

Our Customer Terms

Business and Residential Services

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1. Definitions and Interpretation

1.1 Definitions

In these terms and conditions, the following words have the meaning set out below unless the contrary intention clearly appears:

SJH means “SJH Communications Solutions”.

Acceptable Use Policy means the SJH acceptable use policy.

Accrued Charges means all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies SJH of the cancellation of a Service and any outstanding amounts that cover Installation Costs, Equipment Costs, Equipment Charges, Service Usage

where SJH owned equipment, network (including third party providers) and infrastructure can be used by the Customer in connection with services provided.

Agreement means the agreement between SJH and the Customer for provision of the services and equipment which the agreement is comprised of the Quotation of Services, these Terms and Conditions and CIS Summary. The agreement sets out the minimum term, service description, pricing plan and details of any charge such as equipment charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

Business Customer any Customer who is a business owner or authorised representative of a business / company or non-profit organisation (including a body corporate, sole trader or partnership) who accepted a service quotation from SJH and uses the services provided from SJH for business purposes other than resale.

Business Grade Service means a service that does carry a service level agreement, and/or that does have a guarantee of uptime (SJH imply and express no warranties as to its suitability or availability for any purpose).

Cancellation Date means:

- a. The date thirty (30) days after the Customer notifies SJH that the Customer wishes to cancel the Service, unless SJH agrees otherwise;
- b. The date at least thirty (30) days after SJH notifies the Customer that SJH will be cancelling the Service;
- c. As otherwise set out in the Agreement.

Churn means to change from having a service supplied by one carrier or service provider to having the Service supplied by another carrier or service provider.

Competition and Consumer Act means Competition and Consumer Act (2010).

Equipment Charge means any payment to SJH for use of equipment.

Fixed-Term Agreement means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

Insolvency Event means:

- a. Bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- b. Any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- c. Any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;

- d. Any step that 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 the Customer or to the whole or any part of the Customer's assets or business;
- e. The Customer suspends payment of the Customer's debts generally;
- f. The Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001.

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 a party's reasonable control which interferes with the operation of the network SJH uses to supply the Service and results in ongoing disruption to the Service. Such an event includes 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 the Customer has agreed to receive the Service under a Fixed-Term 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.

Loss means any loss, cost, liability or damage, including reasonable legal costs.

Network means any interconnected telecommunications equipment, facilities, or cabling.

ONT Optical Network Terminal. Device installed by Technicians on the day of activation for Fibre To The Premises by NBNC Co.

Party means a party to the Agreement. Personal Information means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of SJH, includes the employees, agents, contractors or other representatives of SJH.

Premises means locations:

- a. At which SJH supply the Service, and/or
- b. to which SJH needs to have access to supply the Service.

Pricing Plan means the terms and conditions and prices of the plan for the Service the Customer has accepted in the quotation for services.

Quotation of Services means the itemised services and equipment that is supplied, installed and provisioned by SJH in accordance with the agreed services and equipment to be provided.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

Residential Customer means any Customer who is an individual person who acquires and uses the Service for personal, domestic or household use only and who accepted a service quotation for a Residential Grade Service.

Residential Grade Service means a service that does not carry a service level agreement, or a guarantee of uptime. (SJH imply and express no warranties as to its suitability or availability for any purpose. SJH doesn't recommend residential grade services for business needs, or mission critical purposes.)

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.

Roaming means the ability to use the network of overseas mobile carriers when traveling overseas.

Service means the service, with the features requested and described in the Quotation of Services in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by SJH to the Customer in connection with that service.

Service Description means the part of the quotation which describes the Service provided or to be provided by SJH to the Customer.

Service Start Date for the Service means the date on which SJH starts supplying that Service to the Customer as will be notified by SJH to the Customer after acceptance of an Application.

Special Offer means a special promotion or offer made by SJH in connection with the Service, including in relation to a particular pricing plan.

Supplier means any supplier of goods or services (including interconnection services) which are used directly or indirectly by SJH to supply the Service to the Customer.

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 provision of the Competition and Consumer Act.

Unusually High Use means high usage of the Service on a short-term basis that is not consistent with a Customer's normal pattern of use, 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 Offer.

