



# Our Customer Terms and Conditions

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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 JETCO GROUP PTY LTD with ABN 56 154 364 584, trading as “SJH Communications”.

**Customer** means “You”.

**Acceptable Use Policy** means the SJH acceptable use policy.

**Accrued Charges** means all charges and fees (including usage charges and plan fees) incurred by the you to the date on which you notify 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 you in connection with services provided.

**Agreement** means the agreement between SJH and you for provision of the services and equipment which the agreement is comprised of the Proposal, Quotation of Services, these Terms and Conditions and Customer Information 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 Plan fees, administration fees, suspension fees, cancellation fees, late payment fees, failed payment fees and/or payment dishonour fees, reconnection fees or reactivation fees payable by you and any refund or rebate to which you may be entitled.

**Business Customer** means any Customer with an ABN 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 (SLA), 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 you notify SJH in writing that you wish to cancel the Service, unless SJH agrees otherwise;
- b. The date at least thirty (30) days after SJH notifies you in writing that SJH will be cancelling the Service;
- c. As otherwise set out in the Agreement.

**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 Month Term or a Contract Term.



**GST** means Goods and Services Tax which has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Insolvency Event** means:

- a. Bankruptcy proceedings are commenced against you, or you are declared bankrupt;
- b. Any step that is taken to enter into any scheme of arrangement between you and your creditors;
- c. Any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of your 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 you or to the whole or any part of your assets or business;
- e. You suspend payment of your debts generally;
- f. You have, or become, unable to pay your debts when they are due, or you are, or are presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001.

**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 you have 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 NBN 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 you have 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.) It is a product or service provided to you for the purpose of personal or domestic use and is not for resale.

**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 you.

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



**Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 and Part XIB, Part XIC and related provision of the Competition and Consumer Act 2010 (Cth).

**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.

### 1.3 Australian Consumer Law

Nothing in this Agreement limits the Customer's rights under the Australian Consumer Law (ACL). If equipment supplied by SJH fails to meet consumer guarantees, SJH will, at its discretion and in compliance with the ACL, repair, replace or refund the equipment.

## 2. Agreement Terms

- 2.1 The Agreement with you commences when:
  - a. you sign and accept SJH's Agreement; and by this
  - b. you confirm you:
    - i. have read the Quotation for Services and/or our Proposal; and
    - ii. agree that the Service Description meets the requirements to which you have requested; and
    - iii. have read and accepted any Terms and Conditions; and
    - iv. have read our Privacy Policy, Fair Use Policy, Fees and Charges Policy, Acceptable Use Policy and Customer Information Summaries related to any Services provided; and
    - v. understand any minimum terms, applicable fees and any charges related to SJH providing services to you.



- 2.2 SJH will commence providing Services to you under the Agreement from the Service Installation Date. This may also be the Service Start Date (billing date of that service) depending on the scope of services provided.
- 2.3 If the Agreement is not a Fixed-Term Agreement, SJH will provide the Service to you in accordance with the Agreement until the Service is cancelled by either party in accordance with the Agreement.
- 2.4 If the Agreement is a Fixed-Term Agreement, SJH will provide the Service to you in accordance with the Agreement and the Service will remain in effect for the minimum term and will continue thereafter until the Service is cancelled by either party in accordance with the Agreement, as the case may be.
- 2.5 We (at our sole discretion) reserve the right to accept an application by you for Services from SJH based on factors and not limited to:
  - ✓ Your eligibility for the Service
  - ✓ The Service must be available to provide to you
  - ✓ Location and access availability to you in your area
  - ✓ Verification of identity and any credit requirements / assessment
  - ✓ Any previous history with us for any goods or services we have supplied
- 2.6 You must ensure that any person that you allow to use the Service complies with the Agreement as if they were you.

### 3. Variation to Agreement

- 3.1 SJH may vary any part of the Agreement:
  - a. If we need to change the features and functions of a Service and we may need to change a Service itself; and
  - b. we aren't able to provide you with ongoing supply of a Service on the same terms that existed when we first started delivering a Service to you;
  - c. due to circumstances outside our control;
  - d. without your 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 you and it is not a change of a type listed in clause 3.3.
    - i. comply with the provisions of the Telecommunications Legislation;
    - ii. give you twenty-one (21) days notice in writing of the change before the change occurs; and
    - iii. offer the you 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 you 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 you do not agree that the change is likely to benefit you or have only a neutral or minor detrimental effect



on you, then you may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges.

