

## Consumer Terms and Conditions of Service

PLEASE READ THESE TERMS CAREFULLY AS THEY MAY HAVE IMPORTANT CONSEQUENCES FOR YOU.

1.	<b>ABOUT THESE CONSUMER TERMS</b>	3
2.	<b>THE AGREEMENT</b>	3
2.1	The <i>agreement</i>	3
2.2	When does the <i>agreement</i> apply?	3
2.3	What happens if there is an inconsistency between the different parts of the <i>agreement</i> ?	3
2.4	When does the <i>agreement</i> start?	3
2.5	When will we start providing the <i>service</i> to you under the <i>agreement</i> ?	3
2.6	For how long will we provide the <i>service</i> to you in accordance with the <i>agreement</i> ?	3
2.7	What happens at the end of the <i>minimum term</i> if the <i>agreement</i> is a <i>fixed-length agreement</i> ?	3
2.8	Responsibility for persons who you allow to use the <i>service</i>	4
2A.	<b>CHANGING THE AGREEMENT</b>	4
2A.1	When can we make changes to <i>fixed length</i> or <i>non-fixed length agreements</i> ?	4
2A.2	What must we do if we make changes to <i>fixed length agreements</i> ?	4
2A.3	When do we consider that a change will <i>impact you</i> ?	4
2A.4	What do we mean by <i>notice in writing</i> ?	4
2A.5	What do we mean by <i>fair terms</i> ?	4
2A.6	Changes that we can make to <i>fixed length agreements</i> , even if the change <i>impacts you</i> .	4
2A.7	Changes that are likely to benefit <i>you</i> or have a neutral or minor detrimental impact on <i>you</i>	5
2A.8	How can <i>you</i> change anything in the <i>agreement</i> ?	5
3.	<b>YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE</b>	6
3.1	What is the <i>service</i> ?	6
3.2	When may we refuse <i>your application</i> ?	6
4.	<b>HOW WE DEAL WITH YOUR PERSONAL INFORMATION</b>	6
4.1	Collection, use and disclosure	6
5.	<b>USING THE SERVICE</b>	6
5.1	Connecting the <i>service</i>	6
5.2	Quality of the <i>service</i>	6
5.3	Permitted uses of the <i>service</i>	6
5.4	Unusually high use	7
5.5	Compliance with third party rules	7
6.	<b>EQUIPMENT</b>	7
6.1	What are <i>your</i> responsibilities in relation to equipment?	7
6.2	Who owns the equipment?	7
6.3	Installation of the equipment	7
6.4	Maintenance and repair of any <i>Pentanet owned equipment</i>	7
6.5	Lost, stolen and damaged equipment	7
7.	<b>NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION</b>	7
7.1	Maintenance on the <i>network</i> used to supply the <i>service</i>	7
7.2	Reporting faults	8
7.3	Assisting <i>us</i> in investigating and repairing a fault	8
7.4	<i>Our</i> responsibility for repairing faults	8
7.5	Loss of access	8

8.	<b>FEES AND CHARGES</b>	8
8.1	What are the fees and charges for using the <i>service</i> ?	8
8.2	Types of fees and charges (including administration charges and other charges)	9
8.3	How do we calculate fees and charges?	9
8.4	Specials	9
8.5	Variable charges	9
9.	<b>BILLING AND PAYMENTS</b>	9
9.1	How often will we bill you?	9
9.2	What will appear on your bill?	9
9.3	What types of payment methods may you use?	9
9.4	When must you pay your bill?	9
9.5	What happens if you do not pay your bill by the due date?	9
9.6	What happens if you have overpaid because of a billing error?	10
9.7	Taxes (including GST)	10
10.	<b>COMPLAINTS AND DISPUTES</b>	10
10.1	Making complaints	10
10.2	Suspension of payment obligations	10
10.2A	Financial Hardship Policy	10
10.3	Complaints about <i>loss</i> of access to the <i>service</i>	10
11.	<b>CANCELLING THE SERVICE</b>	11
11.1	Your right to <i>cancel the service</i>	11
11.2	Our right to <i>cancel the service – non-fixed-length agreement</i>	11
11.3	Our right to <i>cancel the service – non-fixed-length agreement and fixed-length agreement</i>	11
11.4	How can you <i>cancel the service</i> ?	12
11.5	When will the <i>service</i> be cancelled?	12
11.6	What happens when the <i>service</i> is cancelled?	12
12.	<b>SUSPENDING THE SERVICE</b>	13
12.1	Our rights to suspend the <i>service</i>	13
12.2	What happens when the <i>service</i> is suspended	13
13.	<b>WHAT ARE YOU AND WE LIABLE FOR</b>	14
13.1	Your liability to us	14
13.2	Our liability to you	14
14.	<b>ASSIGNING THE AGREEMENT TO A THIRD PARTY</b>	15
14.1	How can we assign our responsibilities to a third party?	15
14.2	How can you assign your responsibilities to a third party?	15
15.	<b>GENERAL</b>	15
15.1	Which laws and courts govern the <i>agreement</i> ?	15
15.2	Intellectual property protections	15
15.3	What happens if you can't fulfil your obligations or we can't fulfil our obligations under the <i>agreement</i> because of an event outside your or our control?	15
15.4	What happens if you become a carrier or carriage <i>service</i> provider?	15
15.5	When do we waive a right we have under the <i>agreement</i> ?	16
15.6	Payment of commission by us	16
15.7	Information about your rights	16
16.	<b>WHAT DO TERMS IN THE AGREEMENT MEAN?</b>	16
16.1	Definitions	16
16.2	Interpretation	18

## 1. ABOUT THESE CONSUMER TERMS

- (a) These are Pentanet's Consumer Terms. They set out our standard customer terms for *consumers*.
- (b) The meaning of the words printed *like this* is set out at the end of the *consumer terms*.
- (c) These *consumer terms*, together with your *application*, the *critical information summary* and our *policies*, forms the *agreement* with us. To understand your rights and obligations you need to read all of the documents that relate to you and the *service* you select.
- (d) The *service description* is a detailed description of each of the *services* Pentanet offers, including the different features, options and availability of a *service*.
- (e) The *critical information summary* sets out the fees or charges we may charge you for your use of the *service*. It also contains other information such as specific details of any *pricing plan* we offer. Please check the *critical information summary* carefully to see what fees and charges apply to your use of the *service*.
- (f) The *policies* contain further information that may apply to your use of the *service*, such as details of certain usage charges and our usage policies.
- (g) You may obtain a copy of the latest version of the *consumer terms*, *critical information summaries* and *policies* from us or on our website: [www.pentanet.com.au](http://www.pentanet.com.au).

