



Elders Big Red broadband Satellite  
*(Broadband Connect)* Terms

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Please read these terms carefully as they may have important consequences for *you*.

## 1. About these Elders Big Red broadband Satellite (*Broadband Connect*) Terms

- (a) These are Elders' Big Red broadband Satellite (*Broadband Connect*) terms. They set out our standard customer terms for *eligible customers* acquiring the *service*.
- (b) The meaning of the words printed *like this* is set out at the end of the Elders Big Red broadband Satellite (*Broadband Connect*) terms.
- (c) These Elders Big Red broadband Satellite (*Broadband Connect*) terms, including Schedule 1 which sets out the fees or charges *we may charge you* for *your* use of the *service*, together with the *application* and the *appendices*, forms the *agreement* with *us*. To fully understand *your* rights and obligations *you* need to read all of the documents that relate to *you* and the *service*. Please read Schedule 1 carefully to see what fees and charges apply to *your* use of the *service*.
- (d) The *appendices* contain further information that may apply to *your* use of the *service*, such as our usage policies and some *specials*. The Elders Big Red broadband Satellite (*Broadband Connect*) terms will refer *you* to an appendix if it is relevant to *your* use of the *service*.
- (e) *You* may obtain a summary of the Elders Big Red broadband Satellite (*Broadband Connect*) terms together with a copy of the latest version of those terms and *appendices* from *us* or on our website:  
[www.elderstelecomunications.com.au/goto/agreements](http://www.elderstelecomunications.com.au/goto/agreements).

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## 2. The Agreement

### 2.1 The agreement

- (a) The *agreement* is made up of:
  - (i) the *application*;
  - (ii) these Elders Big Red broadband Satellite (*Broadband Connect*) terms (including Schedule 1);
  - (iii) the *Acceptable use policy*; and
  - (iv) the *appendices*.
- (b) The *agreement* is either a *fixed-length agreement* or *non fixed-length agreement*.

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

- (a) If anything in these Elders Big Red broadband Satellite (*Broadband Connect*) terms is inconsistent with a provision in another part of the *agreement*, then

unless otherwise stated, the Elders Big Red broadband Satellite (*Broadband Connect*) terms prevail to the extent of the inconsistency.

- (b) Clause 23, 'What you and we are liable for', below prevails over all other terms.

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

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

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

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

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

- (a) If the *agreement* is a *non fixed-length agreement*, we will provide the *service* to *you* in accordance with the *agreement* for at least three (3) years from the *service start date* and until the *service* is cancelled in accordance with clause 21, 'Cancelling the *service*', below.
- (b) If the *agreement* is a *fixed-length agreement*, we will provide the *service* to *you* in accordance with the *agreement*:
- (i) for at least three (3) years from the *service start date*; or
  - (ii) until the *service* is cancelled in accordance with clause 21 below; or
  - (iii) if *you* do not *cancel the service* at the end of the *minimum term* (see clause 2.6 below), until the *service* is cancelled in accordance with clause 21.1 below.

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

- (a) If *you* do not *cancel the service* at the end of the *minimum term*, the *fixed-length agreement* becomes a non-fixed length *agreement* and *we* will continue to supply the *service* to *you* on a month-to-month basis in accordance with the *agreement*.
- (b) If *you* do not wish to continue to use the *service* on a month-to-month basis after the end of the *minimum term*, *you* must inform *us* (in accordance with clause 21, 'Cancelling the *service*', below) by giving *us* 30 days notice before the end of the *minimum term* that *you* wish to *cancel the service* at the end of the *minimum term*.
- (c) If *we* choose not to provide the *service* to *you* after providing the *service* to *you* for three years after the *service start date*, *we* will give *you* notice of this (in accordance with clause 21, 'Cancelling the *service*', below) by giving *you* 30 days notice.

### **2.7 How can we change anything in the agreement?**

Please read this clause carefully.

In some circumstances (paragraphs 2.7(b) (v) C., 2.7 (b) (vi) F., 2.7 (b) (viii) B., 2.7 (b) (ix) A. below), *we* give *you* a right to *cancel the service* if *we* change it.

- (a) We cannot make any changes to the *agreement* without the prior consent of *DCITA*.
- (b) Paragraphs 2.7 (c) (iv), 2.7 (c) (v), 2.7 (c) (vi), 2.7 (c) (ix) below are marked with an \*. These clauses only apply if at the time *you* entered into the *agreement* *you* did not have a genuine and reasonable opportunity to negotiate the terms of the *agreement* and *you* had, or *we* reasonably estimated that *you* would have, an annual spend of \$20,000 or less with *us* for all telecommunications *services*. In those circumstances, *we* will give *you* additional notice of some types of changes and *you* may have an additional right to *cancel the service* if *we* change it.
- (c) We can make the following types of changes to the *agreement* if we receive *DCITA*'s consent:
  - (i) we can make any type of change to the *agreement* if *we* get *your* consent to the change;
  - (ii) we can make any type of change to a **non fixed-length agreement** without *your* consent provided that *we* comply with the *Telecommunications Legislation*; and
  - (iii) \*we can make changes to a **fixed-length agreement** provided *we* comply with our obligations under paragraph 2.7 (b) above and our additional obligations under paragraphs 2.7 (c) (iv), 2.7 (c) (v) and 2.7 (c) (vi) below.
  - (iv) \*If the *agreement* is a *fixed-length agreement*, subject to paragraph 2.7 (c) (v) below, *we* cannot make any changes to the *agreement* that *impact you* without:
    - A. complying with the *Telecommunications Legislation*;
    - B. giving *you* 21 days notice in writing of the change before the change occurs; and
    - C. offering *you* the right to cancel the service (within 42 days from the date of the notice) without incurring fees or charges other than:
      - 1) usage charges or *access fees* (incurred to the date on which the *service* is cancelled, which is the date on which *you* notify *us* *you* wish to *cancel the service*); and
      - 2) any outstanding amounts that cover installation costs or equipment *charges* (where the equipment can be used in connection with *services* provided by any third party).
  - (v) \*If the *agreement* is a *fixed-length agreement*, so long as *we* comply with the *Telecommunications Legislation*, *we* can make changes to the *agreement* even if they *impact you*, if the change is:
    - A. required by law or industry code;
    - B. in relation to the cost of international services;