- 3.3 SJH may vary a Fixed-Term Agreement even if the variation affects you 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 you, then SJH offers you:
    - 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 you, SJH:
    - i. allows you 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 you, SJH gives you:
    - i. notice in writing of the change; and
    - ii. twenty-one (21) days from the date of the notice in which you may cancel the Service without incurring fees or charges other than Accrued Charges.
    - iii. offer the you 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.

- 3.4 SJH may give you notice in writing of any changes to the Agreement by:
- a. delivering notice of the change to you by mail; or
  - b. sending the notice to your email address; or
  - c. by including a message or insert in an invoice sent to you.

### 3.5 Relocating Services

Moving premise or a change of location, which is the physical location and/or physical address to which the Services have been supplied is considered a variation to the existing Service Agreement.

- a. You must provide reasonable notice to SJH if you intend to relocate your Services to a new location. SJH will assess your request and will notify you of:
  - i. any applicable cancellation fees, reconnection fees including new-installation fees and charges that may apply;
  - ii. time frames for reconnection, and if considered a complex relocation any temporary solutions to supply services;
  - iii. any limitations to delivery of new Services.
- b. You acknowledge and agree if you change location of your premises without notice, that SJH may be unable to provide or continue to provide the Service to you. In the event you do change location of your premises, some services may not be transferable, can only be terminated and any applicable cancellation charges will apply. If a service is not transferable a



new supply of service can be requested. The minimum terms, any fees and charges and conditions under the new Agreement will apply.

- c. If the current Service is under a Fixed-Term Agreement we may deem the Service as cancelled by you based on factors and not limited to:
  - i. you fail to provide us reasonable notice;
  - ii. we aren't able to provide you with ongoing supply of a Service;
  - iii. you do not agree to any new terms of supply;
  - iv. you request to change the type of Service, the current type of Service is no longer available or transferable;
  - v. you cancel the Service and do not request it be relocated.
- d. If the current Service is not under a Fixed-Term Agreement we may deem the Service as cancelled based on factors and not limited to:
  - i. you fail to provide us reasonable notice;
  - ii. we aren't able to provide you with ongoing supply of a Service;
  - iii. you do not agree to any new terms of supply;
  - iv. you cancel the Service or do not request it be relocated.

#### 4. Your Agreement is with SJH, not any of our suppliers

Our Suppliers have no liability or obligation to you or other users of your Service. If you have any questions then please contact SJH. If you or other users contact one of our suppliers in relation to your service then you are responsible for any costs we may incur.

#### 5. Privacy

- 5.1 SJH may collect, use and disclose personal information about you 'the customer' in accordance with our Privacy Policy.
- 5.2 SJH reserves the right to decide whether to recommend financial credit via a finance provider to you for SJH Products and Services.
- 5.3 You agree to our Privacy Policy when you buy Services and Products from SJH or visit our website.

#### 6. Using the Service

- 6.1 Access and assistance
  - a. You must provide reasonable assistance, information and access to SJH to allow us or a supplier, to establish and supply our Service to you under our obligations to you.
  - b. You agree to allow us reasonable access to the Service Equipment during business hours or at other times as agreed with you and with reasonable notice. If you do not allow this access, we may need to restrict, suspend, or cancel your Service.
  - c. We will use due care and skill in providing our services to you.
  - d. You agree to ensure we or our supplier have safe access to the relevant premises as required.
  - e. If you do not own the relevant premises we need access to, then:
    - I. you must ensure you have the owner's permission, and
    - II. you warrant to us that you do have that permission.
  - f. In the event of unexpected faults, SJH will use reasonable endeavours to ensure the Service is restored as soon as possible.



### 6.2 Compliance

You are responsible for the use of your Service. You must not (and must ensure that other persons do not) use your Service other than in accordance with our Agreement. This includes complying with SJH's and our supplier's fair use policies, applicable laws, and other obligations that apply to the Services and their use.

### 6.3 When using your Service, you or any other persons must comply with:

- a. all laws;
- b. all directions by a regulator;
- c. all notices issued by authorisation of or under law; and
- d. our Acceptable Use Policy;
- e. reasonable directions by SJH.

