



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 Pty Limited
Level 10, 60 City Road,
Southbank VIC 3006

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1 Definitions and interpretation

1.1 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.

Carriage Service Provider has the meaning given to that term in the *Telecommunications Act 1997* (Cth).

Carrier has the meaning given to that term in the *Telecommunications Act 1997* (Cth).

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 voicemail. 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 or our Partner's 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.

Partner means a third party that, under contract with us, supplies us the Services that we resupply to you.

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).

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (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.

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".

TCP Code means the Telecommunications Consumer Protection Code.

TCP Customer means a customer to whom the TCP Code applies, namely (and as at the date of this Agreement), a Customer who:

- (a) acquires goods or services for the primary purpose of personal or domestic use; or

- (b) a business or a non-profit organization which at the time it enters into this Agreement does not have a genuine and reasonable opportunity to negotiate its terms and has or will have an annual spend estimated at no greater for \$20,000.00 (other than a person who acquires goods or services for resale).

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

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.

1.2 INTERPRETATION

- (a) Any other undefined or un-interpreted words used in the Agreement shall have the same meaning as in the *Telecommunications Act 1997* (Cth).
- (b) The expression “we”, “our” and “us” refer to M2 Clear Pty Ltd.
- (c) The expression “You” and “Your” refer to the Customer.
- (d) 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 Applications.
- (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(if any) are applied by us as an offset against the charges you incur in accordance with clause 2.7.

2.4 The Service

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
 - (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. However, at all times we will not deny you the benefit of clauses 2.15(b) & (d) if they apply to You.
- (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 and for credit control reasons.

- (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 in respect of goods, services or infrastructure that we do not supply to you (for example, to configure Your local area network to connect it to Your Service, 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 dialer 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, refer to clause 2.15.
- (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) You may be entitled to receive Credits in connection with your plan. Your plan will specify if you are entitled to receive a Credit and if so, the value of your Credit.
- (b) For the avoidance of doubt, the value of your Credit (if any) will be determined with reference to the plan that you enter into with us. We will not make your entitlement to a Credit, or the value of that Credit, contingent upon you receiving goods or services from a third party not being a Related Body Corporate of ours or you refusing to receive goods or services from a third party.

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. However, we will not bill you for charges incurred more than 190 days prior.
- (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. The presentation of the bill may be adversely affected by your equipment or conditions beyond our control.
- (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 misdescription, 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 paragraphs 2.12(c) and (d) we may from time to time vary our charge for any Service (including decreasing the rate of any discounts associated with Services) Variations to charges will be made in accordance with clause 2.12.
- (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, such as international call fees, global roaming fees and charges and fees and charges in respect of

content/premium services.. We may add a fee to the charge which Other Suppliers charge to us before passing it on to you. You acknowledge that such fees and charges are variable in nature and outside of our control. Where we have visibility or control of those fees and charges, we will provide details to you upon request.

- (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). If you are a TCP Customer, we will not bar, suspend or cancel the services until we have complied with the requirements of the TCP Code.
- (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. However, if you are a TCP Customer and you acquire a Standard Telephone Service from us, you may pay by mail, unless we otherwise agree with you.
 - (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 clauses 2.9(b)(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. Please contact us promptly if they are not.
 - (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 twenty-one (21) days 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* and the TCP Code (if applicable to you).
- (d) If you are a TCP Customer, if You demonstrate to us that the Variation has made more than a neutral or minor detrimental impact on You, we must offer You the right to terminate this Agreement within forty-two (42) days of the notice of variation 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 in accordance with s18N(1)(b) of the *Privacy Act 1988* (Cth), 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 2.13 (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:** If the fixed term of your Agreement has expired, either party may terminate this Agreement by giving 30 days Written notice. Early Termination Payments not apply if you terminate after the fixed term of your Agreement has expired.
- (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,

however, if you are a TCP Customer, we will only terminate this Agreement if:

 - (iv) there is evidence to suggest fraud or illegal conduct; or
 - (v) if there is a material breach of your Agreement; or
 - (vi) our Acceptable Use Policy providers for it; or
 - (vii) barring of your Service continues for fourteen (14) days.
- (c) **Fixed-term Agreements:** Without limiting any other clause of this Agreement, all of our plans are fixed-term agreements with a minimum term of 24 months unless otherwise expressly stated. 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 minimum 24 month term, early termination payments may apply.