1.2 Interpretation

- a. The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
 - i. Carriage service
 - ii. Carriage service provider
 - iii. Carrier
 - iv. Content service
- 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. 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.
- f. A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

2. Terms

- 2.1 The Agreement commences when the customer accepts SJH's Quotation for Services.
- 2.2 SJH will commence providing Service to the Customer under the Agreement from the Service Installation Date.
- 2.3 If the Agreement is not a Fixed-Term Agreement, SJH will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.
- 2.4 If the Agreement is a Fixed-Term Agreement, SJH will provide the Service to the Customer in accordance with the Agreement for the minimum term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the minimum term SJH will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

3. Variation to Agreement

- 3.1 SJH may vary any part of the Agreement:
 - a. with the Customer's consent; or
 - b. without the Customer's consent provided SJH complies with the Telecommunications Legislation.
- 3.2 If SJH varies a Fixed-Term Agreement under clause 3.1:
 - a. SJH must if the variation affects the Customer and it is not a change of a type listed in clause 3.3.
 - i. comply with the provisions of the Telecommunications Legislation;
 - ii. giving the Customer twenty-one (21) days' notice in writing of the change before the change occurs; and
 - iii. offer the Customer the right to cancel the Service (within forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.

- b. SJH must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and
- c. if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or changes other than Accrued Charges.

3.3 SJH may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:

- a. required by law;
- b. in relation to a fee or charge to account for a tax imposed by law;
- c. in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, SJH offers the Customer:
 - i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- d. to increase the price of a service (where the supplier who supplies the service to SJH to allow supply of the Service increases the price they charge SJH for the service) provided that if the change affects the Customer, SJH:
 - i. allows the Customer to not use the Service without attracting any additional charges;
- e. as a result of another carrier or service provider varying the agreement SJH has with it in relation to a carriage service and as a result SJH needs to make changes to the Agreement, provided that if the change affects the Customer, SJH gives the Customer:
 - i. notice in writing of the change; and
 - ii. forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without SJH's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

3.6 SJH may give the Customer notice in writing of a changes to the Agreement by:

- a. delivering notice of the change to the Customer by mail; or
- b. sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
- c. by including a message or insert in an invoice sent to the Customer.

4. Request for the supply of the Service

SJH may refuse the Customer's request for services at its sole discretion.

5. Privacy

5.1 SJH may collect, use and disclose personal information about the Customer in accordance with its Privacy Policy.

5.2 SJH reserves the right to decide whether to recommend financial credit via a finance provider to the Customer for SJH Products and Services.

6. Using the Service

6.1 The Customer must reasonably co-operate with SJH to allow SJH, or a supplier, to establish and supply the Service to the Customer safely and efficiently.

6.2 SJH will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults SJH will use reasonable endeavours to ensure the Service is restored as soon as possible.

6.3 When using the Service, the Customer must comply with:

- a. all laws;
- b. all directions by a regulator;
- c. all notices issued by authorisation of or under law; and
- d. the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service)
- e. reasonable directions by SJH.

6.4 The Customer must not use, or attempt to use, the Service:

- a. to break any law or to infringe another person's rights;
- b. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
- c. in any way that may expose SJH to liability; and
- d. in any way which or which may damage, interfere with or interrupt the Service, the SJH network or a supplier's network used to supply the Service.

6.5 SJH may require the Customer to stop doing something which SJH reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which SJH may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.

6.6 The Customer acknowledges that, where the Service is a carriage service, SJH, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.

6.7 SJH may (but is not obliged to) contact the Customer if SJH becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, SJH may ask the Customer to make a prepayment usage charge under clause 9.5. SJH is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.

6.8 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose network the Customer's data traverses.