### 6.4 You or any other persons must not use, or attempt to use, the Service:

- a. by providing us with false account information;
- b. to break any law or to infringe another person's rights;
- c. for hacking or gaining improper access to someone else's information;
- d. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
- e. to make scam calls or text messages;
- f. in any way that may expose SJH to liability; and
- g. 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 by:
  - i. making unauthorised changes to aspects of any part of the supplied Service;
  - ii. altering configuration of services to adjust capacity, operation or connectivity;
  - iii. intending to circumvent or bypass systems, reduce security access or alter software without the express consent of SJH;
  - iv. connection of 3<sup>rd</sup> party equipment or your own which has the same effect of clauses (i, ii and iii) above.
- h. in any way which attempts to manipulate, change or bypass any limitations or settings of the Service by any means, including altering configuration of services to adjust capacity, operation or connectivity.

### 6.5 If SJH is made aware of something which SJH reasonably believes is in breach of clauses 6.3 or 6.4.

- a. SJH may require you to stop and immediately comply with any such request.
- b. Failing to do so, SJH may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.

### 6.6 You acknowledge 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 your usage of the Service and communications sent over it.

### 6.7 SJH may (but is not obliged to) contact you if we become aware of unusual use of the Service by you (including to verify any costs or charges which you may have incurred). In such an event, SJH



may ask you 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 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.
- 6.9 You acknowledge and agree 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 your 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.
- 6.10 Mobile SIM Cards
  - a. You understand that due to the nature of modern mobile telecommunications systems (our reliance on suppliers systems, services and networks that we do not own or control), we cannot promise that access or coverage of Mobile services will be continuous or fault-free.
  - b. You are responsible for and have to pay for any use of your service, whether you authorise it or not, including:
    - i. third party services; and
    - ii. any additional Fees and Charges (clause 9).
  - c. You should take steps to prevent unauthorised use of your service at all times.
  - d. You must advise us if your SIM card has been lost or stolen and you are responsible for any replacement costs.
  - e. We may prevent your mobile device from accessing our Service where we are required to do so under the law or as part of our terms of our Agreement with you to comply with clauses 6.3, 6.4 or 6.7.

## 7. Equipment

- 7.1 Ownership
  - a. Any SJH or suppliers owned equipment remains SJH's or that suppliers property unless we advise you otherwise.
  - b. Cloud based Services which use the internet to store, manage, and process data instead of using your own computer or local server are the property of SJH or its supplier. This includes:
    - a. Licenced software used to provide the Service;
    - b. Configuration data particular to supply of Service;
    - c. Proprietary software of our suppliers.
  - c. Any Cloud Based Services provided under the Agreement are not transferrable and cease on cancellation of the service unless outlined in our Agreement with you.
  - d. You are responsible for any SJH owned or suppliers equipment from the time when you receive it.
    - i. You must pay for any loss or damage you cause to Service Equipment, other than fair wear and tear;
    - ii. You must comply with our reasonable directions to protect our ownership of the Service Equipment and not remove or obscure any identification marks on the Service Equipment;



- iii. You must not part with possession, mortgage or grant a charge, lien or encumbrance over any Service Equipment provided.
- iv. You must notify us immediately of any damage to Service Equipment
- e. You may purchase equipment from SJH to use in connection with the Service. In such event, you will be responsible for the equipment from when you receive it. Responsibility remains after you have received it and in circumstances where that equipment becomes lost, stolen or damaged except where caused by SJH or SJH's personnel.
- f. Equipment purchased from SJH remains our property until we confirm you have paid us in full. You agree you will not part with possession of the equipment except to us until this condition is met. If you do part with Purchased Equipment before full payment, we may:
  - i. recover the value of the Purchased Equipment as a debt due, and
  - ii. offset the value of the Purchased Equipment against any money we may owe to you.

### 7.2 Change of mind

We do not provide refunds for 'change of mind' for Equipment purchased or Services ordered from SJH including any costs incurred for privately purchased equipment or third-party services ordered by you for use on our Service.

### 7.3 Installation of Equipment

- a. Subject to Agreement between the parties as to which Services and Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you.
- b. We may charge you our current fees for installing the Purchased Equipment and Service.
- c. SJH will use reasonable endeavours to install the Purchased Equipment and Service on or around the installation date requested by you.
- d. You must provide an adequate and suitable space, clean power supply and protected environment for all equipment used in connection with the Service located on the Premises.

