GENERAL TERMS FOR BUSINESS CUSTOMERS

STANDARD FORM OF AGREEMENT

SmileTel ABN 51 123 952 232

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ABOUT OUR AGREEMENT

1. INTRODUCTION

1.1 Welcome!

(a) Welcome to our **General Terms** for our **Business** Customers.

> These General Terms are a Standard Form of Agreement as per Part 23 of the Telco Act.

1.2 Who these Terms apply to

(a) If you are a Business Customer, these Terms generally apply whenever SmileTel (that's **us**!) supply Equipment or Services to our customers (that's **you**!), unless we agree with you in writing that *different* terms apply.

(b) If other people use the Service, then these Terms apply to other users of your Service too.

> For example, if you are the account holder for a Service and other people in your business use that Service, these Terms apply to those people also.

2. STRUCTURE OF OUR AGREEMENT

2.1 Our Agreement is made up of different parts

Your Agreement with us includes:

(a) your **Application**,

(b) the **Critical Information Summary**,

(c) these **General Terms**,

(d) the **Payment Schedule**,

(e) the **Direct Debit Service Agreement**, and

(f) our **Acceptable Use Policy**.

2.2 Priority of documents

(a) If different parts of this Agreement are inconsistent, the part listed earlier in the above list takes priority to the extent of the inconsistency.

(b) In particular, your Application and the relevant Critical Information Summary for your Service may describe Service specific terms.

> **For example**, if you sign up for Fixed Term that is greater than a month to month period, then your Application and the relevant Critical Information Summary will state the specific length of our Agreement with you.

3. GETTING STARTED

3.1 Start of Agreement

(a) Our Agreement with you starts if we accept (at our sole discretion) your Application and continues until terminated in accordance with our Agreement.

(b) You can apply for us to supply the Service to you using our Application forms (either online or printed) or by phone.

(c) We decide whether to accept your Application and supply Services to you based on a variety of factors including:

- your eligibility for the Service,
- whether the Service is available to you in your area,
- whether you meet our credit and identification requirements,
- the outcome of any credit assessment we undertake, and
- your prior history with us or a reseller of any goods or services to you.

4. CONTACT US

4.1 We're here if you need help

If you need help or more information, please contact us on 1300 175 636.

You can also use our email address to lodge support requests.

4.2 Your Agreement is with us, not our Suppliers

(a) We're here to help with your Service, so please contact us and not Suppliers if you have questions.

- If you or other users of your Service contact a Supplier, then you're responsible for costs we may incur from the Supplier in connection with that contact.

(b) Our Suppliers have no liability or obligation to you or other users of your Service.

- You and other users of your Service must not make a Claim or start an action against a Supplier in relation to a Service.
- If you do make a Claim or start an action, you also agree to pay us for any costs, damages, or loss we incur as a result.

(c) We may assign our rights under this clause to a Supplier.

USING SERVICE AND EQUIPMENT

HOW TO ENJOY YOUR SERVICES AND EQUIPMENT

5. WE'LL PROVIDE YOU SERVICES

5.1 Service availability

(a) Subject to your rights under the Consumer Law, we aim to provide, but cannot guarantee, a continuous Service free of any Interruptions.

(b) You are aware that we may rely on Suppliers for supplying a Service to you. This means that circumstances beyond our control may cause interruptions to the Service from time to time.

> Our liability to you for any interruption to a Service is limited in accordance with **Clause 21.2 (Our liability for interruptions to the service)**.

5.2 Maintenance and fault restoration

(a) Subject to your rights under the Consumer Law and to the extent permitted by law, we're not obliged to restore Service faults caused by:

- Damage not caused by us to Facilities we (or our Suppliers) use to provide you Services,

  > For example, damage to customer Equipment, loss of power supply, etc.

- interference not caused by us,

  > For example, electrical or other external interference, customer or third parties tampering with Equipment.

- Force Majeure Events, or
- planned outages.

5.3 Technical support and training

Virtual tech support

(a) We offer some technical support. However, we're not responsible for training to use your Service.

(b) We're not responsible for, and may not be able to provide support for, any fault caused by:

- Customer Equipment,
- the Service interacting with third party software you use,
- issues with wireless connectivity from a wireless access point or router to your computer, or
- Services provided by any third party supplier or carrier (other than our Suppliers).

6. YOUR OBLIGATIONS

6.1 Compliance

You're responsible for the use of your Service. You must not (and must ensure that other persons do not) use your Service other than in accordance with our Agreement. This includes complying with

our and our Supplier's fair use policies, applicable laws, and other obligations that apply to the Services and their use.

6.2 Your obligations

Don't misuse a Service

(a) You must not do or allow to be done, in relation to a Service, any of the following:

- breach any Law including Laws regulating content on the Internet or email,
- contravene the Privacy Act, the National Privacy Principles, or guidelines made under them,
- send unsolicited electronic message or make scam calls or text messages.
- engage in denial-of-Service (DOS) attack or let a computer under your authority be used for DOS,
- obtain or attempt to obtain unauthorised access to or control of any other computer or network,
- scan ports on other computers or otherwise probe them for means of access or vulnerabilities,
- spread (either deliberately or through want of reasonable care) any virus, trojan horse or other harmful action.

(b) If we or a Supplier provide you with software, you must only use it in accordance with its licence terms as notified to you from time to time.

(c) Unless we specifically agree with you in writing otherwise, you must not:

- resell the Service,
- establish, maintain or permit multiple concurrent connections to the Service,
- connect the Service to a local area network, except if the Service is designated by us as one which supports use of a local area network.

You're responsible for technology needed

(d) Unless specifically included in our Agreement with you, it is your responsibility to provide the technology necessary for the Service.

Information

(e) You warrant that information you give us in relation to this Agreement is true and correct.

- You must promptly inform us of any changes to this information.

Assistance and access

(f) You agree to give all reasonable assistance, information, access, that we reasonably require to enable us to perform our obligations under this Agreement and deliver Services to you.

6.3 Obligations to retain data

You agree that we (or a Supplier) may take reasonably necessary steps to comply with the Law in relation to the Services we provide you. This may include:

(a) intercepting communications made using a Service, and

(b) monitoring and retaining data relating to your Service or accessed or transmitted by you while using the Service, and

(c) providing such data to persons authorised by law.

7. INTERNET ISSUES AND LIMITATIONS

7.1 Internet issues and limitations

(a) To the extent permitted by law, you acknowledge and agree that:

- the continuity and speed of access to the internet depend on a wide range of factors, many of which are beyond our control,
- we have no control over the accuracy or appropriateness of information on the internet,
- we are not responsible for software or data available on the internet,
- if we provide to you technical or other support or advice in relation to any matter which is outside our direct responsibility under this Agreement, we do so only in an attempt to assist you and without incurring any liability other than any which cannot lawfully be excluded.

7.2 Internet security

(a) You acknowledge and accept that any access to the internet involves security risks and that new threats to Internet security are continually evolving.

(b) You accept responsibility for maintaining your own security and acknowledge that we have recommended you should at least:

- maintain and protect your user identity, email address and password,

  > For example, keeping the password secure, including not disclosing it, avoiding the use of dictionary words, names or dates, changing it regularly, not keeping it in writing or storing it on a computer, etc

- use and keep current anti-virus software and firewall,
- restrict access to Equipment,
- not open emails or files from unknown sources,
- protect other Service users from unsuitable internet content,
- keep up to date on Internet security issues, and
- regularly monitor your data use to avoid unexpected data fees or Service Restrictions.

8. USING SERVICES

8.1 You agree to use the Services correctly

(a) You must use the Services solely for their intended purpose,

(b) You agree to notify us immediately of any security breach (suspected or otherwise) regarding the Service or your confidential password or customer login, and

(c) You must not allow anyone to resell (or attempt to resell) any Service.

8.2 Interference with networks

If we reasonably believe your Equipment or your use of the Service interferes (or threatens to interfere) with a relevant network's efficiency, then you must follow our reasonable directions on how to end or avoid that interference.