7. Equipment

7.1 The Customer must ensure that all additional equipment connected from the ONT used in connection with the Service and the way the Customer uses that equipment complies with:

- a. all laws;
- b. all directions by a regulator;
- c. all notices issued by authorisation of or under law;
- d. reasonable directions by SJH;
- e. adhere to the 'End User Gateway Minimum Requirements' with respect to connectivity, in particular; and
- f. that while possible to connect an End User's PC directly to the ONT Ethernet port that a gateway device with WAN and LAN capability is recommended in order to use the service.
 - (i) the customer to use a suitable 10/100/1000 BASE-T WAN interface that is configured by the end user such that the WAN port and Ethernet MAC address is connected to the ONT
 - (ii) the customer to use a suitable 1000BASE-T LAN interface that has PPPoE/PPP support. Failing which SJH may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

7.2 In relation to equipment:

- a. any SJH/Carrier owned equipment remains SJH's/ Carrier's property;
- b. the Customer is responsible for any SJH owned equipment from the time when the Customer receives it;
- b. the Customer must not mortgage or grant a charge, lien or encumbrance over any SJH owned equipment; and
- c. the Customer may purchase equipment from SJH to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.

7.3 The Customer 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.

7.4 Unless otherwise agreed between the parties, the Customer must allow SJH's personnel (and no other person) to service, modify, repair or replace any SJH owned equipment.

7.5 The Customer is responsible for any lost, stolen or damaged SJH owned equipment, except where caused by SJH or SJH's personnel.

7.6 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from SJH, even when that equipment is lost, stolen or damaged.

8. Network maintenance, fault reporting and rectifications

8.1 SJH may conduct maintenance on the SJH network and maintenance may be conducted on a supplier's network used to supply the Service. SJH will endeavour to conduct scheduled maintenance on the SJH network outside normal business hours.

8.2 SJH will provide a 24-hour number for the Customer to report faults. Before the Customer reports a fault to SJH, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not SJH owned equipment.

8.3 The Customer must provide all reasonable assistance to enable SJH or SJH personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant to the premises.

8.4 The Customer is responsible for ensuring permission is in place with the landlord of the property where the installation is to occur and accepts any costs associated with any installation works required after the boundary point.

8.5 SJH will repair faults within the SJH network used to supply the Service. Unless the Service Description expressly provides otherwise, SJH is not responsible for repairing any fault in the Service where the fault arises in or is caused by:

- a. a supplier's network; or
- b. equipment that is not owned by SJH; or
- c. facilities outside the SJH network.

8.6 Where:

- a. a fault arises in or is caused by a supplier's network; and
- b. SJH becomes aware of the fault; and
- c. SJH is not responsible for the repair of that fault.

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

8.7 Where a fault arises in or is caused by equipment that is not SJH owned equipment, SJH is not responsible for the repair of that fault. Nevertheless:

- a. if the Customer asks SJH to investigate a fault or asks SJH to request a supplier to investigate a fault, SJH will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
- b. if the Customer requests SJH to repair the fault and SJH agrees, SJH will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.

8.8 If SJH investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by SJH in investigating.

9. Fees and charges

9.1 The Customer must pay:

- a. the fees and charges for the Service, which are set out in the Quotation for Services or in any applicable Special Offer; and

b. any additional fees and charges noted in the Quotation for Services, CIS Summary or additional Service offer or notified by SJH in accordance with the Agreement from time to time.

9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.

9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.

9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee, where applicable), SJH may charge the Customer administration fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.

9.5 SJH may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service).

9.6 SJH will calculate fees based on billing information generated or received by SJH which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

9.7 SJH may offer the Customer a Special Offer from time to time. In such event, SJH will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the minimum term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.

10. Payments

10.1 SJH will invoice the Customer;

- a. on a regular basis (either in advance or in arrears) for service usage, unless otherwise set out in the Quotation for Services; and
- b. for any upfront fees, charges and if applicable an initial 50% deposit where the total installation cost exceeds \$1,000 as set out in the Quotation for Services.

10.2 For some services, the service usage records are obtained by SJH from a wholesale supplier. If SJH receive usage records in time from the wholesale supplier, SJH will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of SJH, SJH will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.

10.3 Where usage records are provided by the wholesale supplier to SJH outside the relevant billing period, SJH will incorporate these and associated charges on a subsequent or later invoice. This is called

back billing. SJH will not back bill for usage that has occurred 160 days or more previously, if SJH has not already advised the Customer of the charges.

10.4 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.