- C. in relation to a fee or charge to account for a tax imposed by law;
  - D. in relation to a fee or charge for a service ancillary to the supply of the service (for example, a billing fee or credit card transaction fee) provided that if the change impacts you we offer you:
    - E. use of a reasonable alternative at no fee or charge; or
    - F. a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service* is cancelled, which is the date on which *you* notify *us* you wish to *cancel the service*);
- (vi) to increase the price of a *content service* or *premium service* (where the *supplier* who supplies the *content service* or *premium services* to *us* to allow supply of the *service* increases the price they charge *us* for the *content service* or *premium service*) provided that if the change impacts *you* we:
- A. give *you* reasonable notice of the increase in price if *you* have used the *content service* or *premium service* within the previous six (6) months; and
  - B. allow *you* to elect to not use the *content service* or *premium service* without attracting any additional charges;
- (vii) as a result of another carrier or *service provider* varying the *agreement* we have with it in relation to a carriage *service* and as a result *we* need to make changes to the *agreement*, provided that if the change impacts on *you* we give *you*:
- A. notice in writing of the change; and
  - B. 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
    - 1) usage charges or *access fees* (incurred to the date on which the *service* is cancelled, which is the date on which *you* notify *us* you wish to *cancel the service*); and
    - 2) any outstanding amounts that cover installation costs or equipment *charges* (where the equipment can be used in connection with *services* provided by any third party).
- (viii) \*If the *agreement* is a *fixed-length agreement*, so long as *we* comply with the *Telecommunications Legislation*, *we* can make changes to the *agreement* relating to the characteristics of the *service* (including price) if the change is likely to benefit *you* or have a neutral or minor detrimental impact on *you*. If *you* can demonstrate that such a change has had **more than a minor detrimental impact on you and the change is not of a type described in paragraph (v) above** we:

- A. will offer *you* the right to *cancel the service* without incurring fees or charges other than:
- 1) usage charges or *access fees* (incurred to the date on which the *service* is cancelled, which is the date on which *you* notify *us* *you* wish to *cancel the service*); and
  - 2) any outstanding amounts that cover installation costs or equipment *charges* (where the equipment can be used in connection with *services* provided by any third party); and
- B. may offer *you* an alternative remedy to address the impact the change has had on *you*.

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

- \* if *we* decrease a charge or *access fee*; or
- \* if *we* offer a new feature of the *service*.

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

- \* withdrawing a minor feature of the *service*;
- \* changing the *content* available with the *service*; or
- \* a small increase in a *content* charge.

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

## 2.8 Amendments to charges

*We* may vary the *constitute prices* of the *service* with *DCITA*'s prior consent by giving *you* at least 30 days notice and following any other procedures required by clause 2.7, but may not change the total amount of the charges *you* pay for the *service*.

## 2.9 How will *we* notify *you* of changes to the *agreement*?

If *we* change the terms of the *agreement*, in addition to any other method of notification in writing (including by delivering notice of the change to *you* in person, sending it to *you* by mail, sending it to *your primary email address* (see clause 7.5(c) below), by bill message or bill insert), *we* may notify *you* of the change by notice on our web site: [www.elderstelecommunications.com.au/goto/agreements](http://www.elderstelecommunications.com.au/goto/agreements).

## 2.10 How can *you* change anything in the *agreement*?

*You* cannot make any changes to the *agreement* without first obtaining our consent.

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## 3. What is the Service?

- (a) The *service* is a *broadband* Internet service which provides access to the Internet and related *services*, such as email via a *VSAT*, by accessing available

*satellite* bandwidth. The *service delivery point* is the air interface at the VSAT antenna at the *location*. Up to 5 email accounts are included with the *service*.

- (b) The *service* is a 2 way *service* and *your* computer will **send** and **receive** data by accessing *satellite* bandwidth.
- (c) The *service* includes, subject to clause 9;
  - (i) internet access;
  - (ii) a peak data speed of at least 256 kbps to *you* and 64 kbps from *you*;
  - (iii) average data download and upload speeds of at least 60 per cent of the peak speeds at least 75 per cent of the time measured according to a prescribed *Broadband Connect* testing schedule for test computers located in different geographic regions;
  - (iv) a minimum monthly usage allowance (download and upload) of at least 500 MB;
  - (v) availability 99 per cent of the time, averaged over a quarterly period;
  - (vi) free 24 hour fault reporting which operates 24 hours a day, 7 days a week by email to [ET.Help@Elders.com.au](mailto:ET.Help@Elders.com.au), Facsimile to 1800 235 238, and by telephone from 8am to 8pm Australian Central Standard Time to 1800 384 357;
  - (vii) staffed helpdesk services available during business days between the hours of 8.00am and 8.00pm Australian Central Time;
  - (viii) where usage limits apply, usage information updated at least once per day;
  - (ix) where requested, information regarding current usage and any associated costs at no charge; and
  - (x) internet page accelerator for improved web browsing performance;
  - (xi) TCP/IP spoofing to accelerate TCP traffic;
  - (xii) email capability of 1 mailbox account at 10MB and up to 5 alias email addresses;
  - (xiii) anti-virus and SPAM filter network software;
  - (xiv) 5MB of personal web space per service;
  - (xv) On line usage reporting; and
  - (xvi) data testing tool.
- (d) The *service* does not include (and we have no obligation to provide):
  - (i) a continuous or fault-free service. We will use reasonable care and skill in providing the *service* but given the nature of telecommunications systems (including reliance on systems and services not owned or controlled by us) we cannot promise that the service will be continuous or fault-free;

- (ii) a virtual private *network* (VPN);
  - (iii) a domain name server *service* and registration functions;
  - (iv) a *public IP address* for you or your end user unless explicitly included as part of the *service*;
  - (v) *maintenance services* (including, without limitation, for your equipment) unless explicitly included as part of the *service*;
  - (vi) gateway personal computer and associated *applications* to serve a LAN/WAN;
  - (vii) secure integration;
  - (viii) if you opt to connect your LAN to the *service*, delivery of the *service* beyond the *service delivery point*; or
  - (ix) support for software not supplied by us, including software downloaded from the Internet.
- (e) Elders is not obliged to provide the *service* to:
- (i) any location that is not accessible by road transport;
  - (ii) any location that *Elders* determines is unable to receive the *service* due to a technical limitation;
  - (iii) any location for which, in *Elders* opinion, it is not commercially viable for *Elders* to supply the *service*;
  - (iv) any location that has not been approved by your local council for use in connection with the *service* where this is required. You are responsible for obtaining any such approval; or
  - (v) any person that does not meet *Elders*' credit assessment requirements.
- (f) To receive the *service*, the minimum system requirements to be provided by you are:
- (i) central processing unit/CPU: Intel Pentium 200MHz or better;
  - (ii) random access memory/RAM: 64Mb or minimum specified for the operating system, whichever is greater;
  - (iii) free disk space: 50Mb;
  - (iv) Operating System: Microsoft Windows 98SE or later versions, including Windows Me/Millennium Edition;
  - (v) Windows NT4.0 SP3 or later (excluding server editions);
  - (vi) CD-ROM;
  - (vii) 10Mbps Ethernet Port with RJ45 socket;
  - (viii) browser;

- (ix) Internet Explorer version 5.0 or later, or Netscape Navigator 4.0 or later; and
- (x) Microsoft Outlook Express (if you require *Elders* to set up your email account at installation).

