



Standard Agreement for the Supply of Clear Telecoms Services

M2 Clear Pty Ltd
Level 10, 60 City Road, SOUTHBANK, VIC 3006
ACN 148 154 590

**M2 Clear SFOA was last updated 01 Feb 2011 and this SFOA is
covered by the new Australian Consumer Law that came into force as
of 01 Jan 2011.**

Contents

	Page	
1	Definitions and interpretation	1
2	Terms and Conditions	3
2.1	The Agreement	3
2.2	When does the Agreement start?	3
2.3	How long does the Agreement last?	4
2.4	The Service	4
2.5	Using the Service	4
2.6	Equipment	5
2.7	Credits	6
2.8	Invoicing	6
2.9	Payment	7
2.10	Transfer of Your Account to us	9
2.11	Transfer of Your Account from us	10
2.12	Variations to the Agreement	10
2.13	Personal Information	11
2.14	Termination	12
2.15	Limitation of liability	12
2.16	Indemnity	14
2.17	Miscellaneous terms	14

1 Definitions and interpretation

(a) Definitions

Administration fee means the fee applicable to clients invoicing who do not have a direct debit facility for their monthly invoicing. The fee is chargeable at a amount of \$5.50 Inc GST.

Acceptable Use Policy means our policy about the acceptable levels and methods of use of the Services applicable to our unlimited plans, as amended by us from time to time.

Account means the account held at Your financial institution from which we are authorised to arrange for funds to be debited for the charges incurred by You under this Agreement.

Account Application means the account and telephone application forms headed with the following (or similar) wording: "Application for Telephone Service" and "Application for Telephone Account" respectively, either or both of which are completed by You and to which these terms and conditions are attached.

Agreement means the agreement between M2 Clear Pty Ltd and You for the provision of Services comprising these terms and conditions, the Account Application once accepted by M2 Clear Pty Ltd and our current Tariff Schedule.

Authorised Telecoms Dealer means the agent or dealer who introduces you to the Clear Telecoms Services and is identified as such by M2 Clear Pty Ltd.

Business Plan Discounts are defined as the agreed discounts by You offered upon eligible calls for a fixed duration, and as displayed on Your signed rate Card. Commencing 1st November 2009, discounted rates for all fixed line plans will be the same as standard rates

Broadband Service means the service we provide which allows You to connect to the Internet from your computer or other device via any relevant access technology.

Clear Rate Plans means the specific plans available under each of the Clear Telecoms Product Descriptions. The terms and conditions (including charges) for each of the Clear Rate Plans may be set out in the documents referred to as "Rate Cards" or "Tariff Schedules".

Clear Telecoms Product Descriptions means the broad range of Clear Telecoms voice, data and other products available from time to time under which the specific Clear Rate Plans are offered.

Credit means an amount accrued and available for off-set against charges for Eligible Calls up to a maximum value which is determined at the time you enter into the Agreement.

Credit Reporting Agency means a credit reporting business as defined in the *Privacy Act 1988* (Cth).

Current Supplier means a supplier who supplies Existing Services to You at the time of You signing the Agreement.

Customer means the customer identified in the Account Application also referred to as "You".

Data Calls include calls made from modem(s) to modem(s) on voiceline. Data is charged in a ratio of 1MB (megabyte) to 1,024KB (kilobytes).

Debit Day means the day that payment by you to M2 Clear Pty Ltd is due.

Debit payment means a particular transaction where a debit is made.

Direct Debit Request means the application form headed "Direct Debit Request" which is a request from, and authority given by, You to debit the Account specified on the form for the Services provided under the Agreement.

Early Termination Payment means an amount payable by You which represents a genuine pre-estimate of our loss incurred as a result of the Agreement being terminated (including by You) before the minimum term being satisfied.

Eligible Calls are the particular types of calls as outlined on Your Rate Card. These charges are able to be off-set as Credits . The types of fixed line originated calls which may be Eligible Calls include Local Calls, National Calls, International Calls and Calls to Mobile Telephone, however the types of calls which constitute Eligible Calls vary between Clear Rate Plans. The types of mobile phone originated calls which may be Eligible Calls include Mobile to Mobile calls, Mobile to Fixed calls and, optionally, SMS Messages.