10.5 The terms of payment for monthly invoices are seven(7) business days. If the Customer's payment is not honoured for any reason a 2nd notice of payment required will be issued with a further seven(7) business days for payment. Should failure to make payment in full occur by the due date of the second(2nd) notice SJH will exercise its discretion as per clause 10.7(a) in relation to the Service and issue a third(3rd) and final notice with a further seven(7) business days of payment. Should failure to make payment in full occur by the due date of the third(3rd) and final notice, SJH will further exercise its discretion as per clause 10.7 (b - j).

10.6 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by SJH.

10.7 If the Customer does not pay the invoice by the date the payment is due, SJH may:

- a. include a charge to the Customer
 - i. of a \$15 Late Payment Fee each month for an overdue notice of payment which is payable until all outstanding amounts are paid; and
 - ii. of a 10% surcharge on due amounts if overdue notice of payment is in relation to initial delivery of services where a deposit was required.
- b. require the Customer to provide reasonable security to SJH to secure the payment of future amounts due under the Agreement;
- c. suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If SJH suspends or cancels the Service, SJH may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
- d. restrict a customer's service including limiting inbound calling, outbound calling, applying a limitation to the speed or operation of an internet service; and
- e. suspend or deactivate components of an integrated phone service including the services mentioned in clause (d) in point 10.7 without compensation to the customer;
- f. recover any unpaid supply of equipment that may be providing an operating service without compensation to the customer;
- g. engage a mercantile agent to recover the money the Customer owes SJH and charge the Customer a recovery fee;
- h. institute legal proceedings against the Customer to recover the money the Customer owes SJH and recover from the Customer its legal costs;
- i. and/or
- j. on-sell any unpaid amounts to a third party.

10.8 If the Customer has overpaid as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or SJH will use reasonable endeavours to notify the Customer and refund the over payment.

10.9 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of tax where stipulated. Where the fees and charges do not include an amount on account of tax and tax is payable by SJH in relation to, or on any supply under or in connection with the Agreement, SJH will increase the tax exclusive fees and charges by an additional amount on account of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.

10.10 If the Customer requires a copy of any invoice sent by SJH in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from SJH's records, the Customer must pay SJH's reasonable administration fee for such retrieval.

11. Complaints and disputes

11.1 If the Customer has any complaints in connection with the Service the Customer may complain in writing or by calling SJH.

11.2 SJH will handle all complaints in accordance with its privacy policy and complaints procedure as found in our CIS Summaries, a copy of the relevant CIS Summary for our Services is available from SJH on request.

11.3 SJH will use its best endeavours to resolve all complaints, however if SJH is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, SJH may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non SJH owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

12. Cancelling the Service

12.1 The Customer may cancel the Service at any time by:

- a. giving SJH thirty (30) days notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Agreement); or
- b. giving SJH notice, if SJH breaches a material term of the Agreement and SJH either:
 - i. cannot remedy that breach;

- ii. fails to remedy that breach within thirty (30) days after the Customer gives SJH notice requiring SJH to do so.

12.2 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.

12.3 If the Agreement is a non Fixed-Term Agreement, SJH may cancel the Service at any time by giving the Customer at least thirty (30) days' notice.

12.4 SJH may cancel the Service at any time including prior to the service start date, without liability, if:

- a. there is an emergency;
- b. SJH reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- c. any amount owing to SJH in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within seven (7) business days after SJH gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
- d. SJH reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to SJH or in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- e. the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after SJH gives the Customer notice requiring the Customer to do so;
- f. SJH is 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;
- g. the Customer suffers an insolvency event and SJH reasonably believes SJH is unlikely to receive payment for amounts due;
- h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and SJH reasonably believes SJH is unlikely to receive payment for amounts due;
- i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
- j. if SJH reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;
- k. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
- l. SJH is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.5 SJH may cancel the Service under clause 12.4 as soon as SJH gives the Customer notice, unless otherwise set out in the Agreement. However, SJH may cancel the Service immediately if there is an emergency.

12.6 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service

provider or service provider informs SJH that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to SJH's rights under the Agreement with respect to the Service.