8.3 Use appropriate Facilities and Equipment

In using the Service, you agree you will only connect with Facilities and Equipment that meet technical codes, standards, regulations, and guidelines either made under the Telco Act, published by the ACMA, or published by Communications Alliance Ltd.

8.4 No illegal use

(a) You must not use or allow anyone else to use a Service to transmit or publish any material that is:

- defamatory, or
- in breach of copyright or other intellectual property rights,
- in breach of any obligations of confidentiality, or
- otherwise in breach of any law.

(b) If you breach this clause, then:

- We may restrict, suspend, or cancel the Service in accordance with **clause 24.2 (Your actions cause us to restrict, suspend or cancel)**, and
- You will indemnify us against any costs we incur as a result of your use of the Service to commit an offence or otherwise breach this clause.

8.5 Unusual use

Whilst we may contact you if we notice unusual use on your Service, we are not obliged to monitor your use of a Service, or to restrict, suspend, or cancel a Service if there is unusual usage. You are responsible for all use of the Service, by you or others.

9. USING EQUIPMENT

9.1 Service Equipment

For business customers, if we, or a Supplier, provide a Facility or Service Equipment to you to use with a Service (but we don't sell that Service Equipment to you), then:

(a) Risk in the Service Equipment passes to you on delivery. You must pay for any loss or damage you cause to Service Equipment, other than fair wear and tear.

(b) That Service Equipment remains our property unless we advise you otherwise.

(c) You must not remove or obscure any identification marks on the Service Equipment.

(d) You must comply with our reasonable directions to protect our ownership of the Service Equipment

(e) You will not part with possession of the Service Equipment except to us.

(f) You must not do anything which might detrimentally affect our ownership of the Service Equipment.

- You must not register an interest in the Service Equipment under the PPSA.
- We or a Supplier may register an interest in the Service Equipment under the PPSA.

Changes to Service Equipment

(g) We may, acting reasonably, replace Service Equipment with Service Equipment of similar or additional functionality.

(h) If we agree to a Service with a Fixed Term, then replacement of Service Equipment is subject to our obligations under **clauses 18.1 (We may need to change the terms of our Agreement with you)** and **18.2 (Your rights if we change the Agreement)**.

9.2 After the expiry or termination of Services

(a) If supply of a relevant Services ends, you must let us (and if applicable ensure the landlord lets us) remove Service Equipment from where it is installed.

(b) If we cannot recover the Service Equipment, we may recover the value of it as a debt due by you. This includes offsetting the value of the Service Equipment against any monies owed to us by you.

9.3 We may need access to maintain and install Service Equipment

(a) We (or our Supplier) may need access to your premises from time to time in connection with:

- the provision and maintenance of the Service Equipment or a Service, and
- the installation of any Facility, Equipment or cabling on your premises required for a Service.

> This right of access continues until Service Equipment is returned to us, even if the Services are cancelled.

(b) You agree to allow us reasonable access to the Service Equipment during business hours (or such other times agreed with you) and on reasonable notice.

- If you do not allow this access, we may need to restrict, suspend, or cancel your Service.

(c) If you do not own the relevant premises we need access to, then:

- you must ensure you have the owner's permission, and
- you warrant to us that you do have that permission.

(d) If we (or a Supplier) access your premises, then:

- you agree to ensure we have safe access, and
- you indemnify us (or the Supplier) against any claim by the owner or occupier of the premises in relation to entry to the premises.

9.4 Maintaining Equipment

We will maintain Service Equipment

(a) We may suspend Services for a reasonable period to maintain Service Equipment.

(b) If we do suspend Services to perform maintenance, we'll aim to:

- give you reasonable notice in the circumstances of potential Service interruptions, and

> The length of notice may change, depending on the urgency and nature of the work required for maintenance.

- minimise any interruption to the Services.

> For example, by performing maintenance in off peak times.

You must maintain Customer Equipment

(c) If we use your Facilities or Customer Equipment to provide Services to you, then you're responsible for maintaining them unless we otherwise agree in writing.

9.5 General Equipment details

Insurance

(a) If we request, you must insure Service Equipment for amounts and on terms we reasonably require.

Electricity

(b) If your Service or Equipment depends on electricity, it may not operate fully if your supply of electricity is disrupted or discontinued.

Approve service personnel

(c) You will ensure that Equipment, Facilities or connections used in providing Services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by us.

9.6 Returning Service Equipment

(a) If our supply of Services to you ends, then you must promptly return all Service Equipment to us, or make it available for us to collect.

(b) If you do not return the Service Equipment or make it available for collection within a reasonable period, then we'll issue you a Bill for the reasonable market price for the relevant Service Equipment (including the cost of acquiring or renewing any necessary software licences).

9.7 Purchased Equipment

This section applies if we sell you a Facility or any item of **Purchased Equipment** for use with Services, we provide you or otherwise.

Title in Purchased Equipment passes on full payment

(a) Purchased Equipment remains our property until you pay us in full. You agree you will not part with possession of the Purchased Equipment except to us until you've paid us in full.

- If you do part with Purchased Equipment before full payment, we may:
  - recover the value of the Purchased Equipment as a debt due, and
  - offset the value of the Purchased Equipment against any money we may owe to you.
- Until we receive full payment for the Purchased Equipment, you must not remove or obscure any identification marks on it and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Purchased Equipment.

Risk in Purchased Equipment passes on delivery

(b) Risk of loss or damage to the Purchased Equipment will pass to you upon delivery.

You are fully responsible for any loss or damage to Purchased Equipment from delivery to you.

9.8 Installing Purchased Equipment

(a) Subject to Agreement between us and you as to which Services and Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you.

(b) We may charge you our current fees for installing the Purchased Equipment and Service.

(c) We use reasonable endeavours to install the Purchased Equipment and Service on or around the installation date requested by you.

9.9 Equipment returns and refunds

> Nothing in this section restricts your rights in respect of Consumer Guarantees.

Change of mind

(a) We do not provide refunds for 'change of mind' for Purchased Equipment.

Change of model

(b) If you'd like a different model, we allow 7 Business Days from the date you receive the Purchased Equipment to return it to us at your own cost.

- We inspect the Purchased Equipment and confirm it is in appropriate condition.
- We credit your account with the purchase price.
- We charge you a restock fee that is 15% of the original purchase price.
- We charge you for purchase price of the different model.

(c) If you return the Purchased Equipment late outside the 7 Business Day period, then unfortunately we do not offer you credit.

10. NUMBERS AND PUBLIC IDENTIFIERS

> The *Telecommunications Numbering Plan 2015* (Cth) sets out rules for issuing, transferring and changing phone numbers.
>
> You and we must both comply with the Telecommunications Number Plan.

(a) You're entitled to use phone numbers we issue to you, except where the Telecommunications Number Plan allows us to recover the number from you.

> In addition to phone numbers, your Service may use other Public Addressing Identifiers, such as an IP address.

(b) You must comply with the requirements of any regulatory authority or other body which administers Public Addressing Identifiers.

(c) You agree that:

- we don't control the allocation of Public Addressing Identifiers,
- we're not liable to you if we're required to change, withdraw, suspend or re-assign any Public Addressing Identifier as a result of a direction given by a Regulatory Authority or body which administers Public Addressing Identifiers, and
- on cancellation of the Service, your right to use a Public Addressing Identifier may end.

11. PRIVACY AND PERSONAL INFORMATION

11.1 Our Privacy Policy

(a) Our Privacy Policy outlines how we collect, use, share, store, and manage your Personal Information.

(b) You agree to our Privacy Policy when you visit our website or buy a product or Services from us.

11.2 Consent to collection and use

(a) You agree we may collect, use, and disclose your Personal Information in line with our Privacy Policy, which we update from time to time.

(b) You're responsible for ensuring anyone who uses your Service and discloses information is aware that we may collect, use, and disclose information about them in line with our Privacy Policy.

> Please visit our website, https://www.smileit.com.au/privacy-policy/, or ask us for a copy.