Existing Services means the services supplied to you by a Current Supplier.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Included Calls means an amount of call usage able to be off-set against eligible call-spend charges from your Monthly Plan Fees, including mobile Included Calls.

Included Usage means an amount of service usage available for off-set against eligible usage charges from your Monthly Plan Fees, including but not limited to BlackBerry Included Usage and Broadband Included Usage.

Line Access charge of \$4.35 Inc GST per month is applied to each service on your account for accessing the Clear Telecoms Network.

Maximum Monthly Credits means the maximum value of Credits available in each month during the term of the Agreement determined when you enter into the Agreement. Any credits not utilised in a specific month are non transferable and non-refundable. Credits allocated towards services remain for the full term. No call credits may be reallocated within other service types provided at any time during the term of the agreement.

Monthly Plan Fees is a fee payable by You each month for the Services provided to You by us in each month during the term of the Agreement and thereafter.

Maximum Monthly Included Calls means the maximum amount of Included Calls available in each month during the term of the Agreement.

Other Supplier means a carrier other than M2 Clear Pty Ltd who supplies Telecommunications Services.

Personal Information means information about You from which Your identity is apparent or can reasonably be ascertained, including Your name, address and other details, and Your personal or commercial credit rating.

Port means a change of service provider whilst retaining the same telephone number. "Porting" has a corresponding meaning.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Services means the services we provide to You with the features requested by You in the Agreement, as documented in places including the Clear Rate Plans, the Tariff Schedule and other collateral provided to You in connection with the Agreement.

Telecommunications Services means telephony services as agreed between You and us from time to time.

Tariff Schedule means our tariff schedule (including GST) as at the date of the Agreement as amended from time to time in accordance with clause 2.8(f). Particular Tariff Schedules may also be referred to as "Rate Cards".

Transferred Services means the Telecommunications Services transferred to us by Your Current Supplier.

Voice Services means a telephone call made from one person(s) to another person(s) and specifically excludes data calls from modem(s) to modem(s).

Wireless Connection Device means a device that allows you to connect to the Internet from your personal computer or laptop.

- (b) Any other undefined or un-interpreted words used in the Agreement shall have the same meaning as in the *Telecommunications Act 1997* (Cth).
- (c) The expression "we", "our" and "us" refer to M2 Clear Pty Ltd; and
- (d) the expression "You" and "Your" refer to the Customer.
- (e) If the terms and conditions in the standard customer terms listed in the following Terms and Conditions at clause 2 are inconsistent with any other document forming part of the Agreement, then these terms and conditions shall prevail to the extent of any inconsistency.

2 Terms and Conditions

2.1 The Agreement

- (a) The Agreement is made up of:
 - (i) Your Account Application;
 - (ii) these Terms and Conditions in clause 2 of this document;
 - (iii) the Direct Debit Request and its accompanying Direct Debit Request Service Agreement;
 - (iv) Acceptable Use Policy (where signed by You); and
 - (v) the Tariff Schedule.
- (b) The Agreement is a fixed-term agreement as specified in Your Account Application and is for a minimum term of 24 months, unless stated otherwise.
- (c) If you are an existing Customer of M2 Clear Pty Ltd, this SFOA replaces any previous agreement between You and M2 Clear Pty Ltd.

2.2 When does the Agreement start?

- (a) The Agreement starts when we accept your Account Application.

- (b) The provision of the Services commences when the Transferred Services accounts are transferred from Your Current Supplier to us or our nominated Other Supplier, and upon completion of installation of any necessary equipment and any other arrangements with any Other Supplier for the provision of the Services.
- (c) We will decide whether to supply You with Services under this Agreement based on:
 - (i) Your eligibility for the Service;
 - (ii) the availability of the Service in Your requested location; and
 - (iii) You meeting our credit requirements.