## 2. THE AGREEMENT

### 2.1 The agreement

- (a) The *agreement* is made up of:
  - (i) your *application*,
  - (ii) these *consumer terms*,
  - (iii) the *critical information summary*, and
  - (iv) our *policies*.
- (b) The *agreement* is either a *fixed-length agreement* or *non-fixed-length agreement*.

### 2.2 When does the *agreement* apply?

The *agreement* applies if you are a *consumer*.

### 2.3 What happens if there is an inconsistency between the different parts of the *agreement*?

- (a) If anything in these *consumer terms* is inconsistent with a provision in another part of the *agreement*, then unless otherwise stated, the *consumer terms* prevail to the extent of the inconsistency.
- (b) Clause 13, 'What you and we are liable for', below prevails over all other terms.

### 2.4 When does the *agreement* start?

The *agreement* starts when we accept your *application*.

### 2.5 When will we start providing the *service* to you under the *agreement*?

We will provide the *service* to you under the *agreement* from the *service start date*.

### 2.6 For how long will we provide the *service* to you in accordance with the *agreement*?

- (a) If the *agreement* is a *non-fixed-length agreement*, we will provide the *service* to you in accordance with the *agreement* until the *service is cancelled* in accordance with clause 11, 'Cancelling the *service*', below.
- (b) If the *agreement* is a *fixed-length agreement*, we will provide the *service* to you in accordance with the *agreement*:
  - (i) for the *minimum term*, or
  - (ii) until the *service is cancelled* in accordance with clauses 11.1 or 11.3 below, or
  - (iii) if neither you nor we cancel the *service* at the end of the *minimum term* (see clause 2.7 below), until the *service is cancelled* in accordance with clauses 11.1 to 11.3 below.

### 2.7 What happens at the end of the *minimum term* if the *agreement* is a *fixed-length agreement*?

- (a) If the *agreement* is a *fixed-length agreement* and neither you nor we cancel the *service* at the end of the *minimum term*, the *agreement* becomes a *non-fixed length agreement* and we will continue to supply the *service* to you on a month-to-month basis in accordance with the *agreement*.
- (b) If you do not wish to continue to use the *service* on a month-to-month basis after the end of the *minimum term*, you must inform us (in accordance with clause 11, 'Cancelling the *service*', below) by giving us 30 days' notice before the end of the *minimum term* that you wish to cancel the *service* at the end of the *minimum term*.

- (c) If we choose not to provide the *service* to you after the end of the *minimum term*, we will give you notice of this (in accordance with clause 11, 'Cancelling the service', below) by giving you 30 days' notice before the end of the *minimum term*.
- (d) If we wish to change the terms of the *agreement*, including any fees or charges, at the end of the *minimum term*, we will give you notice of this (in accordance with clause 2A below) before the end of the *minimum term*.

## 2.8 Responsibility for persons who you allow to use the *service*

You must ensure that any person you allow to use the *service* complies with the *agreement* as if they were you.

## 2A CHANGING THE AGREEMENT

### 2A.1 When can we make changes to *fixed length* or *non-fixed length agreements*?

We can make any type of change to a *fixed length agreement* or a *non-fixed length agreement* if:

- (a) the change will benefit or will not adversely affect you;
- (b) you agree to the change; or
- (c) we:
  - (i) reasonably expect the change to adversely affect you; and
  - (ii) give you reasonable notice of the change; and,
  - (iii) if your *agreement* is a *fixed length agreement*, we also make sure that we comply with our obligations set out below.

### 2A.2 What must we do if we make changes to *fixed length agreements*?

- (a) Generally, if we make a change to a *fixed length agreement* which *impacts you* and it is not of the type listed in clauses 2A.6 or 2A.7 below, we must give you *notice in writing* of the change on *fair terms* and the right to *cancel the service*.
- (b) If we make a change to a *fixed length agreement* which is of the type listed in clauses 2A.6 or 2A.7 below, we must comply with our obligations set out in clauses 2A.6 or 2A.7.

### 2A.3 When do we consider that a change will *impact you*?

We consider that a change will *impact you* if you have used or been billed for the *service* affected by the change during the 6 months before our notice and we consider that the change will have more than a minor detrimental impact on you.

### 2A.4 What do we mean by *notice in writing*?

When we need to give you notice in writing under clause 2A.5 below of a change to the *agreement*, we can do so by giving it to you in person, sending it to you by mail or to your email address (if you have agreed to allow us to tell you about changes to the *agreement* by email).

### 2A.5 What do we mean by *fair terms*?

- (c) When we need to give you notice of a change on *fair terms*, we will:
  - (i) give you 21 days' *notice in writing* of the change before the change occurs, and
  - (ii) offer you the right to *cancel the service* within 42 days from the date of our *notice in writing*.
- (d) If you choose to *cancel the service* under clause 2A.5(a)(ii) above,
  - (i) we will *cancel the service* on the date on which you notify us that you wish to *cancel the service* (which must be within 42 days from the date of our *notice in writing*)
  - (ii) you will only have to pay
    - (A) your usage charges or *access fees* (incurred to the date on which you notify us you wish to *cancel the service*) and
    - (B) any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with *services* provided by any third party).
- (e) If you have overpaid for the *service* because
  - (i) the *service* is cancelled during a billing cycle; or
  - (ii) the change related to a price increase that became effective prior to the date your *service* was cancelled then your account (if you continue to have any account with us) will be credited with the amount you have overpaid, or if you have stopped obtaining the *service*, we will use reasonable endeavours to notify you that you have overpaid and refund the overpayment.

### 2A.6 Changes that we can make to *fixed length agreements*, even if the change *impacts you*.

- (f) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement* even if they *impact you*,
  - (i) if the change is required by law or is in relation to a fee or charge to account for a *tax* imposed by law and it

is fair and reasonable for *us* to do so. If *we* expect the change to adversely affect *you*, *we* will whenever possible, try to give *you* at least 21 days' *notice in writing* of the change.