(c) If you:

- don't agree to our Privacy Policy,
- choose not to share the information we need (including date of birth), or
- give us false information,

(d) then we may restrict the Service or credit available to you, or we might not be able to provide you Services or credit at all.

11.3 Use of Personal Information

(a) In particular, you acknowledge and agree that we will use your Personal Information:

- to identify you and assess your Application,
- to supply the Services and Equipment to you,
- to investigate or resolve disputes relating to any Services and Equipment we provide you,
- for the purposes of preventing fraud and other illegal activity,
- to issue Bills and collect Fees and other amounts you owe under this Agreement, and
- for all other purposes reasonably relating to providing the Services to you.

We may market various products and services to you unless you opt out

(b) Unless you opt out of us using your Personal Information for direct marketing purposes, then we will use, and share your Personal Information with our related bodies corporate, agents, affiliates, franchisees, resellers, Suppliers and any other third parties we have engaged in a joint initiative, for the purpose of informing you of other products and Services we offer and by these other entities.

- If you give us permission to use your Personal Information for direct marketing purposes, you consent to us sending direct marketing information to you:
  - by post to your address (as listed in our records),
  - by email to your email address (as listed in our records),
  - on or with the Bills we issue to you for Services, and
  - by calling you (including by leaving a recorded message) on the phone number applicable to your Service or other contact number that you have specified on your Application.

(c) If you do not wish to receive direct marketing in accordance with this **Clause 11.3 (b)**, please call 1300 175 636.

11.4 We may share your information

You agree that we may share your Personal Information with:

(a) **Other Suppliers** for the purpose of enabling us to provide the Services and Equipment to you (including for the purpose of provisioning Services or Equipment and providing particulars of calls and call charges to those suppliers for interconnection and invoicing purposes),

(b) **Our service providers** in connection with the Services and Equipment we supply you (including our resellers, outsourced installation and repair contractors, Billing companies and debt-recovery),

(c) **Credit reporting agencies** for the purposes of credit checking, as detailed in **clause 11.6 (Consent to credit check)** (see also our Privacy Policy),

(d) **Loyalty program providers**, if you choose to take part in our loyalty program,

(e) **Transferees**, if we assign or transfer under **clause 19.2 (Our right to assign or transfer)**,

(f) **Government agencies**, and other law enforcement authorities and persons as required by law, including disclosures to the manager of the Integrated Public Number Database (as noted in **clause 11.5 (We add your details to the IPND)**, and

(g) to any other person, where you have given us consent to do so.

11.5 We add your details to the IPND

(a) We're required by law to give your name, address, phone number and other public number customer details to the manager of the Integrated Public Number Database (**IPND**) for the Approved Purposes.

(b) Unless you specify otherwise in your Application:

- We list your phone number for a fixed or landline Service as a **'listed number'**, and
- We list your phone number for a mobile Service will be recorded as an **'unlisted number'**.

> **Unlisted Service information** is marked and controlled by the manager of the IPND to ensure that it is only used for the relevant Approved Purposes. Unlisted numbers or suppressed address listings recorded in the IPND are not available to the general public via public number directories or directory assistance Services.

(c) You must notify us of any change to your IPND data and you may request changes to the listing status of your Service by contacting us on 1300 175 636.

11.6 Credit check information we disclose

(a) We may disclose your Personal Information (whether collected by us from you or obtained from a third party) to a Credit Reporting Agency for the purposes of providing the Services to you.

(b) Personal Information we may disclose to a Credit Reporting Agency includes:

- Identity particulars such as your name, gender, address (and previous two addresses), date of birth, name of employer and drivers licence number,
- The fact that we are a current credit provider to you,
- Your application for commercial credit (including the amount requested),
- Advise that accounts are no longer overdue in respect of a listed default.
- That in our reasonable opinion you've committed a serious credit infringement, including:
  - Engaging in fraudulent conduct or displaying an intention to breach credit obligations,

- Undisputed account is overdue by more than 60 days, where we have started debt collection action against you,
- Cheques drawn by you or debits from your bank account or credit card have been dishonoured more than once, and

(c) We may disclose this information before, during or after we provide credit to you.

11.7 Use of credit report

(a) You agree we may obtain a credit report containing your Personal Information from a Credit Reporting Agency for the purpose of either assisting us to assess your creditworthiness or in collecting payments that are overdue.

(b) You agree we may disclose a credit report or other report and any Personal Information derived from that report to any other credit provider for the following purposes:

- the assessment by us or the other credit provider of your creditworthiness,
- the collection by us or the other credit provider of payments that are overdue, or
- the exchange of information between us and the other credit provider for the purposes of assessment or collection.

(c) The information we may exchange will relate to your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

(d) You agree that a trade insurer may obtain a credit report about you for the purpose of assessing whether to provide trade insurance to us in relation to your application for commercial credit.

11.8 Access to information

Where we hold any Personal Information about you, you may request access to that information. We will provide you with access to most Personal Information that we have about you (once we have verified your request is in good faith). In some cases that will not be possible, in which case, we will tell you why.

11.9 Compliance

To the extent that you provide us with Personal Information that you have collected or accessed for the purposes of receiving the Services, you must:

(a) comply with the Privacy Act,

(b) comply with any reasonable direction that we may give regarding how to comply with any such legislation,

(c) obtain the informed consent of any individual whose Personal Information you intend to provide to us that allows us to collect, use, disclose and store that information for the purposes of providing you with the Services or as otherwise contemplated by our Agreement,

(d) notify us of any changes to that Personal Information of which you become aware,

(e) notify us of any complaint made by an individual in respect of their Personal Information, and

(f) cooperate with us in the resolution of any complaint alleging a breach of the Privacy Act, a privacy policy or an approved privacy code.

11.10 Records

You must keep sufficient records in respect of Personal Information that you collect, store, use and disclose pursuant to our Agreement to enable us to determine whether you are complying with your privacy obligations under our Agreement, and must provide us with access to such records at our request.

11.11 Accurate and complete information

(a) You warrant that any Personal Information that you provide to us is complete and accurate.

(b) You agree to pay us for any costs we incur that relates to your failure to comply with **clauses 11.9 (Compliance)** and **11.10 (Records).**

12. CONFIDENTIALITY

12.1 Confidential information

Both of us retain all rights (including intellectual property) in any information we give to each other relating to the Equipment, the Services or to supplying the Services which by its nature or the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential.

12.2 Protecting confidentiality

Neither of us will disclose confidential information to any third party and will not allow any written or electronically recorded confidential information to be copied or disclosed to a third party without consent (unless either of us are required to do so by Law or the information has entered the public domain other than through a breach of confidence). Both of us may also disclose confidential Information to our professional advisers on condition that they also agree to keep the information confidential.

12.3 Obligations on termination

On termination of the Services for any reason, each of us will return the confidential information and all copies of it to the other party. If a party has destroyed all copies, or any of them, they will give a written declaration to that effect upon request following termination of the Services.

12.4 Restrictions on use

Neither of us will use information you gain from the other party for any purpose or in any manner that may cause loss to the other party, whether by way of damage to reputation, financial loss or otherwise.

PAYMENTS

13. PAYING FOR YOUR SERVICES

13.1 Fees

You're responsible for your Service

(a) You're responsible for paying all Fees that arise from using the Service, whether it is your use or anyone else with or without your consent.

(b) If your Service is used to access the Facilities or Services of another service provider, then amounts charged by that other service provider are your responsibility (unless our Agreement with you specifies otherwise).

- You will need to pay us those charges and if we are charged, we'll Bill you for them.

How fees are calculated

(c) We calculate fees by reference to data that we record and log about your use.

(d) Our records are generally conclusive evidence of your Service use and the Fees you must pay.

> Contact us promptly if you think there's an issue with your Bill.

(e) Unless specified in the relevant Critical Information Summary, any inclusions which you do not access or use fully are not transferable or refundable.

13.2 GST

(a) Unless clearly stated otherwise, all amounts payable by you under or in connection with our Agreement include GST.

(b) We may Bill you for the Service, plus any applicable GST.