Customers with systems different to those above, eg. different operating system or with a LAN, may purchase the *service*. However it is *your* responsibility to configure and connect *your* computer equipment to the *service* and support *your* non-standard equipment. We will install, test and demonstrate the *service* up to the Ethernet port on the satellite modem.

- (g) Elders will not supply the *service* to *you* unless a standard installation can be carried out at the location where you request the *service* to be supplied. A standard installation requires that:
  - A. installation be at a building with a maximum height of two stories;
  - B. the antenna has an unobstructed line of sight to the *satellite* (approximately north/north east);
  - C. the site and building to which the *service* will be delivered have safe roof and antenna access;
  - D. the location of the in-door-unit or IDU be accessible, clean, within two meter of the RF cable wall plate and *your equipment* or hub and with adequate ventilation; and
  - E. access to a standard general purpose outlet or GPO, within two metres of *your equipment*.

## 4. The Supply of the Service

### 4.1 Who supplies the *service*?

*Elders* supplies the *service* to *you*.

### 4.2 *Supplier and third party services*

*You* acknowledge that:

- (a) supply of many aspects of the *service* relies on the *services* of *suppliers* for its operation, who are not controlled by *us*; and
- (b) we do not exercise any control over, authorise or make any warranty regarding:
  - (i) *your* right or ability to use, access or transmit any *content* using the *service*;
  - (ii) the accuracy or completeness of any *content* which *you* may use, access or transmit using the *service*;
  - (iii) the consequences of *you* using, accessing or transmitting any *content* using the *service*, including without limitation any virus or other harmful software; and

- (iv) any charges which a third party may impose on *you* in connection with their *services* accessed via the *service*.

#### **4.3 Supply of the service**

- (a) *You* may obtain the *service* provided by *us* if:
  - (i) *you* meet the relevant *Broadband Connect* criteria and our eligibility criteria to receive the *service*; and
  - (ii) *your* equipment (including any equipment *you* previously purchased from *us*) meets our specifications set out in the *application* for providing the *service* to *you*.
- (b) If *you* wish to obtain the *service*, *you* may be required to pay a cancelling charge to *us* for cancelling any Elders satellite service *you* obtain from *us* and to pay to upgrade any equipment required to receive the *service* (where necessary).

#### **4.4 Can you change the service supplied?**

*You* have the right to request and have effected a change to *your pricing* plan. If *you* arrange with *us* to change the *pricing* plan supplied then *you* are entitled to return to the *pricing* plan as it was originally provided to *you* as at the *service start date* until the *service* is cancelled (either on expiry of the *minimum term* or otherwise).

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## **5. How we deal with your personal information**

### **5.1 Collection, use and disclosure**

- (a) *We* may collect, use and disclose *personal information* about *you*, to decide whether to start, stop or limit supply to *you* of personal credit, the *service* or the products and *services* of other Elders group companies.
- (b) *We* may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, *location* of call) for purposes related to the supply of the *service* (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide *you* with information about promotions, as well as the products and *services* of Elders group companies and other organisations.
- (c) *We* may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, *location* of call) for the purposes in paragraphs (a) and (b) above to or from:
  - (i) a credit reporting agency or credit provider;
  - (ii) another *Elders group company*;
  - (iii) third parties who are not related to *us*, including our agents, dealers, contractors and franchisees;
  - (iv) *suppliers* who need access to *your personal information* to provide *us* with *services* to allow supply of the *service*; and
  - (v) joint venture partners of Elders group companies.

- (d) We may be permitted or required by applicable laws to collect, use or disclose *personal information* about *you* (which may include, for example, numbers called, time of call, *location* of call), including to:
  - (i) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data;
  - (ii) emergency *services* organisations; and
  - (iii) law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- (e) We may collect, use and disclose *personal information* about *you* (which may include, for example, *your* identity, contact details, the *service* being supplied to *you* and applicable pricing, the details of the *premises* and complaints made by *you* about the *service*) to *DCITA* and other appropriate government agencies and *service providers* for the purpose of:
  - (i) claiming incentive payments from *DCITA* for the provision of the *service* to *you*;
  - (ii) performing our obligations under the arrangements in place between *us* and *DCITA*;
  - (iii) *Broadband Connect* program administration, regulation, evaluation and policy development and reporting by *DCITA* and other appropriate government agencies; and
  - (iv) verifying whether *ISDN* is available at *your premises*.
- (f) If we hold *your personal information*, complaints about our acts or practices may be investigated by the Commonwealth Government Privacy Commissioner who has power to award compensation against *us* in appropriate circumstances.

## 5.2 Opting-out

If *you* wish to only receive communications that are account-related or legally required, *you* may request not to receive other communications (that is, *you* may 'opt out'). *You* will need to contact *Customer Service* to make a request to opt-out. *We* will not charge *you* for processing a request to opt-out.

## 5.3 Gaining access to and correcting *your personal information*

If *you* are an individual, *you* are entitled to:

- (a) gain access to *your personal information* held by *us*, unless *we* are permitted or required by any applicable law to refuse such access; and
- (b) correct any *personal information* held by *us*.

## 5.4 Providing *your personal information*

If *you* do not provide part or all of the *personal information* we request, then *we* may refuse to supply, or limit the supply to *you* of, personal credit or the *service*.

## 5.5 Consent

By providing *your personal information* to us and obtaining the *service*, you acknowledge and consent to the collection, use and disclosure of *your personal information* as set out in this clause 5 and in accordance with our privacy policy. You may obtain a copy of our privacy policy from us or on our website:

[www.elderstelecommunications.com.au/goto/privacy](http://www.elderstelecommunications.com.au/goto/privacy).

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## 6. The Application for the supply of the Service

### 6.1 Eligibility criteria

We will only provide the *service* to you if you and your premises comply with the eligibility criteria set out in the *application*.