*We would consider it fair and reasonable for us to make a change to the agreement to account for a tax imposed by law, if the tax imposed is directed at you, the end-user and relates to your use of, and charges you must pay us for use of, the service. An example of this would be where we pass on to you an increase in the rate of a transaction tax, such as GST or stamp duty.*

*We would not consider it fair and reasonable to pass on a tax imposed by law if the tax imposed is directed at us, the supplier, and affects the cost to us of supplying the service to you.*

- (g) If the *agreement* is a *fixed-length agreement*, *we* can make changes to the *agreement*, if the change is in relation to a fee or charge for a *service* ancillary to the supply of the *service* (for example, a billing fee or credit card transaction fee). If the change *impacts you* *we* will offer *you*: (i) use of a reasonable alternative at no fee or charge, or
- (ii) a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which *you* notify *us* *you* wish to *cancel the service*),
- (h) If the *agreement* is a *fixed-length agreement*, *we* can make changes to the *agreement*, if the change is to increase the price of a *content* or premium *service* (where *we* are passing on an increase in the cost charged to *us* by the *supplier* who supplies that *content service* or premium *service* to *us*). If the change *impacts you* *we* will:
- (i) wherever possible, still try to give *you* at least 21 days' *notice in writing* of the increase in price if *you* have used the *content* or premium *service* within the previous six (6) months, and
- (ii) allow *you* to elect to not use the *content* or premium *service* without attracting any additional charges,
- (i) If the *agreement* is a *fixed-length agreement*, *we* can make changes to the *agreement*, if the change is a result of another *service* provider varying their *agreement* with *us* so that *we* need to make changes to the *agreement*. If the change *impacts you* *we* will:
- (i) whenever possible, still try to give *you* at least 21 days' *notice in writing* of the change, and
- (ii) give *you* 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
- (A) usage charges or *access fees* (incurred to the date on which *you* notify *us* *you* wish to *cancel the service*), and
- (B) any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with *services* provided by any third party).

#### 2A.7 Changes that are likely to benefit *you* or have a neutral or minor detrimental impact on *you*

- (j) *We* can make changes to a *fixed length agreement* relating to the characteristics of the *service* (including price) if the change is likely to benefit *you* or have a neutral or minor detrimental impact on *you*.
- (k) If *you* can demonstrate that such a change has had more than a minor detrimental impact on *you* and the change is not of a type described in paragraph [2A.6](#) *we*:
- (i) will offer *you* the right to *cancel the service* without incurring fees or charges other than:
- (A) usage charges or *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which *you* notify *us* *you* wish to *cancel the service*), and
- (B) any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with *services* provided by any third party); and (ii) may offer *you* an alternative remedy to address the impact the change has had on *you*.

Some examples of a change that would benefit *you*:

- if *we* offer a new feature of the *service*.

Some examples of a change that *we* consider would have a minor detrimental impact on *you*:

- Withdrawing a minor feature of the *service*;

An example of a change that would have a neutral impact on *you* would be changing the URL or website address for accessing information using the *service*.

#### 2A.8 How can *you* change anything in the *agreement*?

Unless expressly allowed in the *agreement*, *you* cannot make any changes to the *agreement* without first obtaining our consent.

### 3. *YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE*

#### 3.1 What is the *service*?

The *service* you have selected is detailed in the *service description*.

#### 3.2 When may we refuse your *application*?

We may refuse your *application* if:

- (a) you do not provide satisfactory proof of identification,
- (b) you do not meet the eligibility criteria for the *service*,
- (c) the *service* is not available at the location where you wish to acquire the *service*, or (d) you do not have an appropriate *credit rating*.

### 4. *HOW WE DEAL WITH YOUR PERSONAL INFORMATION*

#### 4.1 Collection, use and disclosure

(a) We collect personal information directly from you, and also during our ongoing relationship with you. We use it to supply products, give you the best possible *service*, and for the other purposes described in our privacy policy. Without it, we may not be able to supply products or provide the level of *service* you expect.

### 5. *USING THE SERVICE*

#### 5.1 Connecting the *service*

You must reasonably co-operate with us to allow us, or a *supplier*, to establish and supply the *service* to you safely and efficiently. If you do not do so, we may be entitled to *cancel the service* under clause 11.3(a)(v) or 11.3(a)(vi) or suspend the *service* under clause 12.1(a)(vii) or 12.1(a)(viii).

#### 5.2

##### Quality of the *service*

We will provide the *service* to you with due care and skill. In the event of unexpected faults, we will use reasonable endeavours to ensure the *service* is restored as soon as possible.

While Pentanet endeavours to make its service available 24 hours a day, 7 days a week (except for network maintenance), Pentanet does not guarantee that the customer will have access to the service at all times.

#### 5.3 Permitted uses of the *service*

- (a) When you use the *service*, you must comply with:
  - (i) all laws,
  - (ii) all directions by a *regulator*,
  - (iii) all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968 (Cth)*), and (iv) reasonable directions by us.
- (b) You must not use, or attempt to use, the *service*:
  - (i) to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright),
  - (ii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted,
  - (iii) to expose us to liability, or
  - (iv) in any way which damages, interferes with or interrupts the *service*, the *Pentanet network* or a *supplier's network* used to supply the *service*.
- (c) We may ask you to stop doing something which we reasonably believe is contrary to paragraph (b) above. You must immediately comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- (d) You acknowledge that, where the *service* is a *carriage service*, we, or any *supplier* whose *network* is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor your usage of the *service* and communications sent over it.

- (e) If *you* do not comply with this clause 5.3, *we* may be entitled to *cancel the service* under clause 11.3(a)(v) or (vi) or suspend the *service* under 12.1(a)(vii) or (viii).

#### 5.4 Unusually high use

*We* may contact *you* if *we* become aware of an *unusually high use* of the *service* by *you* (including to verify any costs or charges which *you* may have incurred) however *we* are under no obligation to do so. Please note that *we* may also be entitled to suspend the *service* under clause 12.1(a)(iv) for an *unusually high use* of the *service*.

#### 5.5 Compliance with third party rules

When *you* use the *service*, it is *your* responsibility to comply with any rules imposed by any third party whose *content* or *services* *you* access using the *service* or whose *network* *your* data traverses.

## 6. EQUIPMENT

### 6.1 What are *your* responsibilities in relation to equipment?

- (a) *You* must ensure that all equipment *you* use in connection with the *service* and the way *you* use that equipment complies with:
- (i) all laws,
  - (ii) all directions by a *regulator*,
  - (iii) all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)), and (iv) reasonable directions by *us*.
- (b) If *you* breach paragraph (a) above, *we* may:
- (i) disconnect the equipment from the *service*;
  - (ii) suspend the *service* in accordance with clause 11.3(a)(v) or 11.3(a)(vi); or (iii) *cancel the service* in accordance with clause 12.1(a)(vii) or 12.1(a)(viii).
- (c) *We* will try to give *you* reasonable notice before *we* disconnect the equipment under paragraph (i) above, but *we* may disconnect the equipment, suspend the *service* or *cancel the service* immediately if there is an emergency.