2.3 How long does the Agreement last?

- (a) For agreements other than a fixed-term agreement, we will provide the Service to You in accordance with the Agreement until it is terminated in accordance with clause 2.14.
- (b) For fixed-term agreements, we will provide the Service to you in accordance with the Agreement:
 - (i) for the minimum term; or
 - (ii) until it is terminated in accordance with clause 2.14; or
 - (iii) where the minimum term has ended and you have continued to use the Service, on a month-to-month basis until it is terminated in accordance with clause 2.14.
- (c) Unless otherwise specified in the Agreement, a maximum term of 60 months will apply to this Agreement, measured from the first date on which Credits are applied by us as an offset against the charges you incur in accordance with clause 2.7.

2.4 The Service

- (a) The Service that You have selected is detailed in the Tariff Schedule, for which the following terms apply depending on the particular Clear Rate Plan named and selected. Defined terms and conditions applicable to each of the Clear Rate Plans are set out in the relevant Tariff Schedule.

2.5 Using the Service

- (a) We will provide You with our Services at the earliest practical time after commencement of the Agreement.
- (b) Local Calls can be provided to customers that transfer their Line Rentals to M2 Clear Pty Ltd. Local calls may be provided through override dialling codes nominated by M2 Clear Pty Ltd. Your telephone system must be programmed with the override codes or You agree to M2 Clear Pty Ltd providing override dialling boxes for each line.
- (c) We may provide the Services by:
 - (i) You programming Your telephone system equipment for the override code nominated by us;

- (ii) preselecting Your pre-selectable services to a service provider nominated by M2 Clear Pty Ltd; or
 - (iii) by any other method available to M2 Clear Pty Ltd.
- (d) We will use reasonable care and skill in providing the Service and will provide the Service in accordance with this Agreement. However, given the nature of telecommunications systems, we cannot promise that the Service will be continuous, accessible at all times or fault-free. We cannot guarantee the speed of the service as this is a dependant on the number of voice channels in use at the time.
- (e) When You use the Service, You must comply with all laws and regulations and all reasonable directions by us. You must not use the Service to:
 - (i) commit an offence or allow anybody else to do so;
 - (ii) transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (iii) expose us to liability; or
 - (iv) damage, interfere with or interrupt in any way the Service or a network used to supply the Service.
- (f) We do not monitor use of the Service, whether by You or anyone else. However, in some circumstances, we may monitor use of the Service to see whether You are complying with the Acceptable Use Policy.
- (g) You must not use, attempt to use or allow others to use any Service in a way that, in our reasonable opinion, does or may significantly interfere with other customers' use or enjoyment of the Service, or interferes with our efficient or proper operation of the Service and its delivery.
- (h) We may not be able to meet a request from You to provide detailed information about Your usage of Your Service (e.g., information about what sites You visited and when).
- (i) You must make sure You keep Your account information, password, data and equipment secure.
- (j) We encourage You to use our technical support services for genuine problems with Your Service, however you acknowledge that we do not provide technical support services, including for configuring Your local area network to connect it to Your Service, and we do not provide assistance with local area network-related difficulties or technical support for domain, web or email hosting.

2.6 Equipment

- (a) If we provide equipment to you in connection with the Services (including dialler boxes):
 - (i) title in the equipment remains with us;
 - (ii) You must not attempt to sell, rent, remove or otherwise interfere with, create an interest in or dispose of that equipment;

- (iii) You must provide us with reasonable access to that equipment and provide basic amenities for the equipment such as electricity;
 - (iv) we may change the equipment at any time;
 - (v) You acknowledge that the installation of the equipment may mean that the Services are unavailable during the installation process; and
 - (vi) on termination of this Agreement, You authorise us to enter Your premises and remove the equipment.
- (b) We are not responsible for any loss caused by equipment provided by someone other than us. If we are responsible for any loss caused by equipment that we do provide, our liability is limited in accordance with clause 2.14(c).
 - (c) If You provide Your own Wireless Connection Device, You are responsible for any loss that you may incur from its use, including that which is caused by any unauthorised interception of Your Service.