- (d) **Discounted Business Plans:** Without limiting any other clause of this Agreement, 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 fixed 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 Partners and will incur costs if you cancel the service or terminate the Agreement within that time.
- (e) **Business Capped Plans:** Without limiting any other clause of this Agreement, 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 fixed term, as set out 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.
- (f) Where you are entitled to terminate your Agreement early, we may bill you for:
- (i) any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers, and
 - (ii) Usage or network access charges incurred up to the date on which the Agreement ends.
- (g) If we agree that you may terminate it early in any other circumstances, we may bill you:
- (i) an Early Termination Fee (dependent upon the Services You acquire, the Rate Card and term of your Agreement);
 - (ii) any applicable amounts under clauses 2.14(c),(d), (e) & (h);
 - (iii) a reasonable administration charge;
 - (iv) usage or network access charges incurred up to the date on which the Agreement ends; and
 - (v) any other charge that is specified to you in this Agreement.
- (h) Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early

(and we agree that you may do so), we may bill you an additional charge for those items representing value pro-rated against the portion of the minimum or fixed term that is to be truncated.

- (i) 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, Maximum Monthly Credits and associated Maximum Monthly Included Calls And/or 'Monthly Business Credits' will reduce in proportion to the services You transferred to the Other Supplier.
- (j) Where the agreed term has ended, including the expiry of Your Maximum 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.
- (k) M2 Clear Pty Ltd issued SIM 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 us within 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 but those charges may vary from time to time.
- (l) You acknowledge that you may receive additional bills from us even after the termination of your Services.

2.15 Your Rights and Our Limitation of liability

(a) Statutory Guarantees – Consumer Goods

If We supply You with goods of a kind ordinarily acquired for personal, domestic or household use or consumption, You may have the benefit of guarantees set out in Subdivision A, Division 1 of Part 3-2 of the Australian Consumer Law, which (in outline – You should refer to that Act for the precise wording) provide for:

- (i) if We sell You the goods – a condition that We have the right to do so (Guarantee as to title);
- (ii) a guarantee that You will enjoy undisturbed possession of the goods, except where we or a third party with an interest in them You were pre-informed of are entitled to disturb it (Guarantee as to undisturbed possession);
- (iii) if You are to own the goods at a later date – that they will remain free of third party interests You were not pre-informed of, excluding any floating charge over Our assets (Guarantee as to undisclosed securities etc.);

- (iv) a condition that the goods will be of acceptable quality, measured with reference to a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods) and excluding any defects we drew to Your attention or which You should have seen when You examined them, before You contracted to acquire them (Guarantee as to acceptable quality);
- (v) a condition that the goods will be reasonably fit for any purpose You told us You wanted them for, except if You did not rely (or unreasonably relied) on Our skill or judgment in that regard (Guarantee as to fitness for any disclosed purpose);
- (vi) a condition that the goods, if supplied by description, will correspond to that description (Guarantee relating to the supply of goods by description); and
- (vii) a condition that the goods, if supplied by reference to a sample or demonstration model, will correspond with the sample or demonstration model in quality state and condition (Guarantee relating to the supply of goods by sample or demonstration model) –

and nothing in Your Agreement limits those guarantees or Your remedies for any breach of them.

(b) Statutory Guarantees – Consumer Services

If We supply You with services of a kind ordinarily acquired for personal, domestic or household use or consumption, You may have the benefit of guarantees set out in Subdivision A, Division 1 of Part 3-2 of the Australian Consumer Law, which (in outline – You should refer to that Act for the precise wording) provide for:

- (i) a guarantee that the services will be rendered with due care and skill (Guarantee as to due care and skill);
- (ii) a guarantee that the services will be reasonably fit for any purpose told us You wanted them for, except if You did not rely (or unreasonably relied) on Our skill or judgment in that regard (Guarantee as to fitness for a particular purpose); and
- (iii) a guarantee that the services will be supplied within the time fixed by the Agreement or the time determined by both of us, or failing that, within a reasonable time (Guarantee as to reasonable time for supply) –

and nothing in your Agreement limits those warranties or Your remedies for any breach of them.