- If GST is payable on a taxable supply we make to you, then we'll specify the amount of the GST in our Agreement with you (for example in a Critical Information Summary or an Application Form) and also make this clear on your Bill.

14. BILLING

(a) Generally, we send you a Bill for your Service on the date your connection becomes active and then each month after that.

(b) If you have a direct debit arrangement in place for a Service, we debit your credit card or bank account on the due date.

- Monthly fees (if applicable) are Billed in advance.

  > For example, your monthly Fee for an internet plan.

- Usage or excess usage charges are Billed in arrears.

  > For example, charges for international calls made during the billing period.

- If they apply, connection fees and costs for additional hardware will (if possible) be charged on your first Bill.

  > For example, the cost of a new modem and the cost of shipping it to you.

(c) We may change the frequency of your Bill and if we do, we'll give you reasonable notice (at least one Billing cycle).

(d) We may need to reissue a Bill if you or we subsequently discover errors in a Bill.

14.2 Out of cycle Bills

(a) We may issue an interim Bill in the following circumstances:

- you change your existing plan,
- you request a new Service to be connected,
- you relocate an existing Service,
- you request to be Billed for any 'unBilled' charges,
- we have reasonable grounds to believe that you may be a credit risk, or
- as otherwise agreed with you.

(b) We will refund or credit any overpayment due to a variation in the fees or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.

14.3 Methods of payment

(a) When you pay for your Services, you'll need to pay by direct debit from either a credit card standing authorisation or bank account.

> This means we need a record of your credit card or bank account whilst you're enjoying our Services.

(b) If we incur fees from your bank or have to pay fees to your bank, we reserve the right to recover these amounts from you.

> For example, if there is any payment discrepancy or disagreement about bank charges, contact us first before your bank and we will try to resolve the issue. If you contact your bank first and we then incur a bank fee as a result, we reserve the right to pass this fee on to you.

(c) If your preferred payment method is declined, we reserve the right to attempt to take the required payment for up to 10 business days after the initial due date.

14.4 Time for payment

(a) You agree to pay all undisputed Bills on time, by the Due Date.

Payment plans and financial hardship

(b) If you need a payment plan or are experiencing financial hardship, then please contact our customer Service team to discuss options.

14.5 Late payments and actions we may take

Unless you send us a written notice about a legitimate dispute of your Bill or contact customer Service to arrange a payment plan, then we may take the following actions for unpaid Bills:

UNPAID BILL	ACTIONS WE MAY TAKE
(a) **On and from the Due Date**	• Send one or more reminder notices requesting payment. • For direct debit customers, we can attempt to take the required payment for up to 10 Business Days after the initial Due Date. • We reserve the right to charge Interest on any unpaid amount from the Due Date until the date of payment in full. • We may charge administrative fees incurred in reminding you to pay your Bill and recover unpaid Fees.
(b) **5 Business Days from the Due Date**	• In addition to the above actions, we may impose Service Restrictions.
(c) **21 days from the Due Date**	• In addition to the above actions, we may suspend or physically disconnect the Service.

15. OTHER FEES YOU MAY NEED TO PAY

Dishonoured direct debit transaction or credit card authorisation

(a) If we agree a direct debit arrangement with you for your Service Fees and:

- your payment is declined by your payment provider, and
- your payment provider charges us a fee as a result, then

we may recover from you costs we incur as a result of a declined or dishonoured transaction.

Debt recovery

(b) If we, acting reasonably, use debt recovery services to recover outstanding amounts from you, then we may recover those collection costs, such as legal costs.

Early Termination Fees

(c) If you've agreed to a Fixed Term Service in your Application and you cancel the Service before the end of the Fixed Term, you'll need to pay an Early Termination Fee.

- The relevant Early Termination Fee is set out in the relevant Critical Information Summary.

See **clause 23 (Your rights to cancel or end a Service)** for more details on cancelling your Service.

Connection Fee

(d) We may charge you a Fee to re-connect your Service. This Fee won't apply if disconnection was caused by:

- our error or failure to perform our obligations under the Agreement or
- the result of any of the events specified in **clause 24.3 (External factors cause us to restrict, suspend or cancel).**

Other Service specific Fees

(e) There may be other Fees set out in your Application or Critical Information Summary or otherwise agreed with you that you will need to pay.

15.2 Refunds and credits

(a) We process installation and set-up fees on the start date for your Service.

- Installation and setup fees are generally non-refundable unless we cannot provision the Service you requested.

(b) If your account for the Service is terminated and you owe us money, then you agree that:

- We may deduct any outstanding fees on final settlement of your account and
- State on your final Bill either (as applicable):
  - the amount credited to you, or
  - the amount you must pay to us.

> For example, for the unexpired portion of any fee paid in advance by you.

(c) You may choose to claim a refund for an amount credited on your final Bill or apply the credited amount to another Service we may supply to you by notifying us within 90 days of your receipt of the final Bill.

15.3 Prepayment

(a) If, when you apply for a Service, we reasonably believe you may be a credit risk, we may require that you prepay for your Service in advance, based on our reasonable estimate of your use of the Service for a Bill period.

- We may decline your Application or restrict, suspend, or cancel the Service if you do not provide the prepayment when we reasonably request.
- If the Services are cancelled or disconnected, we return to you any portion of a prepayment that is not required to meet any outstanding Fees.

(b) If you are bankrupt when you apply for Services (or become bankrupt), you must let us know.

15.4 Disputed Bills

(a) If you genuinely dispute a Bill or claim a refund for overpayment of any Fees under our Agreement you should do so within 5 months of the date of the Bill to which the disputed amount or alleged overpayment relates.

(b) Nothing in this clause limits your right to issue proceedings in relation to a disputed Bill or alleged overpayment.

15.5 Restriction, suspension, or cancellation for non-payment

Restriction or suspension for non-payment

(a) If we **restrict** or **suspend** the Service for non-payment, then:

- the regular monthly Service charges will continue to accrue, and
- you are responsible for all Fees and charges incurred before the date of restriction, and
- you are responsible for all ongoing Fees and charges until the Service is either paid up to date, cancelled or disconnected.

Cancellation or disconnection for non-payment

(b) If we **cancel** or **disconnect** a Service for non-payment, then you are still responsible for paying all Fees and other charges incurred before the date of cancellation or disconnection.

15.6 You may not set off Fees

(a) Unless we agree in writing, you must pay the Fees without any set off, counterclaim or deduction.

CHANGES

HOW WE CAN BOTH MAKE CHANGES UNDER THIS AGREEMENT AND WHAT HAPPENS

16. TRANSFERRING YOUR SERVICE TO ANOTHER SERVICE PROVIDER

16.1 Transferring Services

You are responsible for Fees until transfer completes

(a) If you ask us to transfer any Services to another supplier, we will action your request.

(b) You are responsible for paying us all Fees for the Services up to the date on which we transfer those Services to another service provider.

> Early Termination Fees may apply if you transfer your Service during Fixed Term.

Services terminate on transfer

(c) We stop supplying the Services on the date we transfer your Services to another service provider.

16.2 Billing after transfer

(a) We aim to include all fees incurred in relation to Services that you transfer within the next normal Billing period.

(b) After the next Billing period, if we:

- discover other Fees (including fees payable to another service provider) for the Services up to the date of transfer, or
- resolve any disputes with you, so that any liability relating to those Services is quantified and payable by you,

then you will pay us all such amounts within 7 days of us sending you a Bill.

16.3 Responsibility for charges from transferring

(a) We are not responsible for any amounts owing by you to another service provider or other person.

(b) You must pay for costs claimed by a service provider or other person against us in relation to any such amounts.

17. AUTHORITY TO ACT ON YOUR ACCOUNT

(a) For business Services, you agree that if we need your consent to take an action then, as long as we act in good faith, we may get consent from your employees who tell us they are authorised.

(b) Subject to our rights and obligations in **clause 11 (Privacy and Personal Information),** we will not let another person access your account unless we have received your authority to so.