12.7 If the Service is cancelled:

- a. the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
- b. the Customer authorises SJH to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
- b. subject to clause 12.7(b) and unless otherwise set out in the Service Description, SJH will refund any over payment on the Customer's account;
- c. if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises SJH to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;

12.8 No cancellation fee shall be payable by the Customer:

- a. if the Agreement is not a Fixed-Term Agreement;
- b. if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.

12.9 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises, or elects to churn their service to another carriage service provider):

- a. before the Service Start Date, the Customer must pay SJH all infrastructure and installation costs incurred by SJH in connection with preparations for supplying the Service to the Customer;
- b. during the minimum term, the Customer must pay SJH a cancellation fee or such higher amount as may be provided in clause 17;
- c. the Customer must pay SJH all costs incurred to rectify the Customer's breach of the Agreement.

12.11 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to SJH provided that if the Service is cancelled as a result of circumstances attributable to the Customer and SJH reinstates the Service, then the Customer may have to pay SJH a reconnection or reactivation fee or such higher amount as may be provided in clause 17.

12.12 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

13. Suspending the Service

13.1 SJH may suspend the Service at any time, without liability:

- a. in any of the circumstances described in clause 12.4(a) to (h) and (1);
- b. if it is necessary to allow SJH or a supplier to repair, maintain or service any part of the SJH network or a supplier's network used to supply the Service;
- c. if SJH reasonably believes there has been an unusually high use of the Service;
- d. problems are experienced interconnecting the SJH network with any supplier's network used to supply the Service.

13.2 SJH may suspend the Service under clause 13.1 as soon as SJH gives the Customer notice, unless otherwise set out in the Agreement. However, SJH may suspend the Service immediately if there is an emergency.

13.3 SJH may suspend the Service if any amount owing to SJH is not paid by its due date, SJH gives you notice requiring payment of that amount (which SJH may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after SJH has completed investigations referred to in clause 11.4) and you fail to pay the amount in full within seven (7) Business Days after SJH gives you that notice as per clause 10.5.

13.4 If SJH suspends the Service, SJH may later cancel the Service for the same or a different reason.

13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.

13.6 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non SJH owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.

13.7 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay SJH a suspension fee.

13.8 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to SJH provided that if the Service is suspended as a result of circumstances attributable to the Customer and SJH reactivates the Service, the Customer may have to pay SJH a reconnection or reactivation fee or such higher amount as may be set out in clause 17.

14. Liability

14.1 The Customer is liable to SJH for any breach of the Agreement that causes foreseeable loss to SJH.

14.2 Except as in the Agreement otherwise expressly provided, the Customer is not liable to SJH for any consequential losses SJH suffers or for any costs, expenses, loss or charges that SJH incurs which are not a direct result of something the Customer has done.

14.3 SJH has responsibilities and obligations under the law, including under:

- a. the Telecommunications Legislation;
- b. the Competition and Consumer Act; and
- c. applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

14.4 SJH may be liable to the Customer for:

- a. any damage to the Customer's property which has been caused by the fault, negligence or fraud by SJH or SJH's personnel during installation, repair or maintenance;
- b. interruptions in the Customer's use of the Service as a result of a fault or negligence of SJH or SJH's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law;
- c. if a customer applies for a residential grade service, which is supplied on the basis is solely for personal, domestic or household use and they use it for any business purposes, SJH is not liable for any business-related losses;
- d. death or personal injury caused by SJH or SJH's personnel; or
- e. breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Competition and Consumer Act or other laws then SJH's liability (if any) for breach of that condition or warranty in connection with any goods or services SJH supplies under the Agreement is (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.5 Other than as provided in clauses 14.4, SJH is not liable to the Customer under this Agreement.

14.6 If the Customer has contributed to any loss or damage the Customer is claiming against SJH, SJH's liability is reduced to the extent of the Customer's contribution.

14.7 SJH is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something SJH has done.

14.8 In relation to a Business Customer, to the extent permitted by law, SJH's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.3 to 14.6 do not apply.

15. Assignment and transfer

15.1 SJH may:

- a. assign some or all of its rights under the Agreement to any person;
- b. perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Company SJH has a partnership with, provided SJH remains responsible for the performance of the obligations, and the Customer irrevocably authorises SJH to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

16. General

16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally reside and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

16.2 SJH owns all material (including intellectual property rights) developed by SJH or SJH's personnel, at SJH's direction.