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## 7. Use of the Service

### 7.1 Compliance with laws, directions and notices

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

### 7.2 Compliance with third party rules

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

### 7.3 Restrictions on *your* use of the *service*

- (a) To be an applicant for the *service*, *you* must be 18 years of age or older, or if not, *you* must have obtained the consent of a parent, teacher or other responsible adult.
- (b) *You* must:
  - (i) comply with the Acceptable use policy when using the *service*; and
  - (ii) ensure that the software *you* use with the *service* is properly licensed.
- (c) *You* must not, subject to paragraph (d) below:
  - (i) resell, share or otherwise distribute the *service* (or any part of the *service*) to any third party without our prior written consent (except in the case of *not-for-profit organisations* who are supplied the *service* to supply a new *public access Internet facility* on a not-for-profit basis); or
  - (ii) run or provide *network services* to others via the *service*.
- (d) *You* may connect a *LAN* to the *service* for private use. However, the set-up and configuration of a *LAN* connected to the *satellite modem* is not supported by *Customer Service*.

### 7.4 *Data usage* limitations

- (a) *Your data usage* applies to *downloading* only. *Your data usage* does not apply to *uploading*.
- (b) If *your data usage* exceeds the *data allowance* for any given billing month, *you* must pay an *excess data charge*.
- (c) *Your data usage* is reset to zero on the first (1st) day of each billing month. Any unused *data allowance* in any month cannot be rolled over into subsequent months.
- (d) The table '*Data usage - Some Practical Guidelines for Usage*' explains some common uses of the *service* that *download* a large amount of data and therefore may increase *your data usage*. This table is available at:  
[www.elderstelecommunications.com.au/goto\datausageguidelines](http://www.elderstelecommunications.com.au/goto\datausageguidelines).

### 7.5 Additional restrictions on *your* use of the *service*

- (a) *We* are not responsible for any Internet *content* that may be obtained via the *service*.
- (b) Any username *you* elect to use in conjunction with the *service* must meet our specifications as advised when *you* apply for the *service*. *We* reserve the right to delete usernames that *we* consider offensive, defamatory, illegal or otherwise inappropriate without notice.
- (c) *We* will communicate with *you* using *your primary email address*. *You* agree to monitor this email account regularly to retrieve and review these communications.

- (d) We may monitor *your* account to ensure that *you* are complying with the *agreement*. We will investigate any misuse of the *service* and may involve police or other law enforcement agencies in doing so. If we find that *you* have misused the *service*, we may recover from *you* any costs of investigating that misuse. If *your* misuse causes *loss* to another user and we are required to pay compensation to that user, we may require *you* to reimburse *us*.
- (e) We will cooperate with other *service providers* to control unacceptable user behaviour and may implement technical mechanisms to prevent behaviour which is, or would be, in breach of the *agreement*.
- (f) If *you* encrypt *your* data using, for example, *IP Sec*, *you* may prevent any acceleration software installed on *your* equipment from operating. This can adversely affect the performance for certain types of traffic.
- (g) *You* acknowledge that, where the *service* is a carriage *service*, we, or any *supplier* whose network is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor *your* usage of the *service* and communications sent over it.
- (h) All *IP* addresses provided by *us* for *your* use remain our property. If we provide a static *IP* address, we may change that address from time to time on reasonable notice. Subject to clause 14.1(b) below and any address option specified in the *application*, we will issue *you* with either a *private IP* address or a *public IP* address. *Private IP* addresses are not visible from the Internet. Therefore, if *you* require *your IP* address to be visible from the Internet or *you* have *applications* that are incompatible with *Network Address Translation (NAT)* *you* should request that we supply *you* with a *public IP* address in the *application*.
- (i) *You* must comply with our specific *satellite* operating conditions as advised by *us* from time to time and *you* must advise *us* immediately of any variation in *your* use of the *service*.
- (j) *You* acknowledge that if we relocate the *service* to a different *satellite* or *satellite transponder* it may not be possible to duplicate all of the previous operating characteristics.

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

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

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## 8. Quality of the Service

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

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## 9. Service Performance Levels

- (a) Subject to paragraph (c) below, the performance levels applicable to the *service* are as set out in clause 3(c).
- (b) If we do not meet the applicable average *data speed* for *your pricing* plan in any three (3) successive calendar months, as measured in accordance with the testing requirements set out in the *Broadband Connect guidelines*, and the

failure to meet the average *data speeds* is not due to an *excluded event*, you may *cancel the service* (and you will not be required to pay any *cancellation fee*).

- (c) Any calculations of availability of the *service* do not take into account those periods of time the *service* is unavailable due to an *excluded event* and do not take into account scheduled downtimes between midnight and six (6) am .
- (d) For a minor outage, where a single *service* is impacted, the maximum restoration time is seven (7) *working days*, except in the case of an *excluded event*, *scheduled maintenance* or the lack of availability of *satellite* bandwidth and a minimum restoration time of four (4) hours. For a major outage, where multiple customers are impacted, the maximum *service* restoration time is 30 *working days*, except in the case of an *excluded event*, *scheduled maintenance* or the lack of availability of *satellite* bandwidth. If the major outage is not rectified within 30 *working days*, you may *cancel the service* (and you will not be required to pay any *cancellation fee*).

---

## 10. Modifications to the Service

We may modify aspects of the *service* and the delivery of the *service* to you if it is necessary to do so for the efficient operation of *our network*. We may, for example:

- (a) deliver access and *content* via proxy servers and caches;
- (b) manage the *network* to prioritise Internet traffic of certain types or users over others;
- (c) block or filter specific Internet ports;
- (d) delete incoming and outgoing email messages which exceed 10 megabytes in size or delete stored email messages that are older than 90 days;
- (e) limit the number of addresses to whom an outgoing email can be sent; or
- (f) refuse to accept incoming email messages to mailboxes that have exceeded the email storage limit.

---

## 11. Maintenance on the Network

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

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## 12. System reconfiguration affecting Satellite Bandwidth

- (a) We reserve the right to conduct a *system reconfiguration*, for example:
  - (i) a different *satellite* may be used to provide the bandwidth that is accessed by the *service*; or
  - (ii) the orbital *location* of a *satellite* may change.

- (b) We will give you at least 21 days notice before conducting a *system reconfiguration* that materially affects *your service* (except in an emergency).
- (c) You must comply with any reasonable instructions we give you as a result of a *system reconfiguration* if you wish to continue using the *service*.
- (d) If, as a result of the *system reconfiguration*, you are unable to continue receiving the *service* without incurring material costs and we have not offered to cover those costs (for example: *your antenna* may need to be adjusted so that it has line-of-sight to the *satellite*) you may *cancel the service* by giving us notice within 42 days after our notice to you that the *system reconfiguration* was taking place. No *cancellation fee* will apply in such a case, as long as you pay all fees and charges relating to the period up until the *cancellation date*.