18. CHANGING OUR AGREEMENT

18.1 We may need to change the terms of our Agreement with you

Services and features may change

(a) Over time, we may need to change the features and functions of a Service and we may need to change a Service itself.

> This means, we aren't able to provide you with ongoing supply of a Service on the same terms that existed when we first started delivering a Service to you.

Changes due to circumstances outside our control

(b) We may need to change a Service, or certain features, as well as the terms of our Agreement with you due to circumstances beyond our control, including:

- changes in law,
- urgent changes for security reasons,
- changes by a Supplier in relation to:
  - the terms on which they supply Services to us, or
  - the functionality or nature of a Service or its underlying technology.

Changes due to business decisions

(c) We may also need to change the terms of our Agreement with you for our own legitimate business purposes, including:

- changes we make to keep pace with technology updates,
- changes in our supply chain requirements,
- changes in the technical Services we have available to support a Service or feature,
- changes in our business strategy,

and many other business reasons for changing Services and features.

18.2 Your rights if we change the Agreement

You can cancel your Service within 42 days in some circumstances

(a) If we give notice of changes that will cause more than a minor detriment to you, then you may cancel the affected Service by giving us notice in writing.

(b) You must give this notice within 42 days from the date we notified you of the change.

> For example, by notifying us using the method listed in the notice we send you about the change.

(c) You will still need to pay all outstanding amounts for installation costs, Services we've delivered, and Equipment we've provided (and return that Equipment, if relevant).

- Other than any outstanding amounts, we will not charge an Early Termination Fee.

After the 42 day notice period

(d) If you don't cancel within the 42 day notice period, then:

- We consider that you accept our proposed changes from the date we stated the changes take effect, and
- our Agreement is amended by those changes and will govern the relationship between you and us from that date.

18.3 When changes take effect

When we need to or decide to make a change, the changes will take effect for your Service in accordance with notice periods set out in the **below** table.

TYPE OF CHANGE	DESCRIPTION	NOTICE REQUIRED	EXAMPLES	EXIT RIGHTS (CLAUSE 14.2)
(a) **Detrimental change**	If we believe a change may be more than a minor detriment to a customer.	At least 21 days.	We remove a feature or function to a Service that you use regularly.	**Yes**
(b) **Beneficial or neutral change**	Changes that we reasonably believe will be beneficial to you or have a neutral impact on your enjoyment of the Service.	We can make these changes straight away without giving you notice.	Increasing data limits on your plan without increasing Fees Removing a minor feature you don't use.	Exit rights don't apply
(c) **Urgent Change**	Changes required by law, for security reasons, or technical reasons to protect network integrity.	We aim to give you as much notice as we reasonably can in the circumstances.	Changes to maintain compliance with new laws. Addressing a security vulnerability.	Exit rights don't apply
(d) **Administrative Fee change**	A new fee or increase in existing admin fees for ancillary Services. *We must first offer a reasonable alternative at the same or lesser cost to the original fee.*	We aim to give you reasonable notice in the circumstances.	Introduction of new credit card transaction fees. Increase in existing fees.	Exit rights don't apply
(e) **Additional tax or levy**	A new fee or increase in an existing fee due to additional tax or levy imposed by law *(where it is fair and reasonable for us to pass that on to you).*	We aim to give you reasonable notice in the circumstances.	An increase in the GST or a new tax that applies to a specific type of service.	Exit rights don't apply

TYPE OF CHANGE	DESCRIPTION	NOTICE REQUIRED	EXAMPLES	EXIT RIGHTS (CLAUSE 14.2)
(f) **Supplier Fee change**	Fee increases due to increases imposed on us by Suppliers for: – **international carriage services** including for voice and data, and – **content and premium services** including services we resell from 3rd parties.	We aim to give you reasonable notice in the circumstances.	Fee increase for international mobile phone calls. Fees for accessing a premium messaging service.	Exit rights don't apply

19. ASSIGNMENT

19.1 You can transfer your rights in some circumstances

(a) You may assign your rights under this Agreement (where those rights are assignable) so long as you have our prior written consent, which we won't unreasonably withhold.

(b) We'll generally consent to your transfer of obligations if the person to whom you intend to transfer:

- gives us satisfactory proof of identification,
- meets our eligibility criteria for the Service,
- has a reasonably appropriate credit rating, and
- the Service is available at the location where they wish to acquire the Service.

19.2 Our right to assign or transfer

(a) You agree that we may assign our rights under, and novate benefits and obligations of, this Agreement at any time:

- to a related body corporate (being a company in our corporate group),
- a Supplier, or
- a purchaser of all or part of our business, (each a **Transferee**) and that the Transferee will assume our liabilities and obligations under this Agreement.

We, or the Transferee, will notify you of transfer

(b) With effect from the date we (or the Transferee) notify you of a formal transfer, this Agreement is cancelled, and a new Agreement is created on the same terms as this Agreement except that:

- the Transferee replaces us under this Agreement as if the Transferee was an original party to this Agreement instead of us, and
- the Transferee has no obligations or liability under this Agreement before the date of the transfer notice.

Our other rights to transfer

(c) We may also assign, transfer or deal with our rights and obligations under this Agreement if you consent (such consent must not be unreasonably withheld).

Our right to use subcontractors

(d) We may subcontract any of our obligations under this Agreement.

MANAGING ISSUES

HOW YOU AND WE HANDLE ISSUES THAT MAY ARISE

20. DISPUTES

(a) We will seek to resolve any dispute by Agreement or consultation with you and request that you contact us on 1300 175 636 in the first instance.

(b) If a dispute remains unresolved, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme.

> For further information go to www.tio.com.au or call the TIO on 1800 062 058 or (TTY) 1800 675 692.

21. LIABILITY

21.1 Our liability for property damage, personal injury and death

We are liable to you for:

(a) loss, destruction or damage to your tangible property during installation, repair, or maintenance of Equipment performed by us, and

(b) personal injury (including illness and disability) or death, which is caused by our fault, negligence or fraud.

21.2 Our liability for interruptions to the Service

Refunds for long interruptions

(a) Subject to **clause 21.2(b) (When refunds do not apply)**:

- We accept liability for interruptions to a Service longer than 48 hours from the time of reporting to the extent of giving you a pro-rata refund of Service Fees payable during the interruption. (To be clear, to the extent permitted by law, we are not liable in connection with interruptions to a Service that are 48 hours or less.)
- To access this refund, contact us on 1300 175 636 and request a compensation assessment.

When refunds do not apply

(b) We do not provide pro-rata refunds in the following circumstances for Interruptions:

- Which occur because of:
  - Force Majeure Event,
  - a fault in your Customer Equipment, power supply, or premises,
  - a system or network outage for an insignificant period,
  - scheduled maintenance to our network, a Supplier's network, or Equipment,

- we've restricted, suspended, or cancelled a Service due to your actions in accordance with **clause 24.2 (Your actions cause us to restrict, suspend or cancel)** or

- If you're entitled to receive compensation for the same Interruption in accordance with either:
  - **clause 21.3 (Customer Service Guarantee (CSG)** or
  - **clause 21.4 (Consumer Law guarantees),** or
- If we have been unable to gain prompt access to your premises.

21.3 Customer Service Guarantee

For some of our Services, it is a condition that you waive your entitlements under the **Customer Service Guarantee Standard** (the **CSG**). If you have waived your CSG entitlements, then this clause may not apply and will be subject to the waiver you gave us.

What is the Customer Service Guarantee (CSG)?

(a) The CSG sets out minimum performance standards for Standard Phone Services in relation to connection times, fault repairs, and keeping appointments.

(b) When we provide our customers a Standard Phone Service and specified enhanced call handling features, that Service must comply with the CSG.

(c) If we don't meet CSG standards, you may be entitled to the monetary compensation in the CSG.

Does the CSG always apply?

(d) There are circumstances where we may be exempt from meeting the CSG standards, including:

- if you agreed to a CSG waiver in your Application or the relevant Critical Information Summary,
- where you unreasonably refuse us access to your premises, or
- if you miss an appointment without giving us reasonable notice.