16.3 SJH may permit the Customer to use this material, or other material licensed by SJH, as part of the Service. This permission is subject to any conditions which SJH may impose from time to time and will cease when the Service is cancelled.

16.4 The Customer 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 the Customer breaches this clause, SJH may suspend or cancel the Service without notice.

16.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning), the Customer authorises SJH to:

- a. inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by SJH or have churned to SJH; and
- b. to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning transaction.

16.6 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:

- a. the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- b. the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.

16.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer are or become a carrier or carriage service provider, SJH may immediately cancel the Service by giving the Customer notice.

16.8 If the Customer breaches the Agreement and SJH does not exercise a right that SJH has because of the Customer's breach, SJH does not waive:

- a. that right unless SJH gives the Customer notice in writing confirming that SJH have waived that right; or
- b. SJH's right to insist that the Customer perform any obligation the Customer has under the Agreement.

16.9 SJH may pay a commission to any of SJH's personnel in connection with the Agreement.

16.10 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

16.11 Information and advice about the Customer's 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 the Customer's state or territory.

16.12 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a. to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to SJH in writing; and
- b. to SJH at SJH's latest address and facsimile number indicated on SJH's website at: <http://www.sjhcomms.com.au>

Any such notice shall be deemed to be received:

- a. In the case of delivery, at the time of delivery;
- b. If served by post, at the expiration of forty-eight (72) hours from time of posting (if sent to a local address), notwithstanding that it may subsequently be returned through the post office unclaimed;
- c. In the case of a facsimile transmission, on production of a transmission control report indicating transmission without error; or
- d. In the case of an e-mail, on production of an e-mail header indicating delivery without error.

16.13 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.

16.14 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

17. Special terms and conditions applicable to the Service

17.1 The Customer acknowledges and agrees if the Customer changes the location of the Premises without notice, that SJH is unable to provide or continue to provide the Service to the Customer. In the event a customer does change the location of the Premises, some services are not transferable, can only be terminated and any applicable cancellation charges will apply. Then the customer can request for a new service for the new location/Premise and the relevant new application charges and new terms and conditions are applicable.

17.2 All SJH Fibre Broadband services require specific network technology compatible modem/ router in order for the service to work optimally or at all. Unless provided by SJH as part of the service, it is the responsibility of the Customer to ensure that a network compatible modem/ router is used to connect

to the service. If a non- network compatible modem/ router is found to cause a service fault, SJH may not be able to provide assistance and in the event of an on-site technical visit SJH may charge a call out fee.

17.3 SJH is unable to confirm the maximum data transfer rate that a Customer's FTTN or FTTB Access Line is capable of (Access Line Capability) until after the Service Start Date.

17.4 The Customer acknowledges and agrees that excessive use of internet peer-to-peer file exchanges may cause network congestion and performance deterioration. Therefore, SJH has a right to, from time to time and at any time, limit the Customer's internet bandwidth available for peer-to-peer file exchanges and or cancel the customer's service if our wholesale supplier(s) request us to do so.

17.5 If another service is also activated from another provider the customer acknowledges that while on the same infrastructure that these are mutually exclusive services, if a fault with the infrastructure is detected any other service running on that infrastructure may be affected.

17.6 In delivering data services SJH deems that 1 gigabyte equals 1,000 megabytes and that 1 megabyte equals 1,000,000 bytes for the purposes of calculating usage.

17.7 The terms 'Economy', 'Lite', 'Medium', Extreme do not guarantee any maximum speed. Speed Tier bands represent the maximum speeds at which NBN Co will allow data to be transferred across the access service at a theoretical speed connecting the Premises to the relevant Point of Interconnection on the Customer's selected speed band.

17.8 If SJH reasonably believes it is in the best interests of the Customer to do so (for example, if Access Line Capability is found to be substantially less than the Speed Tier Speed of the Customer's selected speed tier), SJH may unilaterally change the Customer's selected speed tier to a speed tier capable of being supported by the Customer's Access Line Capability. If SJH does this:

- a. SJH shall give the Customer notice in writing of the change as soon as practicable;
- b. for thirty (30) days from receiving notice of the change, the Customer may:
 - i. cancel the Service without penalty and without incurring charges other than Accrued Charges;
 - ii. request SJH to reverse the change, in which case SJH shall reverse the change without charge.