2.7 Credits

- (a) Credits are applied monthly against the monthly Eligible Calls for the term of this Agreement. The Credits will commence upon receipt of the written notification from Your Authorised Clear Telecoms Dealer that you have acquired the equipment. We will apply to your account the Credits in accordance with the amount, frequency and other terms stated in Your Account Application.
- (b) You acknowledge and accept that not all charges incurred by You under the Agreement are capable of being redeemed as Credits and that Credits only apply to Eligible Calls.

2.8 Invoicing

- (a) We will usually invoice You monthly for the Services in accordance with the Tariff Schedule, incl GST, which may change from time to time in accordance with the Agreement. We reserve the right to defer billing in respect of any billing period and to add the charges incurred to any subsequent billing period.
- (b) All invoices will be issued to You by email. If you request to have a bill mailed you will be charged \$5.50 (inclusive of GST) for each paper bill.
- (c) Method of Billing: We will bill You in arrears for excess usage charges and in advance for all periodic charges, equipment rental, connections and service fees and all other charges. The bill shall be calculated in accordance with data recorded and supplied to us by the Carrier and shall not be calculated by reference to any data recorded by the Customer.
- (d) Re-Issued Bills: We reserve the right to re-issue any bill in order to correct any mis-description, error, omission or miscalculation, subsequently discovered and such reissued bill will take precedence over any prior bill, except that any charges will not be billed older than 190 days from the date that they were incurred by You.
- (e) Time for Payment: All undisputed amounts in all bills must be paid within 14 days of the date of invoice.
- (f) Changes to Charges: Subject to paragraph (g) we may from time to time vary our charge for any Service (including decreasing the rate of any discounts associated with Services) by giving one months notice in writing to You of the new Tariff Schedule.

- (g) Other Suppliers' Charges: Our charges to You may include charges which Other Suppliers charge to us in relation to Your account (including increases or special or one-off charges) from time to time without notice. We may add a fee to the charge which Other Suppliers charge to us before passing it on to you.
- (h) Other Charges:
 - (i) You will pay to us in accordance with this clause 2.8 any charges which any Other Supplier charges to us because You approach that Other Supplier directly, or, otherwise than through us.
 - (ii) You will pay to us in accordance with this clause 2.8 any charges which any Other Supplier or other person charges to us for connection or initiation of any Service or for cancellation of any Service.
- (i) Overdue Amounts:
 - (i) If You do not pay a bill by its due date we can charge You an administrative fee (told to You on Your bill or by other written notification) and interest at 2% above the overdraft rate from time to time charged by our principal bankers. You also agree to pay us all costs, fees, charges incurred by us in respect of collecting any overdue amounts, including bank charges incurred as a result of dishonoured cheques or receipts.
 - (ii) If You do not pay a bill by its due date and we notify You through an overdue notice, we may bar, suspend or cancel the services and we can charge You an administrative fee (told to You on Your bill or by other written notification).
- (j) Disputed Amounts: In the event that a bill is disputed by You, You agree to pay to us all undisputed amounts payable pursuant to the disputed bill without deduction or set-off and we agree to refund any monies found to be charged incorrectly after reasonable and proper investigation. If you dispute any amount in a bill, you must promptly notify us of the amount you consider to be incorrect. All disputes must be raised before the due date for that particular bill and no later than 6 calendar months after the date of the relevant bill, meaning that any Credits which may be applied under this clause will be backdated by a maximum 6 calendar months. If the investigation determines a dispute in Your favour, we may (at our election) offset the disputed amount against Your future charges.
- (k) Your obligations under this Agreement, including the obligation to pay the charges referred to in this clause 2.8, are several and independent from Your or our obligations under any other agreement You may have with us or our related bodies corporate.

2.9 Payment

- (a) Debiting your Account
 - (i) Payment under the Agreement is by direct debit only.
 - (ii) By signing a Direct Debit Request and entering into a Direct Debit Request Service Agreement, you have authorised us to arrange for funds to be debited from Your Account to pay for the charges incurred by You under this Agreement. You should refer to the Direct Debit Request and the Direct Debit Request Service Agreement for the terms of these arrangements between us and You.
 - (iii) We will only arrange for funds to be debited from the Account as authorised in the Direct Debit Request. Alternatively, we will only arrange for funds to

be debited from the Account if we have sent to the address nominated by You in the Direct Debit Request, a written which specifies the amount payable by you to us and when it is due.