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

7.5 You must ensure that all additional equipment connected from the customer connection point is used in connection with the Service and the way you use that equipment complies with clauses 6.3 or 6.4.

7.6 All SJH Fibre Broadband services require specific network technology in order for the service to work optimally. Unless provided by SJH as part of the service, it is the responsibility of you to ensure that network compatible equipment is used to connect to the service. If non-network compatible equipment 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.

### 7.7 Return of Service Equipment

If the supply of Services to you ends or changes. Any equipment:

- a. not owned by you; and



- b. no longer in-use for the service provided by us must be returned or made available to collect; or if
- c. for collection should be the initial place of installation or at premises not significantly further in distance (you have moved). You are responsible for additional costs to collect or return the equipment;
- d. must be received in an un-damaged condition, other than fair wear and tear;
- e. may be subject to Fees and Charges (see Fees and Charges Policy).

### 7.8 Equipment Warranty

Equipment supplied by SJH is covered by the applicable manufacturer's warranty. SJH will assist you in making a warranty claim during the warranty period.

### 7.9 Labour to Remove and Reinstall Equipment

- a. SJH provides a 12-month labour warranty on workmanship from the date of installation.
- b. During this period, if equipment supplied and installed by SJH requires removal and reinstallation under warranty or Australian Consumer Law (ACL), SJH will provide labour at no additional cost.
- c. After this period, labour to remove and reinstall equipment is chargeable at SJH's standard service rates, unless required under the ACL.

### 7.10 Exclusions – Warranty and labour coverage does not apply where equipment failure is caused by:

- a. misuse, neglect, accident, vandalism, or damage by the Customer or a third party;
- b. power surge, lightning strike, water ingress outside the stated IP rating, or other external events beyond SJH's reasonable control;
- c. alterations, modifications, or non-SJH firmware/software applied to equipment;
- d. integration with or impact from non-SJH equipment.

## 8. Network maintenance, fault reporting and rectifications

8.1 Periodically, SJH or its suppliers may conduct routine maintenance and software upgrades on its platforms and Services to provide the best possible quality of service. We aim to:

- a. conduct scheduled maintenance on the SJH network outside normal business hours;
- b. minimise any impact on your services;
- c. give you reasonable notice in the circumstances of possible Service interruptions.

8.2 SJH will provide a 24/7 On-Call service for you to report faults. Before you report a fault to SJH, we ask you to take all reasonable steps to ensure that the fault is not caused by any equipment that is owned by you.

8.3 In the event of any Service issue, you 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 some 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 You are responsible for ensuring permission is in place as:
- the owner / occupier of the property; or
  - the tenant of the property where the installation is to occur and that you accept any costs associated with any installation works required.
- 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 supplier's network; or
  - equipment that is not owned by SJH; or
  - facilities outside the SJH network.
- 8.6 Where:
- a fault arises in or is caused by a supplier's network; and
  - SJH becomes aware of the fault; and
  - 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 You must notify us promptly of:
- any fault or defect that may affect the services and/or equipment;
  - any environmental issue that may affect the services and/or equipment.
- 8.8 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:
- if you ask SJH to investigate a fault or ask SJH to request a supplier to investigate a fault, SJH will give you an estimate of the probable cost of such investigation and obtain your agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform you of the probable cause of the fault.
  - if you request SJH to repair the fault and SJH agrees, SJH will give you a estimate of the probable cost of repairing the fault and obtain your agreement to bear those costs before carrying out the repair.
- 8.9 If SJH investigates a fault and determines that the fault is attributable to a breach of the Agreement by you, a negligent or fraudulent act or omission by you or any of your personnel or a failure of any of your equipment and/or premises, you must pay the costs incurred by SJH in investigating.
- 8.10 If another service is also activated from another provider at your premises you acknowledge 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.