(e) The CSG does not apply to:

- customer Equipment or
- customers that have more than five standard phone Services.

For more information about the CSG, go to the ACMA website at www.acma.gov.au.

(f) We connect Services not covered by the CSG within a reasonable time.

21.4 Consumer Law guarantees

(a) We agree to provide Services to you subject only to the terms, conditions and warranties contained in the Agreement and those imposed by law which cannot be excluded.

For example, if we supply Equipment or a Service to you which costs less than a prescribed amount (currently $100,000) or which, regardless of cost is of a kind ordinarily acquired for personal, domestic or household use, then consumer guarantees require that the Service will be provided with due care and skill and that the Equipment will be of acceptable quality.

(b) Certain remedies are available to you under the Consumer Law if the Service or Equipment we supply to you fails to meet the standard required by applicable consumer guarantees.

21.5 Limitation of liability for breach of a Consumer Guarantee

(a) Where we cannot exclude our liability for our breach of a consumer guarantee but are permitted to limit our liability for such a breach, unless you are able to establish that it is not fair and reasonable for us to do so, our liability to you is limited to:

- **if the breach relates to goods**, the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of repairing or replacing the goods or supplying equivalent goods, or
- **if the breach relates to a service**, resupplying the service or payment of the cost of having the service resupplied.

(b) The limitations of liability in **clause 21.5(a)** above do not apply to:

- a breach of the consumer guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth), or
- a breach of any consumer guarantee relating to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

21.6 Exclusion of liability

(a) To the extent permitted by law, you, we and our Suppliers have no liability to each other for any Consequential Loss (other than loss resulting from our breach of a consumer guarantee).

(b) To the extent permitted by law, we and our Suppliers have no liability to you or any other person for:

- loss suffered by you in connection with the Agreement or the Service to the extent that your acts or omissions or any Customer Equipment cause or contribute to that loss,
- loss to the extent that it results from your failure to take reasonable steps to avoid or minimise your loss, and
- acts, omissions or defaults of any third party or any person who provides goods or services directly to you for use in connection with a Service.

21.7 Liability and indemnity provisions survive

Cancellation of a Service or termination or expiry of the Agreement does not affect the provisions of the Agreement concerning limitation of liability and indemnity.

22. FORCE MAJEURE

22.1 No liability for Force Majeure Events

Neither of us are liable to the other for a delay or failure to perform obligations in this Agreement caused by Force Majeure Events, other than:

(a) the obligation to pay money under this Agreement,

(b) our obligations under the **CSG,** and

(c) any non-excludable rights you have under Consumer Law.

Subject to our obligations under the **CSG** and any non-excludable rights you have under Consumer Law, we are not liable for any of the following circumstances caused directly or indirectly by a Force Majeure Event:

- any delay in installing a Service,
- any delay in correcting any fault in a Service,
- failure to provide a Service or incorrect operation of any Service,
- Service outages, or
- any default by us in compliance with this Agreement.

22.2 Ending this Agreement for continuing Force Majeure Event

If a delay, interruption or failure to deliver under this Agreement that is caused directly or indirectly by a Force Majeure Event continues for more than 30 days, then either party may terminate the affected Service by notice in writing to the other party.

SUSPENDING & ENDING

WHAT HAPPENS IF YOU OR WE END OUR AGREEMENT

23. YOUR RIGHTS TO CANCEL OR END A SERVICE

23.1 You can cancel your Service

(a) You may cancel a Service with at least 30 days' notice.

Fees may apply for cancellation during a Fixed Term

(b) If you cancel a Service with a Fixed Term, then you may need to pay an Early Termination Fee.

See **clause 15(c) (Early Termination Fees)** for more details.

See also your **Application form** and **Critical Information Summary** for the specific terms for your Service.

23.2 Your rights to end the Agreement for cause

You may cancel a Service by giving us notice in the following circumstances:

(a) If we change the Agreement and you are entitled to cancel the Service under **clause 18.2 (Your rights if we change the Agreement)**,

(b) If there's a continuing Force Majeure Event and you're entitled to cancel the Service **under clause 22.2 (Ending this Agreement for continuing Force Majeure Event)**,

(c) If we are in material breach of our Agreement with you, and

- that breach can be remedied, and
- we fail to remedy that breach within 30 days after you tell us of that breach, or

(d) If we are in material breach of our Agreement with you and it is a breach which *cannot* be remedied, including where there have been prolonged or repeated Interruptions to the Service.

23.3 Fees after ending the ending the Agreement for cause

If you cancel a Service for a reason in **clause 23.2 (Your rights to end the Agreement for cause)**, then:

(a) You don't pay an Early Termination Fee (if you are on a Fixed Term), and

(b) You're entitled to a refund of unused portions for any amounts you paid in advance for the Service in accordance with **clause 15.2 (Refunds and credits)**, however

(c) You will still need to pay any outstanding Fees for Services provided, installation, Equipment, etc.

23.4 When rights to cancel a Service do not apply

Service interruptions are not considered 'material' breaches (and the rights to cancel in **clause 23.2 (Your rights to end the Agreement for cause)** do not apply) in the following circumstances:

(a) A system or network outage for an insignificant period,

(b) Scheduled maintenance of our network or Service Equipment in accordance with **clause 9.4 (Maintaining Equipment)**

(c) A fault or other event which may reasonably be attributed directly or indirectly to your Equipment, or your acts or omissions,

(d) If we cancel, suspend, or restrict to the supply of the Service in any of the circumstances listed in **clause 24 (Our rights to restrict, suspend, and cancel a Service)**

23.5 Change of mind before provisioning - *Service Cancellation Fee*

If you sign up for a Service and then seek to cancel that Service before we complete provisioning, we may ask you to pay us for costs we incur in preparing to provide you the Service.

> For example, any cancellation fees imposed by a Supplier will be passed directly on to you and must be paid by you.

24. OUR RIGHTS TO RESTRICT, SUSPEND, AND CANCEL A SERVICE

24.1 How we apply our rights to restrict, suspend, and cancel Services

If we exercise our rights to restrict, suspend, or cancel Services under this clause and our Agreement with you more generally, then we must:

(a) Act reasonably in exercising the rights, and

(b) Only act to the extent reasonably necessary to protect our legitimate business interests.

> For example, in the first instance, we aim to give you reasonable notice in the circumstances of potential issues. We also take an escalated approach where possible, moving from restrictions to suspension of Services and we would only cancel a Service if required by law or to protect our legitimate business interests.

24.2 Your actions cause us to restrict, suspend or cancel

We may need to restrict, suspend or cancel a Service in the following circumstances:

Service use issues

(a) If you leave the premises where we supply a Service to you without our prior agreement.

(b) If we can't enter premises to inspect, repair, or maintain Equipment or cabling connected with a Service.

(c) If you fail to comply with an Acceptable Use Policy after we give you reasonable notice to comply.

(d) If you fail to fix a defect or shortcoming in Customer Equipment or your cabling within 30 days of a request from us.

(e) If you do (or allow) anything which in our reasonable opinion may jeopardise the standard, intended operation of a Service.

(f) If your use of a Service interferes with our network or a Supplier's network and you fail to rectify the situation within 24 hours from our request.

(g) If you become a *Carrier* or *Carriage Service Provider* within the meaning of the Telco Act.

Immediate cancellation for poor behaviour

(h) If we reasonably believe you've engaged in fraud or illegal conduct in your Application.

(i) If you abuse or harass our staff or our contractors in the conduct of their duties.

(j) If you threaten to harm, attempt to harm or cause actual harm to SmileTel staff, our contractors or property.

Payment issues

(k) If you experience an Insolvency Event and we reasonably believe we are unlikely to receive payments from you for Services when they become payable.

(l) If you fail to pay fees on time and we're entitled to restrict, suspend, or cancel the Service under **clause 14.5 (Late payments and actions we may take).**

(m) If you do not provide prepayment for Services when we request under **clause 15.3 (Prepayment)**

(n) If we reasonably believe you are a credit risk.