- (iv) If the debit day falls on a day that is not a normal business day, we may direct Your financial institution to debit Your Account on the following business day. If you are unsure about which day the Account has or will be debited or whether your financial institution considers a particular day to be a normal business day, You should ask Your financial institution.
 - (v) M2 Clear Pty Ltd reserves the right to charge a monthly Administration fee of \$5.50 (incl GST) to any customer account that does not have an active direct debit facility in place for the payment of their monthly tax invoices.
- (b) Changes by You
- (i) Subject to (ii) and (iii), You may change the arrangements under a Direct Debit Request by contacting us on 1300 304 773.
 - (ii) If You wish to stop or defer a debit payment, You must notify us in writing at least 30 days before the next debit day.
 - (iii) You may also cancel Your authority for us to debit the Account at any time by giving us 30 days notice in writing before the next debit day.
 - (iv) If the direct debit facility is cancelled and there is no re-instatement of an active direct debit facility for monthly invoice payment, a monthly administration fee of \$5.50 (incl GST) is applicable to Your Monthly tax invoice.
- (c) Your obligations
- (i) It is your responsibility to ensure that there are sufficient clear funds available in the Account to allow a debit payment to be made in accordance with the Direct Debit Request.
 - (ii) If there are insufficient clear funds in the Account to meet a debit payment:
 - (A) You may be charged a fee and/or interest by Your financial institution for which we have no control;
 - (B) You may also incur fees or charges imposed or incurred by us; and
 - (C) You must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in the Account by an agreed time so that we can process the debit payment.
 - (iii) You should check the Account statement to verify that the amounts debited from the Account are correct.
 - (iv) If we are liable to pay goods and services tax (**GST**) on a supply made in connection with the Agreement, then you agree to pay us on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.
- (d) Errors

- (i) If you believe that there has been an error in debiting the Account, you should notify us directly on 1300 304 773 as soon as possible so that we can promptly investigate.
 - (ii) If we conclude as a result of our investigations that the Account has been incorrectly debited we will respond to your query by arranging for Your financial institution to adjust the Account (including interest and charges) accordingly. We will also notify You in writing of the outcome of that investigation and the amount by which the Account has been adjusted.
 - (iii) If we conclude as a result of our investigations that the Account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding.
 - (iv) Any queries You may have about an error made in debiting the Account should be directed to us in the first instance so that we can attempt to resolve the matter between us and You. If we cannot resolve the matter You can still refer it to Your financial institution which will obtain details from You of the disputed transaction and may lodge a claim on your behalf.
- (e) Accounts
- (i) You should check:
 - (A) with Your financial institution whether direct debiting is available from the Account as direct debiting is not available on all accounts offered by financial institutions;
 - (B) that details of the Account which you have provided to us are correct by checking them against a recent account statement; and
 - (C) with Your financial institution before completing the direct debit request if You have any queries about how to complete the direct debit request.

2.10 Transfer of Your Account to us

- (a) If you are transferring an Existing Service from Your Current Supplier to us:
 - (i) You agree to transfer the Existing Services to us by use of any method we nominate including, porting, Churning, pre-selection or override for the entire term of the Agreement. If we determine that override is the method of transfer the services You agree that the service is only available through override dialing where You are responsible for programming the override code nominated by us into Your telephone system and/or consequent on Your acceptance of our override dialers on each of Your lines;
 - (ii) in respect of Existing Services which are to be transferred to us, You authorise us to submit documentation to Port Your existing number(s) from Your Current Supplier and You understand that Porting will result in the disconnection of these telephone numbers with Your Current Supplier and finalisation of the current account(s) for these telephone numbers;
 - (iii) the Porting of Your telephone service numbers to us will be conducted in accordance with the relevant industry codes; and
 - (iv) You acknowledge that a transfer to us is not available on ADSL or Securitel* lines.