## 9. Fees and charges

- 9.1 You are responsible for paying the fees and charges that:



- a. arise from using the service;
  - b. are set out in the Agreement or in any applicable Special Offer; and
  - c. any additional fees and charges noted in the Quotation for Services, Customer Information Summary, Fees and Charges Policy or notified by SJH in accordance with the Agreement from time to time.
- 9.2 You must pay all fees and charges which are incurred for the Service even if you did not authorise its use.
- 9.3 You must pay the fees and charges for the Service even if the Service is unavailable or you are unable to access the Service. However, you 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 that you incur in the normal use of the Service (including plan fees, where applicable), SJH may charge you an administration fee or 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 or our Fees and Charges Policy.
- 9.5 SJH may also ask you to make a pre-payment usage charge or request that you make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service).
- 9.6 SJH will calculate charges based on billing information generated or received by SJH which will be prima facie evidence of your use of the Service and the fees and charges incurred.
- 9.7 Special Offers
- a. 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 and availability.
  - b. SJH may notify in the event of a Special Offer via the following means:
    - i. At sign-up of a new service; or
    - ii. through general advertising; and or
    - iii. specifically advising existing Customers via email.
  - c. If the offer is available to you and you accept 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.

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## 10. Billing and Payments

### 10.1 Usage charges

- a. 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 you 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.

- b. 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 you of the charges.
- c. 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 you on the subsequent invoices.

### 10.2 SJH will invoice you:

- a. on a regular basis (either in advance or in arrears) for service usage, unless otherwise set out in the Agreement; and
- b. for any upfront fees, charges; and
- c. where applicable we require payment of the total setup cost prior to SJH accepting this Agreement and proceeding with ordering of any hardware.

### 10.3 The terms of payment for SJH's invoices are seven (7) days. If Full Payment is not received for any reason, an initial automated Payment Reminder notice is sent, includes advising you that a late payment fee may apply if Full Payment is not made within the next seven (7) days.

Should Full payment not be received within the seven subsequent (7) days aforementioned; a Second (2nd) automated Payment Reminder notice is sent advising that a late payment fee has now been applied and added to your next monthly plan invoice (if applicable) or another Invoice will follow, as SJH exercised its discretion under clause 10.5 (a) of the Service Terms.

Should Full payment not be received within the seven (7) subsequent days aforementioned; a Third (3rd) automated Payment Reminder notice is sent advising that restriction of services may be invoked at SJH's discretion under clause 10.5 (b–e) of the Service Terms.

Should Full payment not be received within the seven (7) subsequent days aforementioned; a Final (4th) automated Notice is issued advising that SJH will exercise Its rights under clause 10.5 (b-i) of the Service Terms, and the Services will be restricted and/or Cancelled and your Account may be handed to SJH's Mercantile Agent for Recovery.

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

### 10.5 If you do not pay the invoice by the due date, SJH may:

- a. include a Late Payment Fee (See fees and Charges Policy) for an overdue notice of payment on the next monthly invoice;
- b. require you 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 you 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 your 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 10.5 (d) without compensation to you;
- f. recover any unpaid supply of equipment that may be providing an operating service without compensation to you;
- g. engage a mercantile agent to recover the money you owe SJH and charge you a recovery fee;
- h. institute legal proceedings against you to recover the money you owe SJH and recover from you its legal costs; and/or
- i. on-sell any unpaid amounts to a third party.

10.6 If you have been overpaid as a result of an invoicing error, your account with SJH will be credited with the amount overpaid or SJH will use reasonable endeavours to notify you and refund the over payment.

10.7 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, for example G.S.T, 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. You must pay the additional amount at the same time you pay the fees and charges.

10.8 If you require 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, you must pay SJH's reasonable administration fee for such retrieval.

### 10.9 Failed Payment by Direct Debit

Where an automated 'Direct Debit' has been set-up through the agreed third-party payment provider you must always ensure sufficient funds to complete each payment requirement are available. If a due payment fails for any reason, a failed payment fee may apply.

SJH bears no responsibility for the details provided by you to be verified should you alter at any stage your payment facilities and fail to notify the agreed third-party payment provider.

### 10.10 Financial Hardship

Should you need a payment plan or are experiencing financial hardship, then please contact our friendly team at SJH to discuss options.

## 11. Complaints and disputes

11.1 If you have any complaints in connection with the Service you may contact us in writing or by calling SJH via the contact details on our website.

11.2 SJH will handle all complaints in accordance with its Privacy Policy and Complaints Handling Policy. A copy of these policies is available from SJH on request or on our website.