### 6.2 Who owns the equipment?

- (a) *Pentanet owned equipment*
- (i) Any *Pentanet owned equipment* remains *our* property or the property of *our personnel*.
  - (ii) Subject to *your statutory rights as a consumer*, *you* are responsible for any *Pentanet owned equipment* from when *you* receive it.
  - (iii) *You* must not mortgage or grant a charge, lien or encumbrance over any *Pentanet owned equipment*.
- (b) Equipment purchased by *you* from *us* or any of *our personnel*
- (i) *You* may purchase equipment from *us* or any of *our personnel* to use in connection with the *service*.
  - (ii) Subject to *your statutory rights as a consumer*, *you* will own the equipment and be responsible for the equipment from when *you* receive it
- (c) Equipment owned by *you* and supplied by a third party
- (i) If *you* will be supplying, your own equipment to use in conjunction with the *service*, *you* are responsible for the equipment.

### 6.3 Equipment Compatibility

*You* must take reasonable actions to confirm the equipment *you* have purchased from *Pentanet* or supplied by *you* for use with the *service* is compatible and suitable for the *service* connection type.

- (a) NBN service type FTTN or FTTB require a compatible VDSL type modem to connect with the *service*.
- (b) Pentanet Fixed Wireless, Pentamax, Pentanet Apartment, LBN-FTTH, LBN-HFC, NBN-FTTC, NBN-HFC and NBN-FTTP require a compatible Ethernet WAN device to connect with the *service*.

### 6.4 Installation of the equipment

*You* must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the *service* and located on the *premises*.

### 6.5 Maintenance and repair of any *Pentanet owned equipment*

Unless *we* both agree otherwise, *you* must allow *our personnel* (and only *our personnel*) to *service*, modify, repair or replace any *Pentanet owned equipment*.

### 6.6 Lost, stolen and damaged equipment

- (a) You are responsible for any lost, stolen or damaged *Pentanet owned equipment*, except if it is caused by *us* or *our personnel*.
- (b) You will be responsible for any outstanding payments for equipment that *you* have purchased from *us* or *our personnel*, even when that equipment is lost, stolen or damaged, except if it is caused by *us* or *our personnel*.

## 7. NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION

### 7.1 Maintenance on the *network* used to supply the *service*

- (a) We may conduct maintenance on the *Pentanet network* and maintenance may be conducted on a *supplier's network* used to supply the *service*.
- (b) We will try to conduct scheduled maintenance on the *Pentanet network* outside normal business hours, but we may not always be able to do so.

### 7.2 Reporting faults

- (a) We will provide a fault reporting *service* for *you* to report faults.
- (b) Before *you* report a fault to *us*, *you* must take all reasonable steps to ensure that the fault is not caused by any equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

### 7.3 Assisting *us* in investigating and repairing a fault

*You* must provide all reasonable assistance to enable *us* or *our personnel*, or where necessary a *supplier*, to investigate and repair a fault.

### 7.4 *Our* responsibility for repairing faults

- (a) We will repair faults within *the Pentanet network*.
- (b) Unless the *service description* expressly provides otherwise, *we* are not responsible for repairing any fault in the *service* where the fault arises in or is caused by:
  - (i) a *supplier's network*,
  - (ii) equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, or (iii) facilities outside the *Pentanet network*.
- (c) Where:
  - (i) the fault arises in or is caused by a *supplier's network*,
  - (ii) we become aware of the fault, and
  - (iii) we are not responsible for the repair of that fault,

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

- (d) Where the fault arises in or is caused by equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, *we* are not responsible for the repair of that fault. If *you* ask *us* to investigate and repair such a fault:
  - (i) we will give *you* an estimate of the probable cost of investigating the fault and, if *you* agree to pay those costs, *we* will undertake an investigation and *we* will then charge *you* for the cost of investigation,
  - (ii) if *we* have investigated the fault, *we* will use reasonable endeavours to inform *you* of the fault's probable cause, and
  - (iii) if *you* request *us* to repair the fault and *we* agree to repair the fault, *we* will give *you* an estimate of the probable cost of repairing the fault and *we* will then charge *you* for the cost of repairing the fault.
- (e) If *we* investigate a fault and determine that the fault is attributable to an *excluded event*, then *we* may charge *you* for any costs *we* incur in investigating and repairing the fault.

### 7.5 Loss of access

If the fault results in a significant *loss* of access to, or use of the *service*, *you* should check if *you* are entitled to a refund or rebate under clause 10.3 below. *You* may also be entitled to *cancel the service* under clause 11.1(a)(ii)(A) below. *Pentanet* accepts no liability for loss resulting from use of the *service* unless that liability cannot be excluded by law—in which case, *Pentanet* limits its liability to re-supply or replacement of the goods or services.

## 8. FEES AND CHARGES

### 8.1 What are the fees and charges for using the *service*?

- (a) You must pay:
  - (i) the fees and charges for the *service*, which are set out in the *critical information summary* or in any applicable *special*, and
  - (ii) any additional fees and charges noted in the *agreement* (including in *your application*) or notified by us in accordance with the *agreement* from time to time.
- (b) You must pay all fees and charges which are incurred for the *service* even if *you* did not authorise its use.
- (c) You must pay the fees and charges for the *service* even if the *service* is unavailable or *you* are unable to access the *service*. You will be entitled to a refund or a rebate under clause 10.3 below if:
  - (i) you suffer a significant *loss* of access to, or use of, the *service*, and
  - (ii) the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by us for *you* to use in connection with the *service*.

### 8.2 Types of fees and charges (including administration charges and other charges)

- (a) In addition to the fees and charges *you* incur in the normal use of the *service* (including an *access fee*, where applicable), *we* may charge *you* for an administration fee and other similar charges. These costs may include suspension fees or *cancellation fees*, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the *standard pricing table* for *your service*.
- (b) We may also ask *you* to make a pre-payment usage charge or request that *you* make an interim good-faith payment (including, for example, if there has been an *unusually high use* of the *service*).

### 8.3 How do *we* calculate fees and charges?

- (a) To calculate fees and charges *we* look at billing information generated or received by us.
- (b) If *you* use the *services* of a third party, *you* will be billed at the third party's applicable rates and charges. We may bill *you* for *your* use of the *services* of a third party, acting in our capacity as that third party's billing agent only.

### 8.4 Specials

- (a) We may offer *you* a *special* from time to time (including a *special* in relation to a particular pricing plan).
- (b) We will notify *you* of any *specials* offered to *you* either through general advertising or by specifically advising *you*. The terms of each *special* will either be set out in the *standard pricing table* for the relevant *service*, in an appendix, in advertising material or *you* will be advised separately in writing.
- (c) A *special* may be an offer to vary the price or the terms of supply (including the *minimum term*), and it may be subject to certain conditions.
- (d) If *you* validly accept a *special*, the terms of the *special* will prevail to the extent that the terms of the *special* are inconsistent with the terms of the *agreement*. Otherwise, the terms and conditions of the *agreement* continue to apply.
- (e) After the *special* expires, *we* may end the *special* and the full terms and conditions of the *agreement* will apply.