- (b) By entering into this Agreement:
- (i) You acknowledge that the features of the Service may be different from your current services and may not have access to Existing Services such as Telstra Easycall, Telstra Messagebank and Directory Services;
 - (ii) You certify that you have the authority to change from Your Current Supplier and authorise us to supply you with the Services.
 - (iii) You acknowledge that to transfer the Existing Services from Your Current Supplier there may be delays and downtime during the process which will be in accordance with the relevant industry codes.
 - (iv) You authorise us to sign on Your behalf and in Your name forms of authority to Your Current Supplier as are necessary to transfer the Transferred Services accounts as we direct. This includes acting as your agent for the purposes of Porting.
 - (v) If we request, You will Yourself give written instructions to Your Current Supplier to transfer the Transferred Services accounts from Your name to ours.
 - (vi) You will immediately pay Your Current Supplier all amounts owing to it for the Transferred Services up to the time of transfer of those accounts.
 - (vii) If we, in our absolute discretion, make any payment on Your behalf to Your Current Supplier, as referred to in paragraph (iii) above, then You will reimburse us for that amount.

2.11 Transfer of Your Account from us

- (a) **Transfer of Services:** If in the future You transfer any of the Services to any Other Supplier, then You remain responsible to us for the amount payable for the Services up to the time when we transfer those accounts to the Other Supplier and You will pay us that amount in accordance with clause 2.8. You will also forfeit any Credits or discounts that you were entitled to. If you only transfer a portion of the Services to any Other Supplier the Monthly Plan Fees and Credits will reduce in proportion to the Services you transferred to the Other Supplier.
- (b) **Termination of Services:** Our obligations to provide the Services cease when we transfer those accounts to any Other Supplier. We will bill You for the Services up to and including the date they are transferred to the Other Supplier and for all other charges You are liable for under the Agreement in accordance with clause 2.8.

2.12 Variations to the Agreement

- (a) The Agreement and any feature of the Service may be modified, added to or withdrawn by us at any time (**Variations**).
- (b) Where a Variation occurs, the Variation will not take effect until Your next billing period after the date of its implementation.
- (c) Where a Variation could be reasonably expected to adversely affect You, we will give You reasonable notice of this Variation having regard to the nature of the Variation, the means by which the notice is to be provided, the length of time before the Variation is to occur and any other matter that is reasonably relevant in accordance with the *Telecommunications (Standard Form of Agreement Information) Determination 2003*.

- (d) Where You demonstrate to us that the Variation has made a reasonable detrimental impact on You, we must offer You the right to terminate this Agreement without incurring any fees or charges, including any applicable Early Termination Payments, other than:
 - (i) Service usage or network access charges (incurred up to the date on which the Agreement ends); and
 - (ii) any other outstanding amounts that cover installation costs or equipment (where such equipment can be used in connection with services provided by other suppliers).

2.13 Personal Information

- (a) We and/or our agents may collect, use and disclose Personal Information about You that is reasonably necessary to provide the Service, including for purposes related to the provision of the Service (e.g. billing and account management), and to provide you with information about promotions, products and services of related companies and other organisations.
- (b) We may be permitted or required by applicable laws to collect, use and disclose Personal Information about You, including to:
 - (i) law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws;
 - (ii) our service and content providers, dealers and agents, or any company within the M2 Clear Pty Ltd group for purposes that are related to providing You with a Service and which You would reasonably expect us to use that information for.
- (c) Personal Information in our possession that relates to You may be disclosed by us to a Credit Reporting Agency, and You hereby consent to such disclosure.
- (d) You agree we may obtain a credit report relating to You from a Credit Reporting Agency for the purpose of either processing Your application to us for commercial credit, or for collecting overdue payments in respect of commercial credit provided to You by us.
- (e) You agree that we may disclose a credit report or other report relating to You or any other personal information derived from that credit report or other report to any other credit provider for any of the following purposes:
 - (i) the assessment by us or the other credit provider of Your creditworthiness.
 - (ii) the collection by us or the other credit provider of payments that are overdue, or
 - (iii) the exchange of information between us and the other credit provider for the purposes referred to in sub paragraphs (a) and (b).
- (f) You may request (in writing) that we provide You with access to Personal Information we have about you, or to correct any Personal Information that is incomplete, inaccurate or out-of-date.
- (g) If you do not wish to receive information on promotions and services from us, other than account-related and legally required information, You may request not to receive the information.