> The following are examples of reasonable grounds for believing you may be a **credit risk**:
>
> - *Your Service use is unusually high compared to previous use and you fail to respond to notices from us about that use.*
> - *You have a payment history indicating late payments, dishonoured payments or failures to pay, or you fail to pay or replenish a security deposit.*
> - *We become aware you may be experiencing an Insolvency Event and we have taken reasonable steps to notify you of the restriction, suspension, or cancellation of the Service.*

(o) You are in material breach of any of the terms of our Agreement with you.

24.3 External factors cause us to restrict, suspend or cancel

We may also need to restrict, suspend or cancel a Service in the following circumstances:

Emergencies

(a) If there is an emergency.

(b) If we reasonably believe there is a risk to the security or integrity of a relevant network or that supplying the Service may cause death, personal injury or damage to property.

Legal requirements

(c) If we are required to do so by law.

(d) If our supply of the Services contravenes any law (or we reasonably believe it may contravene a law in the near future),

(e) To the extent necessary for us to comply with an order, instruction or request of a government agency, an emergency Services organisation or any other competent authority (whether such an order, instruction or request is received or reasonably anticipated by us).

Network and Service integrity

(f) If a relevant network is being modernised or upgraded.

(g) If we reasonably believe it is necessary to repair, maintain or restore a network.

(h) During a technical failure, modification or maintenance related to the Service.

> We will use reasonable endeavours to minimise the disruption and resume standard Services as soon as practicable,

Supply capability

(i) If a third party (including a Supplier) withdraws or suspends an underlying service which means we cannot provide your Service.

(j) If a Force Majeure event prevents us from supplying the Service to you in accordance with the Agreement for 30 days or more.

Actions by you

(k) If you notify us in accordance with under **clause 18.2 (Your rights if we change the Agreement).**

(l) If your Service has not been used or accessed for a continuous period of 24 months.

24.4 Ending the Service or our Agreement for convenience

We also reserve the right to cancel a Service for convenience in the following circumstances:

(a) If there is no Fixed Term specified in your Application, at any time by giving you reasonable notice of at least 30 days' notice.

(b) If there is a Fixed Term is specified in your Application:

- at any time after the end of the Fixed Term by giving you at least 30 days' notice, or
- during the Fixed Term, if we have your consent, or
- during the Fixed Term, if:
  - we offer to migrate you to a reasonably comparable alternative Service for the remainder of the Fixed Term, and
  - we take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled Service and the alternative Service we offer, and

(c) If we reasonably determine that it is not technically, commercially or operationally feasible to supply the Service to you, at any time prior to the Service start date specified in **clause 3.1 (Start of Agreement)** by giving you notice.

25. WHAT HAPPENS AFTER RESTRICTION, SUSPENSION, OR CANCELLATION

25.1 Fees payable after restriction, suspension, or cancellation

(a) If we restrict, suspend, or cancel a Service for any of the reasons listed **in clause 24.3 (External factors cause us to restrict, suspend or cancel)**, then:

- We won't charge you a disconnection or reconnection fee, and
- You're entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with **clause 15.2 (Refunds and credits)**.

(b) Without limiting any of our rights under the Agreement or at law, if we restrict, suspend, or cancel the Service for any of the reasons listed in **clause 24.2 (Your actions cause us to restrict, suspend or cancel)**, then you *will* be liable to pay:

- a disconnection Fee, and
- if we agree to reconnect the Service, a reconnection Fee, and
- an Early termination Fee if applicable, and
- as well as all other Fees incurred up to the time of cancellation of the Service.

25.2 Security deposits

(a) After reviewing the outcome of a credit assessment in relation to you and the Service you've applied for, we may require you to pay a security deposit.

(b) The amount of the security deposit is based on:

- the value of any Equipment in your possession that you have not fully paid for and
- our reasonable estimate of the amount necessary to secure our exposure.

(c) We may use your security deposit to recover any Fees you owe us or to compensate for any loss, or expense we incur if you breach our Agreement.

(d) Before we access the security deposit we will let you know and give you 5 Business Days to pay the amounts instead of us accessing the security deposit.

- If we use part of the security deposit, then you must replenish it within 7 days of our request.
- You are not eligible to earn or accrue interest on the security deposit.

(e) We will repay all unused portions of a security deposit to you within 5 Business Days after you stop receiving the relevant Service from us.

25.3 After a Service ends

If a Service is terminated by either of us for any reason:

(a) You must still pay Fees in respect of Services provided to you up to the time of cancellation or termination, and

(b) You must promptly:

- stop using the Service and Equipment owned by us or any Supplier, and
- allow us to remove any Equipment owned by us or any Supplier or any Purchased Equipment that you have not paid for in full, and

(c) We may delete your data from any storage media.

> You are solely responsible for backing up your data.

25.4 Month to month after Fixed Term

If we have agreed to provide a Service to you for a Fixed Term or agreed period, then when that Fixed Term or other period expires we will continue to supply the Service to you on a month-to-month basis until either of us ends the Service in line with our Agreement.

GENERAL & DICTIONARY

DEFINITIONS FOR SPECIFIC WORDS AND GENERAL AGREEMENT DETAILS

26. GIVING NOTICES

26.1 How we can contact you

(a) We communicate with you about this Agreement via the following methods:

METHOD OF NOTICE	WHEN IS THE NOTICE REGARDED AS RECEIVED?
Email: Sent to your email address in our records.	Date email is sent, as long as sender's email system doesn't receive a delivery failure notice.
On a Bill: Clearly on, in, or with a Bill.	See method of sending Bill (i.e. Email or Mail).
Mail (post): Prepaid post to your address in our records.	2 business days after posting if sent by registered post, 4 days if sent otherwise.
Text or Voice message: SMS or voicemail.	Date of delivery.

(b) For pre-paid telecommunications Services, we may also communicate information to you:

- via our Website, or
- via a recorded message, text message, or in writing that informs you how you can obtain the full information, or

(c) To the extent reasonable and permitted by this Agreement and other applicable law, we may also communicate information to you by publishing a notice in a daily newspaper circulating generally in the region or capital city of the State or Territory in which you ordinarily reside or carry on business.

Keep your contact information current

(d) You consent to notices being sent to your email address.

- It is your responsibility to check your emails and keep your contact details current.

27. OTHER GENERAL DETAILS

27.1 Intellectual property

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

27.2 Governing law

This Agreement is governed by the laws of the state of Queensland. You and we submit to the exclusive jurisdiction of the courts of the State of Queensland.

27.3 No waiver

No failure to exercise, or any delay in exercising, any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

27.4 Survival

Any provision of the Agreement which by its nature is intended to survive termination or expiry of the Agreement (including without limitation any exclusion or limitation of liability or indemnity in the Agreement) will survive termination or expiry of the Agreement for any reason.

27.5 Severability of provisions

Any provision of the Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

28. DEFINITIONS AND INTERPRETATION

28.1 Definitions

The following definitions apply unless the context requires otherwise:

THE TERM	MEANS
ACMA	the Australian Communications and Media Authority (www.acma.gov.au).
Agreement	The Agreement between you and us for the Service.
Application	an Application made by you for the provision of Services by us, either by: a form (online or printed), approved by us, or a phone Application with us.