---

## 13. Fault Reporting and Rectification

### 13.1 Reporting faults

- (a) We will provide a 24 hour fault reporting service for you to report faults. The contact details for this service are set out in clause 3 (c) vi of this *agreement*.
- (b) Before you report a fault to us, you must take all reasonable steps to ensure that the fault is not caused by any equipment that is not *Elders owned equipment* or the *purchased equipment* if you have selected that we provide *maintenance* in the *application*.

### 13.2 Assisting us in investigating and repairing a fault

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

### 13.3 Our responsibility for repairing faults

- (a) All faults within our network will be repaired, other than irrecoverable failures in the *satellite network* or lack of availability of *satellite* bandwidth.
- (b) Subject to clause 15.5 below, we are not responsible for repairing any fault in the *service* where the fault arises in or is caused by:
  - (i) a *supplier's network*;
  - (ii) equipment that is not *Elders owned equipment*; or
  - (iii) facilities outside *our network*.
- (c) Where:
  - (i) the fault arises in or is caused by a *supplier's network*;
  - (ii) we become aware of the fault; and
  - (iii) we are not responsible for the repair of that fault,

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

- (d) Subject to clause 15.5 below, where the fault arises in or is caused by equipment that is not *Elders owned equipment* we are not responsible for the repair of that fault. If you ask us to investigate and repair such a fault:
  - (i) we will give you an estimate of the probable cost of investigating the fault and, if you agree to pay those costs, we will undertake an investigation and we will then charge you for the cost of investigation;
  - (ii) if we have investigated the fault, we will use reasonable endeavours to inform you of the fault's probable cause; and
  - (iii) if you request us to repair the fault and we agree to repair the fault, we will give you an estimate of the probable cost of repairing the fault and we will then charge you for the cost of repairing the fault.
- (e) If we investigate a fault and determine that the fault is attributable to an *excluded event*, then we may charge you for any costs we incur in investigating and repairing the fault.

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## 14. Connecting to the Service

### 14.1 What do you need to do to be able to connect to the service?

- (a) To be able to connect to the *service*, you must:
  - (i) obtain all required licenses (including council approval where necessary and approval of the building owner if it is not you), and any other approvals necessary for the relevant personnel to enter the *location*, provide the *service*, install *purchased equipment*, open up and install software on your equipment and make any necessary physical modifications to the *location*;
  - (ii) purchase the *purchased equipment*;
  - (iii) ensure that your equipment (other than the *purchased equipment*) is operational and available by the proposed *service start date*;
  - (iv) establish and properly maintain any connection necessary for you to connect the *purchased equipment* to the *service delivery point* in accordance with our directions;
  - (v) ensure your computer has the minimum specifications set out in the *application*; and
  - (vi) provide us, as required, with all routing information reasonably necessary to provide the *service*.
- (b) We will supply you with a *private IP address* for all 2 way services, unless you request a *public IP address* in the *application*. *Public IP addressing* is available at additional cost, as set out in Schedule 1.

### 14.2 Connecting the service

- (a) You must reasonably co-operate with us to allow us, or a *supplier*, to establish and supply the *service* to you safely and efficiently.

- (b) We will provide and install the *purchased equipment* at the *location* and connect the *purchased equipment* to the *service*. We may charge you an additional charge for any *non-standard installation* or re-installation as set out in Schedule 1.
- (c) The *service* will be installed within four (4) to six (6) weeks after we accept your *application*, except:
  - (i) by *agreement* with you;
  - (ii) if the *location* is not situated on the Australian mainland or is not accessible by road transport; or
  - (iii) if the *location* is not accessible at the time when we seek to connect the *service* for example due to extreme weather conditions.
- (d) We may agree with you a date on which we will seek to connect the *service*. We will endeavour to keep to the agreed date, but we will not be liable for any loss you suffer if we fail to do so.
- (e) If our representative attends the *location* on the date agreed with you and the installation cannot be completed during that visit due to circumstances for which you are at fault, inaccessibility to the *location*, cancellation of installation by you with insufficient notice or *non-standard installation* requirements which were not identified in the *application*, we may perform a site survey and charge you for it as specified in Schedule 1.
- (f) You indemnify us against any *claim* made against us by another person which arises out of your failure to obtain any necessary *licences* or approvals to perform the installation, *relocation* or removal of the *service*.
- (g) While we will take reasonable care not to cause any damage, our connection, inspection and *maintenance* of the *service* may cause damage to your computer software, hardware or data. It may also invalidate your computer warranty. You agree to accept the risk of any of these things occurring. You also agree to back up all existing computer files by copying them to another storage medium or other computer before we perform the connection. We do not accept any responsibility or liability for any loss or damage it may cause to your computer, software, files, data or peripherals, even if the loss or damage is caused by a negligent act or omission of us or our *personnel*. Nothing in this clause removes or limits our liability for death or personal injury caused by our negligence, nor are any statutory rights you may have affected, including those under the *Trade Practices Act*.

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## 15. Equipment

### 15.1 What are your responsibilities in relation to equipment?

- (a) You must ensure that all equipment you use in connection with the *service* and the way you use that equipment complies with:
  - (i) all laws;
  - (ii) all directions by DCITA or a regulator;
  - (iii) all notices issued by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)); and

- (iv) reasonable directions by us.
- (b) If you breach paragraph (a) above, we may disconnect the equipment from the service.
- (c) We will try to give you reasonable notice before we disconnect the equipment under paragraph (b) above, but we may disconnect the equipment immediately if there is an emergency.
- (d) You are responsible for ensuring that your equipment complies with the requirements set out in the agreement. If your equipment does not comply with these requirements you may be refused assistance by [Customer Service].
- (e) You must provide, on our request, details of the location of any Elders owned equipment or purchased equipment that is in your possession or control.

## 15.2 Who owns the equipment?

- (a) *Elders owned equipment*
  - (i) Any Elders owned equipment remains our property or the property of our personnel subject to clause 25.2.
  - (ii) You are responsible for any Elders owned equipment from when you receive it.
  - (iii) You must not mortgage or grant a charge, lien or encumbrance over any Elders owned equipment.
- (b) *Purchased equipment*
  - (i) You may purchase equipment from us or any of our personnel to use in connection with the service.
  - (ii) You will own the purchased equipment at the expiry of this agreement or until such time you pay the cancellation fee, whichever occurs first, and you will be responsible for the operation, repair and upkeep of the purchased equipment from when you receive it, unless you have selected otherwise in the application (see clause 15.5 below).