- (h) Any collection, use or disclosure of Personal Information by us will be in accordance with our privacy policy and the Privacy Act. You may obtain a copy of our privacy policy from us or from our website: <http://www.cleartelecoms.com.au/>.

2.14 Termination

- (a) Termination: Either party may terminate this Agreement by giving 30 days Written Notice. Early termination payments will be applicable and dependent upon the Rate Card and Term of your agreement.
- (b) Immediate Termination: We may terminate the Agreement immediately at any time by notice, if
 - (i) You have breached the Agreement or our Acceptable Use Policy, or
 - (ii) a liquidator, receiver, receiver and manager, official manager, trustee, administrator or similar official of Your business or association is appointed or You enter into any composition with Your creditors; or
 - (iii) you fail to make payments under this Agreement as and when they are due.
- (c) Fixed-term Agreements: All of our plans are fixed-term agreements with a minimum term of 24 months. Unless otherwise specified in Your Agreement, a maximum term of 60 months will apply, measured from the date on which Credits first are applied to us as an offset against the Charges You Incur. The terms and conditions are set out in Your Agreement. If you wish to terminate your agreement within the initial term we will charge You for the minimum line rental charges for the months remaining and any other applicable Early termination payments.

If you request to transfer any Services to any other supplier then you remain responsible to us for the amount payable for the services up to the time when we transfer those accounts to the Other Supplier. You will also forfeit any credits You were entitled to. If you transfer a portion of the services to any other supplier the Monthly Plan fees, Monthly Plan Credits and associated Monthly Included Usage and/or Monthly Business Credits will reduce in proportion to the services You transferred to the Other Supplier.

Where the agreed term has ended, including the expiry of Your Monthly Plan Credits, and You have continued to use the Services, we will provide the Services to You and charge You on a month-to-month basis including Your Monthly Plan Fee and associated Monthly Included Eligible Calls at the discounted rates displayed on either rate schedule until such time as You terminate Your agreement by giving us 30 days written notice.

- (d) Discounted Business Plans: If you are on a fixed term discounted business plan, that is 12 month, 24 month, 36 month term as displayed on your signed rate schedule, early termination payments will be applicable if you terminate and/or choose to move your services to another carrier prior to your agreement's expiry. We will charge you the total amount of applied discounts provided within your fixed term agreement, and we will charge You for the minimum line rental charges for the months remaining and any other applicable Early termination payments.

Where the agreed term has ended and You have continued to use the Services, we will provide the Services to You and charge You on a month-to-month basis at the standard rates displayed on either rate schedule until such time as You terminate Your agreement by giving us 30 days written Notice.

Apart from charges for call usage, You understand that we commit to minimum terms with our carriers and will incur costs if you cancel the service or terminate the Agreement within that time.

- (e) Business Capped Plans: If we have agreed to provide a combination of services including fixed line services, mobile service and wireless internet service under our Business Capped plan for a set term, as defined on the rate card, then apart from the charges to call usage, the Cap Plan fee is the debt owing for the remainder of the term, and any other Early termination payments should the services all services be cancelled prior to the end of the minimum term.

M2 Clear Pty Ltd issued sims cards and wireless broadband USB remain the property of M2 Clear Pty Ltd. Upon termination wireless broadband USB, and sim cards provided must be returned to M2 Clear Pty Ltd 64 Parramatta Road Glebe NSW 2037, with 14 days of termination. M2 Clear Pty Ltd reserves the right to apply the cost of the Wireless broadband USB and sim cards to your Early Termination Payments issued on your final account with M2 Clear Pty Ltd. The cost associated is \$165.00 Inc GST per wireless broadband USB, and \$27.50 Inc GST per Sim card.