### 8.5 Variable charges

- (a) Some fees and charges for the *service* are subject to variation, such as charges relating to:
  - (i) international *services* or *roaming*; and
  - (ii) content or premium *services*.
- (b) You should contact us before travelling overseas

## 9. BILLING AND PAYMENTS

### 9.1 How often will *we* bill *you*?

We will bill *you* on a regular basis (either in advance or in arrears), unless otherwise set out in the *service description*.

### 9.2 What will appear on *your* bill?

- (a) We will try to include on *your* bill all charges for the relevant billing period. However, this is not always possible and *we* may include these unbilled charges in a later bill(s).

- (b) We may place *your service* on a single bill with one or more other *services* that *you* have with us. If *you* receive a single bill, afterwards it may not be possible to obtain individual bills for *your services*.
- 9.3 What types of payment methods may *you* use?  
(a) *You* may pay by one of the payment methods as set out in the "How to Pay" section of *your* bill or on our websites.
- 9.4 When must *you* pay *your* bill?  
Subject to clause 10.2, *you* must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by us.
- 9.5 What happens if *you* do not pay *your* bill by the due date?  
If *you* do not pay *your* bill by the date the payment is due, *we* may:  
(a) charge *you* a late fee. *You* should see the relevant *policy and/or critical information summary* for the *service* concerned to check the late fee that applies;  
(b) suspend or *cancel the service*, in accordance with clause 11 or 12 as relevant or the relevant *service description*. If *we* suspend or *cancel the service*, *we* may charge *you* a suspension fee or *cancellation fee*. If the *service* is cancelled and the *service* disconnected or deactivated, *you* may have to pay a reconnection or reactivation fee for the reconnection or reactivation of the *service*. *You* should see the relevant *critical information summary* for the *service* concerned to check what fees apply, and if fees do apply, what that fee is;  
(c) engage a mercantile agent to recover the money *you* owe us. If *we* engage a mercantile agent, *we* may charge *you* a recovery fee;  
(d) institute legal proceedings against *you* to recover the money *you* owe us. If *we* institute legal proceedings, *we* may seek to recover our reasonable legal costs reasonable incurred; and  
(e) on-sell any unpaid amounts to a third party. If *we* do this, any outstanding amounts will be payable to that third party.
- 9.6 What happens if *you* have overpaid as a result of a billing error?  
If *you* have overpaid as a result of a billing error:  
(a) *your* account will be credited with the amount *you* have overpaid, or  
(b) if *you* have stopped obtaining the *service*, *we* will use reasonable endeavours to notify *you* that *you* have overpaid and refund the over payment.
- 9.7 Taxes (including GST)  
(a) Unless otherwise indicated, the fees and charges set out in the *agreement* include any amount on account of *tax*.  
(b) Where the fees and charges do not include an amount on account of *tax*, if any *tax* is payable by us in relation to, or on any supply under or in connection with the *agreement*, *we* will increase the *tax* exclusive fees and charges by an additional amount on account of the *tax*. *You* must pay the additional amount at the same time *you* pay the fees and charges. This applies where the *tax*, such as GST, is directed at, and imposed on, *you*, the end-user.

## 10. COMPLAINTS AND DISPUTES

### 10.1 Making complaints

- (a) If *you* have any complaints in connection with the *service*, *you* may complain in writing or by calling us.
- (b) *We* will handle *your* complaint in accordance with our complaints procedure. *You* may obtain a copy of this procedure from us or on our website: [www.pentanet.com.au](http://www.pentanet.com.au)
- (c) *We* will use our best endeavours to resolve *your* complaint, however if *we* are not able to resolve *your* complaint to *your* satisfaction, *you* can take *your* complaint through other avenues, such as the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

### 10.2 Suspension of payment obligations

Where *your* complaint is about a fee or charge for the use of the *service*, provided *we* reasonably believe *your* complaint is bona fide, *we* will

- (a) in most cases suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved, or
- (b) if *you* pay by direct debit, protect *your* account and reverse any incorrect fees or charges that have been applied to *your* account, once the complaint has been investigated and resolved. All other fees and charges that are not in dispute are due and payable.

## 10.2A Financial Hardship Policy

The Pentanet *Financial Hardship Policy* contains information about how we can assist customers who are experiencing financial hardship. You can see and print a copy at [www.pentanet.com.au](http://www.pentanet.com.au) or have a copy sent to you by calling us on 08 9466.

## 10.3 Complaints about *loss* of access to the *service*

Where *your* complaint is about a significant *loss* of access to, or use of, the *service* and the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by us for *you* to use in connection with the *service*, *you*

- (a) will be entitled to a refund or a rebate of any *access fees* for the period in which *your* access or use was interrupted (including when an *intervening event* occurs) and
- (b) may be entitled to *cancel the service* under clause 11.1(a)(ii)(A) below. You should contact customer *service* to lodge *your* complaint.

# 11. CANCELLING THE SERVICE

## 11.1 Your right to *cancel the service*

- (a) You may *cancel the service* at any time by:
  - (i) giving us 30 days' notice (please note that *you* are required to give us this notice if *you* do not wish to continue to use the *service* after the end of the *minimum term* of a *fixed-length agreement*, otherwise we will continue to supply the *service* to *you* - see clause 2.7(b) above), or (ii) giving us notice, if:
    - (A) we breach a material term of the *agreement* and *we* cannot remedy that breach, including where there are prolonged or repeated interruptions to *your* access to or use of, the *service* and the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by us for *you* to use in connection with the *service*; or
    - (B) we breach a material term of the *agreement* and *we* can remedy that breach, but *we* do not remedy that breach within 30 days after *you* give us notice requiring us to do so; or
    - (C) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days.
- (b) If the *agreement* is an unsolicited *consumer agreement* regulated by the unsolicited *consumer agreement* provisions of the Australian Consumer Law, *you* may also *cancel the service* (i) before the end of the cooling-off period which is:
  - (A) if the *agreement* was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after *you* signed *your application*; or
  - (B) if the *agreement* was negotiated by telephone - the period of 10 business days from and including the first business day after *you* received written confirmation from us of *your application*;
- (ii) in accordance with any additional termination rights *you* may have relating to unsolicited *consumer agreements* under the Australian Consumer Law. Details about these additional rights to *cancel the agreement* are set out in the information provided to *you* with *your application*.
- (c) If the *agreement* is a *fixed-length agreement*, *you* may also *cancel the service* in accordance with clause 2A above. Clause 2A sets out the circumstances which give *you* the right to *cancel the service* if *we* change the *agreement*.