17.9 SJH may charge an amount of one dollar (\$1.00) to the Customer's bank account or credit card to make reasonably sure that the Customer has legal control over one or more of his or her payment methods. This charge will be applied in full as a credit to the first invoice of the Customer, or as soon as is practicable thereafter. If the Customer cancels the Service prior to the issue of the first invoice and no other fees or charges have been levied, then SJH will refund the verification charge in full.

17.10 Installation, Equipment, Rental, any additional Services and usage including 1st month pro rata and next subsequent ongoing monthly access charge may debited to the customers first invoice of account;

- a. Pro rata (balance) of the first months services are debited on the date of installation of respective services from our wholesale supplier(s) once the service has been activated.

- b. Pro rata (balance) of the first months services are debited on the date of installation of respective services from our services once the respective service has been activated.
- c. Subsequent monthly access charges are currently charged one month in advance either;
 - i. on, or around, the 1st working day of each calendar month for that month. This date may change if any of our suppliers change the date in which they bill SJH for services;
 - ii. advance on, or around 4th, for the billable period 28th of the month to the 27th of the next month. This date may change if any of our suppliers change the date in which they bill SJH for services.
- d. Any excess usage charges past to us from our wholesale supplier(s) are debited:
 - i. on, or around, the 4th working day of each calendar month following the month in which excess usage was incurred, per GB or part thereof.
 - ii. on, or about the 4th of the month, for the billable period 28th of the prior month to the 27th of the next month, in which excess usage was incurred, per GB or part thereof.

17.11. If the customer has purchased a modem from SJH or received a free modem as part of plan from SJH and the new broadband service does not proceed to activation for any reason, the customer may return the modem to SJH in original condition within 30 days of first receiving the modem and SJH will refund the modem purchase price.

- a. If the modem is not returned in its original condition, the full modem price of \$160 (inc. GST) and a \$20 (inc. GST) handling charge will be debited to the customer's account for payment.
- b. If the modem is not returned, the full modem price of \$160 (inc. GST) and a \$40 (inc. GST) insurance charge will be debited to the customer's account for payment.

17.12. If the customer receives a modem from SJH, and it is agreed with SJH that the modem is faulty when first turned on (within the first 30 days of receipt), then the customer must return the modem to SJH in its original condition within 30 days of receiving the replacement modem from SJH (SJH will arrange return or a pre-paid shipping satchel), otherwise the full modem price of \$160 and a \$40 (inc. GST) freight charge will be debited to the customer's account for payment. If returned modem claimed as faulty is not found as faulty after SJH test the returned modem and if the modem is in its original condition, a \$40 (inc. GST) freight charge, and a \$45 (incl. GST) testing fee will be debited to the customer's account for payment. If returned modem claimed as faulty is not found faulty after SJH test the returned modem and if the modem is not in its original condition, the full modem price of \$160 (inc. GST), a \$40 (inc. GST) freight charge, and a \$45 (incl. GST) testing fee will be debited to the customer's account for payment.

17.13. If the customer receives a modem from SJH, and it is agreed with SJH that the modem is faulty within the first 12 months of ownership (Warranty period after DOA period), then the customer must return the modem to SJH (at their own cost) within 30 days of receiving the replacement modem from SJH, otherwise the full modem price of \$160 (inc. GST) and a \$20 (inc. GST) handling charge will be debited to the customer's account for payment. If returned modem claimed as Warranty is not found as faulty after SJH test the returned modem and if the modem is in its original condition, a \$20 (inc. GST) freight charge, and a \$45 (incl. GST) testing fee will be debited to the customer's bank account or credit card. If returned modem claimed as Warranty is not found as faulty after SJH test the returned modem and if the modem is not in its original condition, the full modem price of \$160 (inc. GST), a \$20 (inc. GST) freight charge, and a \$45 (incl. GST) testing fee will be debited to the customer's account for payment.