(c) Statutory Guarantees – Goods under \$40,000

If We supply you with goods that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption, You may have

the benefit of the guarantees set out in clause 2.15(a) but Our liability for a breach of those guarantees (other than a guarantee set out in clauses 2.15(a)(i) to (iii)) is limited to:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired –

unless You can demonstrate that it is not fair or reasonable for Us to rely on this clause.

(d) Statutory Guarantees – Services under \$40,000

If We supply you with services that cost under \$40,000 but are not of a kind ordinarily acquired for personal, domestic or household use or consumption, You may have the benefit of the guarantees set out in clause 2.15(b) but our liability for breach of those guarantees is limited to:

- (i) supplying the services again; or
- (ii) payment of the cost of having the services supplied again –

unless You can demonstrate that it is not fair or reasonable for Us to rely on this clause.

(e) Personal Injury and Death

To the extent that Our negligence causes personal injury or death, We accept liability on normal principles of law.

(f) Exclusion of Statutory Warranties and Limitation of Liability

Unless clauses 2.15(a) to (e) apply to you:

- (i) Any representation, warranty, condition or undertaking that would be implied in Your Agreement by legislation, common law, equity, trade, custom or usage or otherwise is excluded from Your Contract to the fullest extent permitted by law.
- (ii) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- (iii) We are never liable to You for:

- (A) economic loss;
 - (B) business interruption;
 - (C) loss of revenue, profits, actual or potential business opportunities or contracts;
 - (D) anticipated savings;
 - (E) loss of profits;
 - (F) loss of data;
 - (G) indirect or consequential loss;
 - (H) an act or omission by a party for whom We are not responsible in law;
 - (I) a fault in or failure of a Facility We do not control or operate;
 - (J) any Loss arising from circumstances beyond Our reasonable control; or
 - (K) Our failure to continue to provide the Services to You for any reason whatsoever.
- (iv) Otherwise, Our maximum aggregate liability to You under, in connection with or arising out of Your Agreement or our Service to You (whether pleaded in contract, tort, breach of statutory duty or on any other basis, whether arising from acts or omissions, and whether in relation to damage or loss the risk of which we were or should have been aware) is limited to the aggregate charges You actually paid to us in respect of the first three months of your Agreement.

2.16 Indemnity

Except to the extent that We have engaged in misleading or deceptive conduct, or we have made false or misleading representations to You, 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.

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) a failure or incorrect operation of any Service (except to the extent that We are responsible for that failure or incorrect operation); and/or
- (ii) 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

- (v) The Agreement is governed by the laws of Victoria unless you are a TCP Customer, in which this Agreement is governed by the laws of the state in which you ordinarily reside and the laws of the Commonwealth of Australia.
- (vi) 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 about anything relating to the Agreement, You should contact customer service.
- (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. We may also notify you by email, post, fax or SMS to the addresses or numbers that you have previously notified to us.

- (iii) Any notice will be deemed to have been received two business days after it is posted. In the case of notices by fax, email or SMS, such notices are deemed to be received immediately.

(f) Entire agreement

- (m) 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.
- (iv) Clauses 2.17(f)(i) and (ii) do not apply in circumstances of fraud, misrepresentation or misleading or deceptive conduct but may go to demonstrate that you have not relied on, or it was not reasonable to rely on, our skill, judgement or representations.

(g) 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.

(h) Complaints and Assistance Services

- (i) You may contact Us or the following assistance services:
 - (A) Customer Service – refer to our website or your bill.
 - (B) National Relay Service – 133 677.
 - (C) Translating and Interpreting Service – 131 450.
- (ii) Information 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 your state or territory 'Fair Trading' or 'Consumer Affairs' office.