## 11.2 Our right to *cancel the service* - *non-fixed-length agreement*

If the *agreement* is a *non-fixed-length agreement*, *we* may *cancel the service* at any time by giving *you* at least 30 days' notice.

## 11.3 Our right to *cancel the service* - *non-fixed-length agreement* and *fixed-length agreement*

- (a) We may *cancel the service* at any time if:
  - (i) there is an emergency,
  - (ii) we reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - (iii) any amount owing to us in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,

- (iv) we reasonably consider *you* a credit risk because *you* have not paid amounts owing to us (which is not the subject of a valid dispute under clause 10.2 above) in respect of any *service* by its due date and *you* are given notice requiring payment of that amount and *you* fail to pay that amount in full within the required period,
  - (v) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Use Policy) or breach clause 6.1 above) and *you* cannot remedy that breach,
  - (vi) *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Use Policy) or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,
  - (vii) *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)),
  - (viii) *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (ix) *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (x) the *service* is suspended for more than 14 days, unless otherwise set out in the *agreement*,
  - (xi) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days, or
  - (xii) *we* are otherwise entitled to do so under the *agreement*.
- (b) In most circumstances, *we* will give *you* as much notice as *we* reasonably can before *we* cancel the *service*. However, in some circumstances, for example in an emergency or if *we* consider *your* use of the *service* is unreasonable and in breach of Fair Use Policy, *we* may cancel the *service* without notice to *you*.

#### 11.4 How can *you* cancel the *service*?

- (a) *You* can ask us to cancel the *service* by calling us. Your call will be notice of cancel of *service*.
- (b) *You* may also be able to cancel the *service* by electing to have an equivalent *service* to the *service* supplied by another carrier or carriage *service* provider (including, by churning). That carrier or carriage *service* provider will inform us that *you* have elected to have the relevant *service* supplied by them or have churned to them and *we* will cancel the *service* immediately.

#### 11.5 When will the *service* be cancelled?

The *service* will be cancelled on the *cancellation date*. *You* will not be able to use the *service* after the *cancellation date*.

#### 11.6 What happens when the *service* is cancelled?

- (a) The *agreement* terminates when the *service* is cancelled.
- (b) If the *service* is cancelled:
  - (i) *you* are liable for any charges incurred (including the *cancellation fee*, and outstanding *equipment charges* if any) up to, and including, the *cancellation date* (*you* should check the *service description* and *critical information summary* for *your service* for details of any applicable *cancellation fee*). *You* will not be liable for any such charges under this subsection if *you* cancel the *service* in accordance with section 11.1(b)(i) above.
  - (ii) because an *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days (under clause 11.1(a)(ii)(C) or 11.3(a)(xi) above), *you* are liable for any charges incurred (including outstanding *equipment charges* if any) up to the *cancellation date*. However, unless it is fair and reasonable for us to do so, *we* will not charge *you* any *cancellation fee* in these circumstances
  - (iii) *you* authorise us to apply any over payment on *your* account and/or money that *you* have paid in advance for the *service* which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any),
  - (iv) subject to paragraph (iii) above and unless otherwise set out in the *service description*, *we* will refund any over payment on *your* account and any money that *you* have paid in advance for the *service* which is being cancelled on a pro-rata basis to *you*, and

- (v) if *you* are required under the *service description* to pay for the *service* by direct debit payment (either from *your* credit card or from *your* nominated bank account), *you* authorise us to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from *your* credit card or bank account.
- (c) If the *service* is cancelled as a result of circumstances reasonably attributable to *you*:
  - (i) before the *service start date*, *you* must pay us all infrastructure and installation costs incurred by us in connection with preparations for supplying the *service* to *you*, and
  - (ii) during the *minimum term*, subject to clause 2A, *you* must pay us the *cancellation fee*.
- (d) If *you* wish to reinstate the *service* *you* should contact us. If the *service* is cancelled as a result of circumstances reasonably attributable to *you* and *we* reinstate the *service*, then *you* may have to pay us a reconnection or reactivation fee.
- (e) If *you* are able to use the *service* after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 11.6.

## 12. **SUSPENDING THE SERVICE**

### 12.1 Our rights to suspend the *service*

- (a) We may suspend the *service* at any time, if:
  - (i) there is an emergency,
  - (ii) doing so is necessary to allow us or a *supplier* to repair, maintain or *service* any part of the *Pentanet network* or a *supplier's network* used to supply the *service*,
  - (iii) we reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - (iv) we reasonably believe there has been an *unusually high use* of the *service*,
  - (v) any amount owing to us in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,
  - (vi) we reasonably consider *you* a credit risk because *you* have not paid amounts owing to us (which is not the subject of a valid dispute under clause 10.2 above) in respect of any *service* is not paid by its due date and *you* are given notice requiring payment of that amount and *you* fail to pay that amount in full within the required period,
  - (vii) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Use Policy or breach clause 6.1 above) and *you* cannot remedy that breach,
  - (viii) *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Go Policy or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,
  - (ix) we are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)),
  - (x) problems are experienced interconnecting the *Pentanet network* with any *supplier's network*,
  - (xi) *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (xii) *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due, or
  - (xiii) *we* are otherwise entitled to do so under the *agreement*.
- (b) In most circumstances, *we* will give *you* as much notice as *we* reasonably can before *we* suspend the *service*. However, in some circumstances, for example in an emergency or if *we* consider *your* use of the *service* is unreasonable and in breach of our Fair Use Policy *we* may suspend the *service* without notice to *you*.
- (c) If *we* suspend the *service*, *we* may later *cancel the service* for the same or a different reason.

### 12.2 What happens when the *service* is suspended

- (a) If the *service* is suspended, *you* will have to pay *access fees* for the *service* while it is suspended.

- (b) If the *service* is suspended and the suspension was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by us for *you* to use in connection with the *service*, *you* will be entitled to a refund or a rebate of any *access fees* for the period of suspension. You should contact customer *service* for *your* refund or rebate.
- (c) If the *service* is suspended as a result of circumstances reasonably attributable to *you*, *you* may have to pay us a suspension fee. You should check the relevant *standard pricing table* for the *service* concerned to see if a suspension fee applies.
- (d) If *you* wish to lift the suspension *you* should contact us.

## 13. WHAT ARE YOU AND WE LIABLE FOR

### 13.1 Your liability to us

- (a) You are liable to us for any breach of the *agreement* by *you* that causes foreseeable substantial *loss* to us.
- (b) You are not liable to us for any *consequential losses* *we* suffer or for any costs, expenses, *loss* or charges that *we* incur which are not a direct result of something *you* have done.