## 15.3 Installation of the equipment

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

## 15.4 Maintenance and repair of any Elders owned equipment

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

## 15.5 Maintenance and repair of purchased equipment

- (a) Elders will provide free maintenance of purchased equipment during the maintenance period, unless the service is cancelled earlier. Free maintenance is not included if you purchased your equipment from another service provider.
- (b) Maintenance includes travel, except that for locations that are greater than 400km from one of our Maintenance Centres or where you are located outside

of the Australian mainland or Tasmania, we reserve the right to quote for additional *maintenance* charges.

- (c) During the *maintenance period*, subject to clause 13.1(b) above, we will use reasonable endeavours to repair or replace faulty *purchased equipment*. If there is a fault in the *satellite modem*, you may be required to return this equipment to us for repair or replacement. If so, you must pay for the postage of the *satellite modem* to us.
- (d) After the *maintenance period*, you may request *maintenance* on a call out basis but you will be required to pay a *maintenance* visit fee as specified in Schedule 1. The fee does not include free replacement of the *satellite modem* outside the *maintenance period*.
- (e) We have no obligation to provide free *maintenance* in respect of faults in the *purchased equipment* due to an *excluded event*.

## 15.6 Lost, stolen and damaged equipment

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

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## 16. Insurance

Because of the limited availability of insurance in respect of *satellites* and *satellite*-based businesses, we may suffer detriment as a result of you seeking such insurance. Accordingly, you must not take steps to obtain insurance in respect of *consequential loss* or business *interruption* arising in connection with *loss*, failure or non-performance of our *satellite network* without our prior written consent (which must not be unreasonably withheld).

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## 17. Customer Service

- (a) If you require support with your connection to the *service* or have any questions relating to that connection you can contact *Customer Service*.
- (b) We will provide *customer service* for the connection of a single computer that meets the current *supported system requirements* to the *service*. We will not provide *customer service* for the connection of additional computers, *networking* devices or *LAN* to the *service*.

---

## 18. Fees and Charges

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

- (a) You must pay:
  - (i) the fees and charges for the *service*, which are set out in Schedule 1 or in any applicable *special*; and

- (ii) any additional fees and charges noted in the *agreement* (including in the *application*) or notified by *us* in accordance with the *agreement* from time to time.
- (b) *You* must pay all fees and charges which are incurred for the *service* even if *you* did not authorise its use.
- (c) *You* must pay the fees and charges for the *service* even if the *service* is unavailable or *you* are unable to access the *service*. However, *you* may be entitled to a refund or a rebate under clause 20.3 below.

## **18.2 What does the cost of the *service* depend on?**

The cost of the *service*, once connected, depends on:

- (a) the *pricing plan* *you* select;
- (b) *your* use of the *service* (including whether any *excess data charge* is payable in any given month); and
- (c) any changes *you* make to *your pricing plan* and if *you* accept the terms of a *special*.

## **18.3 Types of fees and charges (including administration charges and other charges)**

- (a) In addition to the fees and charges *you* incur in the normal use of the *service* (including an *access fee*, where applicable), *we* may charge *you* for an administration fee and other similar charges. These costs may include suspension fees or *cancellation fees*, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in Schedule 1.
- (b) *We* may also ask *you* to make a pre-payment usage charge or request that *you* make an interim good-faith payment (including, for example, if there has been an *unusually high use* of the *service*).

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

- (a) To calculate fees and charges *we* look at billing information to calculate the fees and charges set out in Schedule 1, and *we* will include fees and charges received by *us* for which *you* have agreed to purchase from a third party and for which the third party has advised *you* that these charges will appear on *your* invoice from Elders for the *service*.
- (b) If *you* use the services of a third party, (for example: content services), *you* will be billed at the third party's applicable rates and charges and otherwise on the terms and conditions advised by *Elders* from time to time.

## **18.5 When do we start charging *you* for *your use* of the *service*?**

*We* will charge *you* for use of the *service* from the *service start date*.

## **18.6 Can *you* change *your pricing plan*?**

- (a) *You* may at any time request to change *your pricing plan*.
- (b) Under the terms of a *pricing plan* or *special*, there may be certain charges or conditions relating to changing *your pricing plan*.

- (c) A change of *pricing* plan may take up to ten (10) *working days* to take effect following *your* request.
- (d) All charges for the billing month in which *you* changed *your pricing* plan will be charged at the rate for the new *pricing* plan.
- (e) Changing *your pricing* plan does not affect the *minimum term*.

## 18.7 **Specials**

- (a) We may offer *you* a *special* from time to time (including a *special* in relation to a particular *pricing* plan).
- (b) We will notify *you* of any *specials* offered to *you* either through general advertising or by specifically advising *you*. The terms of each *special* will either be set out in Schedule 1, in an appendix, in advertising material or *you* will be advised separately in writing.
- (c) A *special* may be an offer to vary the price or the terms of supply (including the *minimum term*), and it may be subject to certain conditions.
- (d) If *you* validly accept a *special*, the terms of the *special* will prevail to the extent that the terms of the *special* are inconsistent with the terms of the *agreement*. Otherwise, the terms and conditions of the *agreement* continue to apply.
- (e) After the *special* expires, we may end the *special* and the full terms and conditions of the *agreement* will apply.

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## 19. **Payments**

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

- (a) Our initial bill will cover:
  - (i) the first full month's *access fee* plus a pro rata amount for any preceding part of a month;
  - (ii) the *installation charge*; and
  - (iii) any one-off-charge set out in the *application*.
- (b) We will then bill *you* monthly:
  - (i) in advance for the *access fee*; and
  - (ii) in arrears for any usage (*excess data charge*) and/or *one-off charges*.

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

We will try to include on *your* bill all charges for the relevant billing period (less any *service* credits arising from the previous month). However, this is not always possible and we may include these unbilled charges in a later bill(s). *Your* bill will include costs incurred for *your* monthly access and any excess usage charges. *You* will be able to monitor your usage of the service, session times and MBs per session on *your* "My Account Web Page". If you require usage and session times on your tax invoice we will provide this at no charge to *You*.

### **19.3 We may use a billing agent to bill you**

We may bill you using a billing agent (which may be another *Elders group company*).

### **19.4 What types of payment methods may you use?**

- (a) You may pay by one of the payment methods as set out in the payment notification, on the back of the bill or on our websites.
- (b) If your payment is not honoured (for example, in the case of insufficient funds for direct debit or credit card payment, or a dishonoured cheque), we may charge you a fee as set out in Schedule 1.