THE TERM	MEANS
Approved Purposes	Includes: directory assistance Services and operator Services, publishing and maintaining public number directories, location dependent carriage Services, emergency call Services or assisting emergency Services under Part 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, assisting enforcement agencies or safeguarding national security under the Telco Act, the *Telecommunications (Interception and Access) Act 1979* or other legal requirements, verifying the accuracy of information given by a data provider and held in the IPND against the information the data provider holds, undertaking research of a kind specified in the Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017, assisting the ACMA to verify the accuracy and completeness of information held in the IPND, meeting obligations to a Government Agency (for example , the Australian Tax Office), and any other purpose permitted or required by the Telco Act or any other applicable laws.
Smile Tel	SmileTel, ABN 51 123 952 232
Broadband	a high capacity communications pipeline capable of delivering a simultaneous range of Services at speeds greater than conventional dial-up.
Business day	Monday to Friday, excluding days which are public holidays in the place where the relevant Services are provided.
Business hours	8.30 am to 5.00 pm Monday to Friday (AEST), excluding days which are public holidays in the place where the Services are to be provided.
Claim	includes any debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising under or in connection with this Agreement or its subject matter and whether present or future, fixed or unascertained, actual or contingent, arising under contract (including under any indemnity), tort (including negligence), under statute or otherwise.
Commercial Credit	has the meaning given in section 6 of the Privacy Act. *Currently, commercial credit means credit (other than Consumer Credit) that is applied for by, or provided to, a person.*
Consequential Loss	loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, loss of data, loss of value of Equipment (other than cost of repair), loss of opportunity or expectation loss and any increased operating costs suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute, any other form of consequential, special, indirect, punitive or exemplary loss or damages and any third party loss.
Consumer Guarantee	a guarantee referred to in **clause 15.4 (Consumer Law guarantees),** as more fully described in the Consumer Law.
Consumer Law	Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
Credit Reporting Agency	has the meaning given in section 6 of the Privacy Act. *Currently, an organisation, or an agency prescribed by the regulations, that carries on a credit reporting business.*

THE TERM	MEANS
Critical Information Summary (CIS)	the document forming part of the Agreement describing the Service and setting out specific details, inclusions, limitations, and terms and conditions for that Service.
CSG (or Customer Service Guarantee)	minimum performance standards for Standard Phone Services in relation to connection times, fault repairs, and keeping appointments, as detailed in Part 5 of *Telecommunications (Customer Service Guarantee) Standard 2011.*
Customer	the lucky current account holder for a Business Service or Equipment supplied by us, Smile Tel. If you are under the age of 18, we'll need your Application to be co-signed by an adult as guarantor.
Customer Equipment	any Equipment or Facility in your possession, ownership or control, other than Service Equipment.
Direct Debit Service Agreement	the terms and conditions under which you authorise us to debit funds from your bank account, a copy of which is available on our website.
Due Date	unless otherwise agreed, 10 business days after a Bill is issued or if relevant, the date otherwise specified on a Bill as the due date.
Early Termination Fee	the fee payable (if any) calculated in accordance with your Application, the relevant Critical Information Summary and the Payment Schedule.
Equipment	unless otherwise specified, Service Equipment or Purchased Equipment.
Facilities	has the meaning given in the Telco Act.
Acceptable Use Policy	Depending on the Service we supply you, this may be either our or a Supplier's policies and requirements for reasonable and fair use of a Service (also called a Fair Use Policy). A copy of which is accessible on our website.
Fee	amounts payable for a Service as set out in the Application, the Payment Schedule or the relevant Critical Information Summary and any other amount payable by you in accordance with the terms of our Agreement.
Fixed Term	The means the set minimum period of time during which we provide a specific Service to you, as set out in your Application or a CIS.
Force Majeure Event	an event or circumstance that is beyond either your or our reasonable control. Including (for example) acts of God or natural disasters, fire, lightning, explosions, subsidence, civil disorder, military operations, war, terrorism, strikes or industrial disputes, or an act or omission of a government agency, and an act or omissions of a third party (including a Supplier) where the act or omission is caused by circumstances outside that third party's reasonable control.
Government Agency	any State or Federal government or government authority with legal power to require another person to act or not act in a particular way or to authorise a particular act, including a minister responsible for administering Part XIB or XIC of the *Competition and Consumer Act 2010* (Cth), the Telco Act, the ACMA or the Australian Competition and Consumer Commission.
GST	has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

THE TERM	MEANS
Insolvency Event	– You are declared bankrupt or bankruptcy proceedings start against you, or – You suspend payment of your debts generally, or – You are, or become, unable to pay your debts when they are due or you are, or are presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth), or – One or more steps are taken: o to enter into a scheme of arrangement between you and your creditors, or o by a mortgagee to possess or dispose of the whole or any part of your assets or business, or o to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to all or any part of your assets or business.
Interest	interest at the rate prescribed by the *Penalty Interest Rates Act 1983* (VIC) plus 2% calculated daily and compounded monthly.
Internet	the world wide connection of computer networks which provides a number of Services to users, including the transmission of electronic mail, provision of information on the world wide web and transfer of files.
Internet access	being able to access the Internet such that data can be transferred to and from the user's computer.
Interruption	in the supply of a Service, a delay in supplying, a failure to supply or an error or defect in the supply of, that Service.
IPND	the Integrated Public Number Database.
Law	Commonwealth, State, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders, binding industry codes and all common laws and equity.
Network	the infrastructure used and maintained by us or our Suppliers to provide you with your Service (but does not include the computer networks that make up the internet).
Personal Information	any information or document referred to in section 276(1) of the Telco Act and any Personal Information within the meaning given in section 6 of the Privacy Act.
Phone Number	Telephone Service number.
PPSA	the Personal Property Securities Act 2009 (Cth).
Privacy Act	the *Privacy Act 1988* (Cth).
Public Addressing Identifiers	Includes, phone numbers, IP addresses, domain names, and other identifiers.
Purchased Equipment	Equipment or Facilities that we sell to you, either to use with a Service we also provide you or otherwise.
Service	the service requested in your Application and described in the Application and the relevant Critical Information Summary and other documents forming the Agreement, including any related goods and ancillary Services we provide you.
Service Cancellation Fee	The Fee which aims to recover the costs we incur if you sign up for a Service and then change your mind or otherwise cancel the Service before we can fully provision the Service.

THE TERM	MEANS
Service Equipment	Equipment or Facilities that we (or a Supplier) provide to customers to use with a Service, but we do not sell that Equipment to you.
Service Restriction	Includes the following actions: Internet speed limited to 1:1 Mbps. VoIP limited to calling emergency Services and Smile Tel. Mobile calls to emergency Services only.
Shaping	a reduction in the speed of a Broadband Service. See also Service Restriction.
Small Business Customer	a customer with a business ABN requiring standard plan Services rather than quoted Services who is defined as a small business according to the Australian Consumer Law.
Standard Phone Service	as defined in the Telecommunications (Consumer Protection and Service Standards) Act 1999.
Supplier	a third party from whom we acquire services or from whom our supplier acquires services that form all or part of a Service we provide to you.
Taxable Supply	has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
Telco Act	the Telecommunications Act 1997 (Cth).
we, our or us	SmileTel, ABN 51 123 952 232.
Website	our website, www.Smiletel.com.au
you or your	the current account holder for the Service.

28.2 Interpretation

Unless the context indicates otherwise:

(a) a reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity,

(b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time,

(c) the singular includes the plural and vice versa,

(d) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions,

(e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning,

(f) an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally,

(g) a reference to a recital, clause, paragraph, schedule or annexure is to a recital, clause or paragraph of, or schedule or annexure to, these General Terms, and a reference to these General Terms includes any schedule or annexure,

(h) a reference to dollars and $ is to Australian currency,

(i) headings are used for convenience only and do not affect the interpretation of the Agreement, and

(j) specifying anything in the Agreement after the words ‘including’, ‘includes’ or ‘for example’ or similar expressions does not limit what else is included unless we expressly say so.

29. DYNAMIC COST CLAUSE

SmileTel reserves the right to revise the pricing of telephone and internet services covered by this agreement if there are changes imposed by suppliers or network operators, including but not limited to the National Broadband Network (NBN) or any wholesale service provider. If SmileTel's underlying costs are changed due to increases or decreases in regulated access charges, supplier rates, government levies, or other costs outside SmileTel’s direct control, SmileTel will provide written notice to the customer at least 30 days before any price adjustment takes effect. Any such change will be limited to the amount necessary to reflect the change in SmileTel’s costs.

If the customer does not accept the revised charges, they may terminate the affected service(s) without early termination fees by providing written notice to SmileTel within 14 days of receiving the price change notice.

End