### 13.2 Our liability to *you*

- (a) We have responsibilities and obligations under the law, including under:
  - (i) the *Telecommunications Legislation*,
  - (ii) the *Competition and Consumer Act*, including the Australian Consumer Law, (iii) applicable laws, regulations and codes.

Nothing in the *agreement* removes or limits any rights that *you* have under existing laws or regulations.

#### Your statutory rights as a consumer

Under the Australian Consumer Law, if *you* enter into an *agreement* to purchase goods or *services* from us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by *you*, certain *consumer* guarantees apply to those goods and *services* in relation to acts or omissions that occur on or after 1 January 2011 (consumer guarantees). Consumer guarantees apply regardless of any express warranties to which *you* may be entitled under this *agreement*. We guarantee that:

- goods are of acceptable quality (unless *we* specifically drew to *your* attention the reasons why the goods are not of acceptable quality);
- any express warranties will be honoured;
- you are buying goods that have clear title, that do not have undisclosed securities and with a right to undisturbed possession;
- you are buying goods that are fit for any disclosed purpose;
- you are buying goods that match the description, sample or demonstration model; and
- the *services* *we* supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the *services*) and are provided within a reasonable time, if no time is fixed for supply of the *services*.

If the goods or *services* *we* supply fail to meet a *consumer* guarantee, *you* may have rights against us. This may include the right to a repair, replacement or refund. In certain circumstances, *we* may choose how *we* remedy our failure. In other circumstances, *you* may choose how the failure should be remedied.

You may not be entitled to a refund or replacement under the *Australian Consumer Law* if the good is not rejected within a reasonable period; *you* have lost, destroyed or disposed of the good; or the good has been damaged after delivery. You may be entitled to recover reasonably foreseeable *loss* or damage suffered for our failure to meet a *consumer* guarantee.

You may also have rights against us in relation to acts or omissions occurring before 1 January 2011 that amount to a breach of an implied condition and/or warranty under the *Trade Practices Act*, in respect of goods or *services* purchased from us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by *you*.

- (b) We are liable to *you* for:

- (i) any damage to *your* property which has been caused by the fault, negligence or fraud by us or our *personnel* during installation, repair or maintenance,
  - (ii) interruptions in *your* use of the *service* as a result of a fault or negligence of us or our *personnel*, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable *loss* incurred, and
  - (iii) death or personal injury caused by us or our *personnel*.
- (c) If *you* have contributed to any *loss* or damage *you* are claiming against us, our liability is reduced to the extent of *your* contribution.
- (d) Subject to *your statutory rights as a consumer*, we are not liable to *you* for any *consequential losses* *you* suffer or for any costs, expenses, *loss* or charges that *you* incur.

## 14. ASSIGNING THE AGREEMENT TO A THIRD PARTY

### 14.1 How can we assign our responsibilities to a third party

- (a) We may assign some or all of our rights under the *agreement* (where those rights are assignable) to any person.
- (b) We may transfer some or all of our obligations under the *agreement* to any *contractor* that is able to perform those obligations.
- (c) We may perform any of our obligations under the *agreement* by arranging for them to be performed by another person. We will still be responsible for the performance of the obligations.

### 14.2 How can you assign your responsibilities to a third party

- (a) You may assign *your* rights under the *agreement* (where those rights are assignable) so long as *you* have our prior written consent.
- (b) You may transfer *your* obligations under the *agreement* if:
  - (i) the person to whom *you* are transferring the obligations:
    - (A) provides satisfactory proof of identification,
    - (B) meets the eligibility criteria for the *service*,
    - (C) has an appropriate credit rating
  - (ii) the *service* is available at the location where they wish to acquire the *service*.

## 15. GENERAL

### 15.1 Which laws and courts govern the *agreement*?

- (a) The *agreement* is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which *you* normally reside.
- (b) You and *we* submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

### 15.2 Intellectual property protections

- (a) We own all material (including *intellectual property rights*) developed by us or our *personnel*, or at our or their direction.
- (b) We may permit *you* to use this material, or other material licensed by us, as part of the *service*. This permission is subject to any conditions which *we* may impose from time to time and will cease when the *service* is cancelled.
- (c) You must not infringe any person's *intellectual property rights* (such as by using, copying or distributing data or software without the permission of the owner) in using the *service*. If *you* breach this paragraph, *we* may suspend the *service* under clause 12.1(a)(vii) or (viii) or *cancel the service* under clause 11.3(a)(v) or (vi).

### 15.3 What happens if *you* can't fulfil *your* obligations or *we* can't fulfil our obligations under the *agreement* because of an event outside *your* or our control?

- (a) If an *intervening event* occurs which affects *you* from performing any of *your* obligations under the *agreement* (other than an obligation to pay money), then *you* will not be liable for failing to perform that obligation. You must notify us of the *intervening event* and use *your* best efforts to resume performance in accordance with the *agreement* as soon as reasonably possible. Our obligations continue during the *intervening event*, except if *we* are not able to perform our obligations because *you* are unable to perform *your* obligations due to the *intervening event*.

- (b) If an *intervening event* occurs which affects us (or any of our personnel) from performing any of our obligations under the *agreement* (other than an obligation to pay money), then we will not be liable for failing to perform that obligation. We must notify *you* of the *intervening event* and use our best efforts to resume performance in accordance with the *agreement* as soon as reasonably possible. Your obligations continue during the *intervening event*, except if *you* are not able to perform *your* obligations because we are unable to perform our obligations due to the *intervening event*.

15.4 What happens if *you* become a carrier or carriage *service* provider?

- (a) You represent that *you* are not a carrier or carriage *service* provider.
- (b) If *you* are or become a carrier or carriage *service* provider, we may immediately *cancel the service* by giving *you* notice.
- (c) If we *cancel the service* under this clause, we will negotiate in good faith with *you* to enter into an alternative *agreement* governing supply of the *service*, on terms to be agreed.

15.5 When do we waive a right we have under the *agreement*?

If *you* breach the *agreement* and we do not exercise a right that we have because of *your* breach, we do not necessarily waive our entitlement to exercise that right because of *your* breach at any later time.

15.6 Payment of commission by us

We may pay a commission to any of our *personnel* in connection with the *agreement*.

15.7 Information about *your* rights

Information and advice about *your* rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

## 16. WHAT DO TERMS IN THE AGREEMENT MEAN?

### 16.1 Definitions

*access fee* means the fixed payment for access to the *service* payable on a regular basis (often monthly). The *access fee* is payable regardless of the actual usage of the *service*. A minimum monthly charge and minimum monthly *service* charge are also *access fees*. *agreement* means the terms and conditions on which we supply the *service* to *you*. *appendices* means the *appendices* containing information relevant to the *service*. *application* means the part of the *agreement* which is the written or verbal *application* *you* complete to request that we supply the *service* to *you*.