### **19.5 When must you pay your bill?**

Subject to clause 20.2, you must pay the entire amount billed within 30 days of the date of the bill.

### **19.6 What happens if you do not pay your bill by the due date?**

If you do not pay your bill by the date the payment is due, we may:

- (a) charge you a late fee as set out in Schedule 1. Any late fee is payable until all outstanding amounts are paid;
- (b) suspend or *cancel the service*, in accordance with clause 21 or 22 as relevant. If we suspend or *cancel the service*, we may charge you a suspension fee, *cancellation fee* and/or reconnection or reactivation fee. Reconnection or reactivation of the *service* is subject to payment of the reconnection or reactivation fee;
- (c) engage a mercantile agent to recover the money you owe us. If we engage a mercantile agent, we may charge you a recovery fee as set out in Schedule 1;
- (d) institute legal proceedings against you to recover the money you owe us. If we institute legal proceedings, we may seek to recover our legal costs; and
- (e) on-sell any unpaid amounts to a third party. If we do this, any outstanding amounts will be payable to that third party.

### **19.7 What happens if you have overpaid as a result of a billing error?**

If you have overpaid as a result of a billing error:

- (a) your account will be credited with the amount you have overpaid; or
- (b) if you have stopped obtaining the *service*, we will use reasonable endeavours to notify you that you have overpaid and refund the over payment.

### **19.8 Taxes (including GST)**

- (a) Unless otherwise indicated, the fees and charges set out in the *agreement* include any amount on account of *tax*.

- (b) Where the fees and charges do not include an amount on account of *tax*, if any *tax* is payable by *us* in relation to, or on any supply under or in connection with the *agreement*, *we* will increase the *tax* exclusive fees and charges by an additional amount on account of the *tax*. *You* must pay the additional amount at the same time *you* pay the fees and charges.

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## 20. Complaints and Disputes

### 20.1 Making complaints

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

### 20.2 Suspension of payment obligations

Where *your* complaint is about a fee or charge for the use of the *service*, *we* may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. If so, all other fees and charges that are not in dispute are due and payable.

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

Where *your* complaint is about a significant and sustained *loss* of access to, or use of, the *service* and the *loss* was not as a result of circumstances reasonably attributable to *you* or non *Elders* owned equipment, *you* may be entitled on request to a refund or a rebate of any *access fees* for the period in which *your* access or use was interrupted (including when an *intervening event* occurs or *satellite* bandwidth is not available).

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## 21. Cancelling the Service

### 21.1 *Your* right to *cancel the service*

- (a) *You* may *cancel the service* at any time by:
- (i) giving *us* 30 days notice (please note that *you* are required to give *us* this notice if *you* do not wish to continue to use the *service* after the end of the *minimum term* of a *fixed-length agreement*, otherwise *we* will continue to supply the *service* to *you* – see clause 2.6(b) above); or
- (ii) giving *us* notice, if:
- A. there is no *satellite* bandwidth available for 30 days or more;

- B. we breach a material term of the *agreement* and we cannot remedy that breach; or
  - C. we breach a material term of the *agreement* and we can remedy that breach, but we do not remedy that breach within 30 days after you give us notice requiring us to do so.
- (b) If you acquire the *service* from us through a sales method regulated by door-to-door sales legislation in your state or territory, you may *cancel the service* before the end of the cooling-off period set out in the relevant legislation.
  - (c) If the *agreement* is a *fixed-length agreement*, you may also *cancel the service* in accordance with clause 2.7 or paragraph 12(d) above. These provisions set out the circumstances which give you the right to *cancel the service* if we change the *agreement* or the *service*.

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

- (a) We may cancel the service after three (3) years from the *service start date* without liability at any time by giving you at least 30 days notice.
- (b) We may *cancel the service* at any time, without liability, if:
  - (i) there is an emergency (for example, in the event of a *satellite* failure in any part of our *satellite network*, there may not be sufficient *satellite* bandwidth available to restore all of our *satellite* customers, in which case, we may *cancel the service*);
  - (ii) we reasonably suspect fraud by you or any other person in connection with the *service*;
  - (iii) any amount owing to us in respect of the *service* is not paid by its due date and we give you notice requiring payment of that amount and you fail to pay that amount in full within ten (10) days after we give you that notice, unless otherwise set out in the *agreement*;
  - (iv) we reasonably consider you a credit risk because you have not paid amounts owing to us or any *Elders group company* in respect of any *service* by its due date and you are given notice requiring payment of that amount by that *Elders group company* and you fail to pay that amount in full within the required period;
  - (v) you breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clause 7.6 or your obligations relating to the use of the *service* set out in clause 7 above or otherwise misuse either the *service* (for example in breach of the *Acceptable use policy*) or breach clause 15.1) and you cannot remedy that breach;
  - (vi) you breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clause 7.6 or your obligations relating to the use of the *service* set out in clause 7 above or otherwise misuse either the *service* (for example in breach of the *Acceptable use policy*) or breach clause 15.1) and you can remedy

that breach, and *you* do not remedy that breach within 30 days after we give *you* notice requiring *you* to do so;

- (vii) we are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth));
  - (viii) *you* suffer an *insolvency event* and we reasonably believe we are unlikely to receive payment for amounts due;
  - (ix) *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due;
  - (x) the *service* is suspended for more than 14 days, unless otherwise set out in the *agreement*;
  - (xi) any *intervening event* prevents the supply of the *service* or the availability of *satellite* bandwidth in accordance with the *agreement* for more than 14 days; or
  - (xii) we are otherwise entitled to do so under the *agreement*.
- (c) We may *cancel the service* under paragraph (a) above as soon as we give *you* notice, unless otherwise set out in the *agreement*. However, we may *cancel the service* immediately if there is an emergency.

### **21.3 Our right to *cancel the service* for breach of conditions relating to *Broadband Connect***

If:

- (a) any of the representations or information provided by *you* are, or come to be, false, untrue, misleading or inaccurate in any way or *you* breach any of the terms of the *agreement* (including *your* eligibility attestation in the *application*);
- (b) any of the conditions in clause 6.1 above are not complied with; or
- (c) *you* apply for more *services* than *you* are entitled to under *Broadband Connect* and the *agreement*,

we may immediately *cancel the service* without liability.

### **21.4 How can *you* notify us that *you* wish to *cancel the service*?**

*You* can ask us to *cancel the service* in accordance with the terms of this *agreement* by calling *Customer Service*. *Your* call will be notice to *cancel the service*.