- 11.3 SJH will use its best endeavours to resolve all complaints, however if SJH is not able to resolve a complaint to your satisfaction, you 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 your complaint or dispute is:
- a. 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;
  - b. about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to you or non-SJH owned equipment, you may be entitled on request to a refund or a rebate of any plan fees for the period in which your 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 You may cancel the Service at any time by:
- a. giving SJH thirty (30) days' notice in writing (including if you do 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 in writing, 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 you give SJH written notice requiring SJH to do so.
- 12.2 If the Agreement is a Fixed-Term Agreement, you 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 you 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 you 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 you fail to pay that amount in full within seven (7) days after SJH gives you a notice requiring payment of that amount, unless otherwise set out in the Agreement;
  - d. SJH may reasonably consider you a credit risk because you have not paid amounts owing to SJH or in respect of any service by its due date and you fail to pay that amount in full within the period stated in any notice given to you requiring payment of that amount;
  - e. you breach a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and you either cannot remedy that breach or fail to remedy that breach within thirty (30) days after SJH gives you notice requiring you 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. you suffer an insolvency event and SJH reasonably believes SJH is unlikely to receive payment for amounts due;
  - h. a significant circumstance related to yourself happens or if you are in 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 you;
  - 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 you have been provided with a Service by another carrier, carriage service provider or service provider and have elected to have that service replace the Service under Agreement with SJH, the Service will be deemed to have been cancelled by you 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. you are 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. you authorise SJH to apply any over payment on your SJH account and/or money that you have paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
  - c. subject to clause 12.7 (b) and unless otherwise set out in the Service Description, SJH will refund any over payment on your SJH account;
  - d. if you are required under the Service Description to pay for the Service by direct debit payment (either from your nominated bank or credit card account), you authorise SJH to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from your nominated bank or credit card account.
- 12.8 No cancellation fee shall be payable by you:
- 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:

- a. before the Service is activated, you must pay SJH all infrastructure and installation costs incurred by SJH in connection with preparations for supplying the Service to you;
- b. during the minimum term, you must pay SJH a Cancellation fee or such higher amount as may be provided as a reasonable estimate of SJH's likely financial loss if any individual Services are cancelled;
- c. you must pay SJH all costs incurred to rectify your breach of the Agreement;
- d. SJH will refund you the balance of any amounts paid to SJH under this Agreement in respect of the Service cancelled after deducting all amounts payable to SJH; and
- e. where SJH determines that it is fair and reasonable to do so in the circumstances SJH may refund, in part or in whole, any upfront or equipment costs that you have paid to SJH in connection with the cancelled Service.

12.10 If you wish to reinstate the Service at any time after cancellation:

- a. you may make a request to SJH provided that if the Service is cancelled as a result of circumstances attributable to the you; and
- b. if SJH reinstates the Service;
  - i. then you may have to pay SJH a reconnection or reactivation fee or such higher amount as may be provided in Clause 17.3; and
  - ii. you must pay SJH all infrastructure and installation costs incurred by SJH in connection with preparations for supplying the Service to you.

12.11 If you are able to use the Service after the Cancellation Date, you are liable for any charges incurred for that use, in addition to any other charges under this clause 12.

12.12 How Cancellation fees are calculated

If you cancel your contract anytime during the term, you'll need to pay a fee which is the equivalent to the remainder of your minimum contract total. This is calculated as the minimum monthly cost of the service multiplied by the number of months including part thereof remaining in your agreement. After the contract has finished, we require a minimum of 30 days notice in writing to SJH at [accounts@sjhcomms.com.au](mailto:accounts@sjhcomms.com.au).

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## 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 (l) and under the Agreement or Acceptable Use Policy;
- 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 you 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) 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:
- a. you will have to pay plan fees for the Service while it is suspended; unless
  - b. the suspension was not as a result of circumstances attributable to you or your owned equipment, you may be entitled on request to a refund or a rebate of any plan 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:
- a. you may make a request to SJH provided that if the Service is suspended as a result of circumstances attributable to the you; and
  - b. if SJH reinstates the Service, then you may have to pay SJH a reconnection or reactivation fee or such higher amount as may be provided in clause 17 or our 'Fees and Charges Policy'.

