) From time to time we may offer special promotions to you on additional terms and conditions. If there is any inconsistency between this Agreement and the terms of the special promotion, the latter will prevail to the extent of the inconsistency.
- (e) The failure by either party to exercise any right or remedy under this Agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.
- (f) If a provision of this Agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this Agreement will not be affected.

TELECOMMUNICATIONS AGREEMENT

- (g) You may complain in writing or orally by calling our Customer Service number or the contact number located at our website. We will comply with our customer complaints policy located at our website, when endeavouring to resolve your complaint. If we are not able to resolve your complaint to your satisfaction, you may refer your complaint to the Telecommunications Industry Ombudsman or the ACMA.
- (h) Any notice, demand, consent or other communication required to be given to either of us must be delivered personally or sent by prepaid mail, email or by facsimile to the address of the other last notified.
- (i) You authorise us to complete any blank spaces or incomplete information in your Application and including but not limited to the serial numbers and other identification details of the Equipment, any and all components of the Package and any other equipment being provided to you.
- (j) We may engage an agent, dealer, contractor or franchisee to conduct any aspect of service or equipment provision and maintenance under this Agreement. You acknowledge that we may enter into this Agreement as principal or as agent. Where we enter into this Agreement as an agent, all references to our rights are to be read as references to us and our principal. Our performance of this Agreement may, at our discretion, be carried out by a Related Body Corporate of ours or any other party arranged by us or a Related Body Corporate (and your obligations under this Agreement will be owed to us or that Related Body Corporate or that other party, as relevant).
- (k) No reliance: You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement
- (l) Release: You accordingly release us and each of our officers, agents and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and from the negotiations leading to it

17. INTERPRETATION AND DEFINITIONS

17.1 DEFINITIONS

The following definitions apply unless the context requires otherwise:

ACMA means the Australian Communications and Media Authority.

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

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

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

Application means the application form settling out the Services you have selected and other details in a form prescribed by us from time to time.

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

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

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

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

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

TELECOMMUNICATIONS AGREEMENT

Early Termination Fee means the fee payable by you if the contract with you is terminated before its Minimum Term has expired, the calculation of which is 90% of the monthly fee times the number of months remaining in the Minimum Term.

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

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

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

LNP Authorisation means the LNP Customer Authorisation in your Application on the terms of this Agreement.

Maintenance means any Maintenance we provide as specified in your Application and under the terms of this Agreement.

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

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

Minimum Term or Minimum Term Contract means the term of this Agreement as specified in your Application.

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

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

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

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

Mobile Services means the public mobile telecommunications service and any Value Added Features which we provide you under this Agreement and as specified in your Application.

MNP Customer Authorisation means the MNP Customer Authorisation in your Application on the terms of this Agreement.

Numbering Plan means the Telecommunications Numbering Plan (1997) as amended from time to time.

Other Equipment means equipment that is not Equipment provided by us.

Other Software means software that is not Software provided by us.

Package means a bundled offering of any or all Services, Equipment, Software and/or Maintenance and as described in your Application.

Part refers to any section of this Agreement so described.

Personal Information means any information or document referred to in section 276(1) of the Telecommunications Act and any personal information within the meaning given in section 6 of the Privacy Act.

Premium SMS or MMS service means a carriage service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199; or a content service supplied by way of a call to a number with the prefix 191, 193, 194, 195, 196, 197 or 199.

Privacy Act means the Privacy Act 1988 (Cth).

Proprietary network means a telecommunications network that enables Customers to access, by way of a mobile device, a premium content service that is not otherwise generally available.

TELECOMMUNICATIONS AGREEMENT

Proprietary network service means a public mobile telecommunications service that enables customers to access a proprietary network.

Rate Sheets means our standard rate sheets for the Services or any and all components of the Package as amended from time to time, copies of which are available on our website, on your Application or by contacting our customer service.

Related Body Corporate has the same meaning as in section 50 of the Corporations Act 2001 (Cth).

Services means the Data & Internet Services, Mobile Services, Mobile Premium Services, Voice Services or other services specified in your Application that we supply to you under this Agreement.

Services Agreement means the contract with us for the supply of Services under this Agreement.

Service Level Agreement means the Service Level Agreement as specified in your Application and available at our website.

Service Terms means the Service-specific descriptions which contain further detail regarding the particular Services you have chosen to receive in the Application.

Site means the site described in your Application.

Software means the software we provide as specified in your Application but does not include Other Software.

Short Message Service (SMS) is the ability to send Short Messages and receive Short Messages in relation to GSM and in relation to CDMA.

Spend Limit has the meaning given to that term in clause 4.4(b).

Supplier means any carrier, telecommunications service providers, internet service providers or software or equipment suppliers that provide facilities and services.

Telecommunications Act means the Telecommunications Act 1997 (Cth).

Value Added Features means any of the Mobile Services value added features as specified in your Application.

Voice Services means the telecommunications services to be provided to you under this SOFA and as specified in your Application.

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

we, us means UBT Marketing Pty Ltd.

you, your means the customer, as specified in your Application.

17.2 INTERPRETATION

- (a) Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Agreement.
- (g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated, or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to dollars and \$ is to Australian currency.
- (j) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.