2.15 Limitation of liability

- (a) Performance: We do not warrant that the Services will be free of blockages, delays or other related faults and we will not be responsible for loss or damage to You or Your business which may result.
- (b) To the extent permitted by law, all terms, conditions, warranties, under takings, inducements and representations, whether expressed or implied, statutory or otherwise, relating to the provision of Services by us are excluded, and we will not be responsible for any loss or damage (including loss of income, loss of profit, or consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services.
- (c) To the extent permitted by law, where any applicable legislation implies any term, condition, warranty or remedy into the Agreement from our relationship with You which may not be excluded but which may be limited, our liability for any breach of such implied term, condition or warranty will be limited, at our option, to
 - (i) (where the breach is related to goods);
 - (A) the replacement of the goods or supply of equivalent goods, or
 - (B) the repair of the goods, or
 - (C) the payment of the cost of replacing the goods or acquiring the goods;
 - (D) the cost of having those goods repaired; and
 - (ii) (where the breach relates to services):
 - (A) supply of those services again, or
 - (B) payment of the cost of having those services supplied again.
- (d) We have no liability to You or any other person for:
 - (i) acts or defaults of Other Suppliers, or

- (ii) faults or defects in Service which are caused to any material extent by Your own conduct or negligent use, or
 - (iii) faults or defects that arise in Telecommunications Services not provided under the Agreement (even if they are connected with the Services provided under the Agreement) which are due to incompatibility with the Services.
- (e) The Agreement or the parties' dealings in respect of the Services do not give rise to any liability under any Standard Rental Agreement.

2.16 Indemnity

You:

- (a) acknowledge that You enter into the Agreement entirely as a result of Your own inquiries and that You do not rely on any statement, representation or promise by us or on our behalf not expressly set out in the Agreement and these terms; and
- (b) accordingly release us and each of our officers, agents and advisers, to the extent permitted by law, from all claims and demands of any kind (including negligence) arising from the subject matter or terms of the Agreement, including any matter arising out of our dealings with You before the Agreement was signed by You.
- (c) Remedy
 - (i) The failure by either party to exercise any right or remedy under the Agreement in a timely manner, does not constitute acceptance of the matter which gave rise to the right or remedy, nor that party's waiver of such right or remedy.
 - (ii) If a Service is cancelled, suspended or disconnected, You remain liable for any liabilities incurred before the cancellation, suspension or disconnection.

2.17 Miscellaneous terms

- (a) Relationships

By signing the Agreement You are entering into a direct relationship with us and not Your Current Supplier or Your Authorised Telecoms Dealer. If You currently have a discount plan with a Current Supplier, that discount plan will not be applicable to the Services.

- (b) Force Majeure

We are not liable for:

- (i) any delay in Service;
 - (ii) delay in correcting any fault in any Service;
 - (iii) failure or incorrect operation of any Service; and/or
 - (iv) any other default in performance under the Agreement if it is caused by any event reasonably beyond our control, including but not limited to war, accident, act of God, industrial action, embargo and delay or failure or default by Other Suppliers.
- (c) Assignment

- (i) You will not assign, charge or otherwise deal with Your rights under the Agreement except with our prior written consent.
 - (ii) We may assign the Agreement without requiring Your consent.
- (d) General Information
 - (i) The Agreement is governed by the laws of New South Wales.
 - (ii) The Agreement contains the whole understanding of the parties to the exclusion of any prior agreement or understanding of any kind relating to the Services.
 - (iii) If any of these terms and conditions (or part of them) is void or unenforceable, it is taken to be removed and no longer forms part of the Agreement. The remaining terms and conditions remain in full force and effect.
- (e) Notices
 - (i) If You wish to notify us in writing about anything relating to the Agreement, you should write to us at M2 Clear Pty Ltd, 64 Parramatta Road Glebe NSW 2037.
 - (ii) We will notify You by sending a notice in the ordinary post to the address You have given us in the Direct Debit Request.
 - (iii) Any notice will be deemed to have been received two business days after it is posted.
- (f) Entire agreement
 - (i) This Agreement constitutes the entire agreement between You and M2 Clear Pty Ltd in relation to the Services provided under it.
 - (ii) This Agreement will not be altered by any representations made in addition or contrary to its terms, including in respect of any such representations (verbal or otherwise) made by any Authorised Telecoms Dealer or any other party.