### 14. Liability

- 14.1 You are 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, you are 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 you have 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 you for:



- a. any damage to your 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 your 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. death or personal injury caused by SJH or SJH's personnel;
  - d. 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 SJH is not liable to you under this Agreement:
- a. if you apply for a residential grade service, which is supplied on the basis is solely for personal, domestic or household use and you use it for any business purposes, SJH is not liable for any business-related losses;
  - b. Other than as provided in clauses 14.4.
- 14.6 If you have contributed to any loss or damage you are claiming against SJH, SJH's liability is reduced to the extent of your contribution.
- 14.7 SJH is not liable to you for any consequential losses you suffer or for any costs, expenses, loss or charges that you incur 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 as follows:
- a. In respect of any claim arising from the provision of professional services, SJH's total liability is limited to \$2,000,000 for any one claim and \$4,000,000 in the aggregate, being the limit of indemnity available under SJH's Professional Indemnity insurance policy; and
  - b. In respect of any claim arising from personal injury, property damage or products liability, SJH's total liability is limited to \$20,000,000 for any one claim and \$20,000,000 in the aggregate, being the limit of indemnity available under SJH's Public and Products Liability insurance policy, 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 you irrevocably authorise SJH to execute on their behalf all such documents that may be required to be executed by you 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 resides, 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 If you been provided with a Service by another carrier, carriage service provider or service provider and you have elected that the Service be replaced by the SJH Service under the Agreement, then you authorise SJH to:
  - a. inform that carrier, carriage service provider or service provider that you have elected to have that Service replaced by the SJH Service; and
  - b. to take such action (including give such notices and sign such documents) on behalf of the you as may be necessary or appropriate to effect the transfer of Services and provision of by SJH.
- 16.4 You as a 'customer' are not a carrier or carriage service provider. If you are or become a carrier or carriage service provider, SJH may immediately cancel the Service by giving you notice.
- 16.5 If you breach the Agreement and SJH does not exercise a right because SJH has not yet become aware of your breach, SJH does not waive:
  - a. that right unless SJH gives you notice in writing confirming that SJH have waived that right; or
  - b. SJH's right to insist that you perform any obligation you have under the Agreement.
- 16.6 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.
- 16.7 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.
- 16.8 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted or emailed:
  - a. to you at your nominated email address, postal address as indicated on the Application or your latest email address or postal address notified to SJH in writing; and
  - b. to SJH at SJH's email address or address indicated on SJH's website at: <https://sjhcommunicationsolutions.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 seventy-two (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 an email, on production of an email header indicating delivery without error.

16.9 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.

16.10 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 terms 'Economy', 'Lite', 'Medium', 'Extreme', 'Ultimate', 'High Speed' and 'very High Speed' 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.

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

- a. SJH shall give you notice in writing of the change as soon as practicable;
- b. for thirty (30) days from receiving notice of the change, you 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.

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

- a. Pro rata (balance) of the first month's 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 month's 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 1st, for the billable period 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 passed onto SJH from our wholesale supplier(s) are debited:
  - i. on, or around, the 1st day of each calendar month following the month in which excess usage was incurred, per GB or part thereof for the billable period of the prior month in which excess usage was incurred.

### 17.4 Modems

For information about returning modems or seeking a replacement see 'Equipment' clauses 7.7, 7.8 and 7.10 in this document. Further information can be found in our "Fees and Charges Policy" sent with your sign-up documents or see our website.

## 18. Confidentiality

18.1 You agree that any information provided to each other relating to the Equipment, the Services or to supplying the Services which by its nature or the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential.

18.2 We agree that information gained from the other party for any purpose or in any manner that may cause loss to the other party, whether by way of damage to reputation, financial loss or otherwise will always remain confidential; and

18.3 Any information provided will be dealt with in accordance with our Privacy Policy.

## 19. Changes to our Customer Terms and Conditions

We reserve the right to change or modify the terms of this policy at any time, and these changes will be effective when posted on our website.

## 20. Important Supplementary References

As an SJH Communications customer starting a new agreement or continuing with SJH Communications after your initial agreement has passed, these SJH Policies and Guidelines shall always apply:

- Acceptable Use Policy
- SJH Complaints Handling Policy
- SJH Privacy Policy

### Residential Customers

- SJH Service Installation Guidelines - Residential
- Fees and Charges - Residential

### Business Customers

- SJH Service Installation Guidelines - For Business
- Fees and Charges - For Business