*Australian Consumer Law* means The *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth). *cancel the service* means that the *service* is cancelled and the *agreement* is terminated.

*cancel the service for convenience* means to *cancel the service* in circumstances where *you* have not breached the *agreement* and there is no other event which triggers the right to *cancel the service*. *cancellation date* means:

- (a) the date 30 days after *you* notify us that *you* wish to *cancel the service*, unless we agree otherwise, (b) the date at least 30 days after we notify *you* that we will be cancelling the *service*, or (c) as otherwise set out in the *agreement*.

*cancellation fee* means the *cancellation fee* or termination charge which may be payable on cancellation of the *service*. Unless otherwise indicated in the *service description*, any *cancellation fee* payable is set out in the *standard pricing table*.

*charging zone* refers to the geographic zone within which a particular *service* number can be used, which in turn determines the applicable *charging zone*, as prescribed by ACMA's Telecommunication Numbering Plan 1997.

*churn* means to change from having a *service* supplied by one carrier or carriage *service* provider to having the *service* supplied by another carrier or carriage *service* provider.

*Competition and Consumer Act* means the *Competition and Consumer Act 2010* (Cth), (named the *Trade Practices Act* before 1 January 2011) as amended or replaced from time to time. *consequential loss* means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator* and any *loss* that is an indirect *loss*. *consumer* means a person who acquires and uses the *service* for personal, domestic or household use only. *consumer terms* means this document. *content* means:

- (d) all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined, and (e) any *content service*, sent and received across a *network*. For the avoidance of doubt, *content* includes, but is not limited to, SMS and MMS. *credit rating* means information about *your* credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the *Privacy Act 1998* (Cth) as amended from time to time. *equipment charges* means any payment for equipment obtained from us including, for example, phones or modems and includes the cost of any software or licences supplied to operate in conjunction with that equipment. *excluded event* means:

- (f) a breach of the *agreement* by *you*,

- (g) a negligent or fraudulent act or omission by *you* or any of *your* personnel, or (h) a failure of any of *your* equipment.

*fixed-length agreement* means an *agreement* that has a *minimum term*, during which time neither *you* nor *we* are free to change the terms of the *agreement* or to *cancel the service*, other than as specifically provided for in the *agreement*. A *fixed-length agreement* does not include a month-to-month *agreement*. *insolvency event* means:

- (i) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt,
- (j) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors,
- (k) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business,
- (l) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business,
- (m) *you* suspend payment of *your* debts generally, or
- (n) *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).

*intellectual property rights* means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright). *intervening event* is an event outside *your* or *our* reasonable control which interferes with the operation of the *network* we use to supply the *service* and results in ongoing disruption to the *service*. An *intervening event* includes the following events where those events are outside *your* or *our* reasonable control: failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the *Telecommunications Legislation*) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any *regulator*, any *supplier* or any of their *personnel*). *minimum term* means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start date* and runs for the period of time stated on the *application*, unless otherwise set out in the *agreement*. For a *non-fixed-length agreement*, there is no *minimum term*. *loss* means any *loss*, cost, liability or damage, including reasonable legal costs. *network* means any interconnected telecommunications equipment, facilities, or cabling. *non-fixed-length agreement* means an *agreement* that does not have a *minimum term*, or a *fixed-length agreement* where the *minimum term* has expired. A *non-fixed-length agreement* includes a month-to-month *agreement*.

*Pentanet network* means the *Pentanet network* used to supply the *service*, as set out in the *service description*. *Pentanet owned equipment* means any equipment or cabling *we*, or *our personnel*, may provide or lease to *you* to use in connection with the *service*. *personnel* of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of any *Pentanet group company*. *premises* means locations:

- (o) at which *we* supply the *service*, and/or
- (p) to which *we* need to have access to supply the *service*. *pricing plan* contains information about the terms and conditions and prices of the plan *you* have selected in *your application*. *You* may also hear a *pricing plan* referred to as a 'rate plan'.

*regulator* means the Australian Communications and Media Authority and the Australian Competition and Consumer Commission or statutory body or authority.

*related corporation* of a company means another company that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth). *service* means the *service*, with the features requested in the *application* as described in the *service description*, and any related goods (including equipment) and ancillary *services* which *we* supply to *you* in connection with that *service*. *service description* means the part of the *agreement* entitled '*service description*', which is *our* standard *service description* for *consumers* describing the *service*. *service start date* for the *service* means the date on which *we* start supplying that *service* to *you*, unless otherwise specified in the *service description*. *special* means a *special* promotion or offer made by *us* in connection with the *service*. *standard pricing table* means the part of the *agreement* entitled '*standard pricing table*', which is *our* standard rate plan, pricing and charges list for *consumers* for the *service*. *supplier* means any *supplier* of goods or *services* (including interconnection *services*) which are used directly or indirectly by *us* to supply the *service* to *you*. Where a *supplier* supplies goods or *services* to *you* directly, that *supplier* is not acting in its capacity as *supplier*, but rather is a third party providing *services* directly to *you*.

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

*Telecommunications Legislation* means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provisions of the *Competition and Consumer Act*, including the Australian Consumer Law.

*tethered modem* refers to the use of a mobile phone as a modem when connected to a computer or laptop, enabling connection to the internet over a mobile network. The connection to the computer or laptop may be either with cables

or wireless. Use of a mobile phone as a *tethered modem* requires both an active mobile *service* together with a *tethered modem* data plan.

*Trade Practices Act* means the *Trade Practices Act 1974* (Cth).

*you* means the person who fills out the *application* (and *you* and *yours* is to be construed accordingly). Only one person may fill out the *application*.

*your statutory rights as a consumer* means *your* rights and remedies as a *consumer* under the *Australian Consumer Law* (see the explanatory box at clause 13.2 of these *consumer terms*).

*we* means the *Pentanet company* specified in the *service description* as supplying the *service* (and *us* and *ours* is to be construed accordingly). *unusually high use* means high out of pattern usage of the *service* on a short-term basis or a sustained high usage which exceeds the general average usage of customers on a similar *pricing plan* or who have accepted a similar *special*.

## 16.2 Interpretation

- (a) The following words have the same means in the *agreement* as they have in the *Telecommunications Legislation*:
  - (i) carriage service,
  - (ii) carriage service provider,
  - (iii) carrier,
  - (iv) content service, and (v) facility.
- (b) A term which is defined in any part of the *agreement* has the same meaning in every other part of the *agreement*.
- (c) The singular includes the plural and vice versa.
- (d) Different grammatical forms of the same word(s) have the same meaning.
- (e) Examples or words of inclusion are illustrative only and do not limit what else might be included.
- (f) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (g) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.