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

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

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

- (a) The *agreement* terminates when the *service* is cancelled.

- (b) If the *service* is cancelled:
  - (i) *you* are liable for any charges incurred (including the *cancellation fee*, and outstanding equipment *charges* if any) up to, and including, the *cancellation date* (*you* should check Schedule 1 for details of any applicable *cancellation fee*);
  - (ii) *you* authorise *us* to apply any over payment on *your* account and/or money that *you* have paid in advance for the *service* which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any); and
  - (iii) subject to paragraph (ii) above, *we* will refund any over payment on *your* account and any money that *you* have paid in advance for the *service* which is being cancelled on a pro-rata basis to *you*.
- (c) If the *service* is cancelled as a result of circumstances reasonably attributable to *you*:
  - (i) before the *service start date*, *you* must pay *us* all infrastructure and installation costs incurred by *us* in connection with preparations for supplying the *service* to *you*; and
  - (ii) during the *minimum term*, subject to clause 2.7, *you* must pay *us* the *cancellation fee*.
- (d) *We* are under no obligation to return the *location* to its original condition after the *service* is cancelled.
- (e) If *you* wish to reinstate the *service* *you* should contact *us*. If the *service* is cancelled as a result of circumstances reasonably attributable to *you* and *we* reinstate the *service*, then *you* may have to pay *us* a reconnection or reactivation fee.

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## 22. Suspending the Service

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

- (a) *We* may suspend the *service* at any time, without liability, if:
  - (i) there is an emergency (for example, in the event of a *satellite* failure in any part of the *satellite network* used to provide the *service*, there may not be sufficient *satellite* bandwidth to restore all of our *satellite* customers immediately, in which case, *we* may suspend the *service*);
  - (ii) doing so is necessary to allow *us* or a *supplier* to repair, maintain or *service* any part of *our network* or a *supplier's network* used to supply the *service*;
  - (iii) *we* reasonably suspect fraud by *you* or any other person in connection with the *service*;
  - (iv) *we* reasonably believe there has been an *unusually high* use of the *service*;
  - (v) any amount owing to *us* in respect of the *service* is not paid by its due date and *we* give *you* notice requiring payment of that amount and

*you* fail to pay that amount in full within ten (10) days after *we* give *you* that notice, unless otherwise set out in the *agreement*;

- (vi) *we* reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* or any *Elders group company* in respect of any *service* is not paid by its due date and *you* are given notice requiring payment of that amount by that *Elders group company* and *you* fail to pay that amount in full within the required period;
  - (vii) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clause 7.6 or *your* obligations relating to the use of the *service* set out in clause 7 above or otherwise misuse either the *service* (for example in breach of the *Acceptable use policy*) or breach clause 15.1) and *you* cannot remedy that breach;
  - (viii) *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clause 7.6 or *your* obligations relating to the use of the *service* set out in clause 7 above or otherwise misuse either the *service* (for example in breach of the *Acceptable use policy*) or breach clause 15.1) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so;
  - (ix) *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth));
  - (x) problems are experienced interconnecting *our network* with any *supplier's network*;
  - (xi) *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due;
  - (xii) *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due; or
  - (xiii) *we* are otherwise entitled to do so under the *agreement*.
- (b) *We* may suspend the *service* under paragraph (a) above as soon as *we* give *you* notice, unless otherwise set out in the *agreement*. However, *we* may suspend the *service* immediately if there is an emergency.
- (c) If *we* suspend the *service*, *we* may later *cancel the service* for the same or a different reason.

## **22.2 What happens when the *service* is suspended?**

- (a) If the *service* is suspended, *you* will have to pay *access fees* for the *service* while it is suspended.
- (b) If the *service* is suspended and the suspension was not as a result of circumstances reasonably attributable to *you* or non *Elders owned equipment*, *you* may be entitled on request to a refund or a rebate of any *access fees* for the period of suspension.

- (c) If the *service* is suspended as a result of circumstances reasonably attributable to *you*, *you* may have to pay *us* a suspension fee.
- (d) If *you* wish to reactivate the *service* *you* should contact *us*. If the *service* is suspended as a result of circumstances reasonably attributable to *you* and *we* reactivate the *service*, *you* may have to pay *us* a reconnection or reactivation fee.

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## 23. What are you and we liable for?

### 23.1 Your liability to us

- (a) *You* are liable to us if you breach this Agreement or act negligently under the principles applied by the courts. However, *you* are not liable for any *loss* we suffer to the extent that it is caused by *us*, for example, through our negligence or breach of this Agreement.
- (b) *You* are not liable to *us* for any *consequential losses* we suffer or for any costs, expenses, *loss* or charges that *we* incur which are not a direct result of something *you* have done or failed to do (except under an indemnity in paragraph (c) below or clause 14.2(f)).
- (c) If *you* are a *small or medium enterprise customer*, *we* are not liable to *your end users* (in contract, tort (including negligence), statute or otherwise). If an *end user* makes a *claim* against *us* in relation to:
  - (i) the use (or the attempted use) of *your service*; or
  - (ii) equipment used in connection with *your service*,*you* indemnify *us* against (and must pay *us* for) any *loss* or damage *we* suffer in connection with that *claim*.

### 23.2 Our liability to you

- (a) *We* have responsibilities and obligations under the law, including under:
  - (i) the *Telecommunications Legislation*;
  - (ii) the *Trade Practices Act*; and
  - (iii) applicable laws, regulations and codes.Nothing in the *agreement* removes or limits any rights that *you* have under existing laws or regulations.
- (b) *We* may be liable to *you* for:
  - (i) any damage to *your* property which has been caused by the fault, negligence or fraud by *us* or our *personnel* during installation, repair or *maintenance*;
  - (ii) *interruptions* in *your* use of the *service* as a result of a fault or negligence of *us* or our *personnel*, to the extent of a refund or rebate for the period of the *interruption*;
  - (iii) death or personal injury caused by *us* or our *personnel*; and

- (iv) breach of terms that are implied by the *Trade Practices 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 *Trade Practices Act* or other laws, then our liability (if any) for breach of that condition or warranty in connection with any goods or *services* we supply under the *agreement* is limited to re-supplying, 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.
- (c) If *you* have contributed to any *loss* or damage *you* are *claiming* against *us*, our liability is reduced to the extent of *your* contribution.
- (d) We are not liable to *you* for:
  - (i) any *consequential losses* *you* suffer; or
  - (ii) for any costs, expenses, *loss* or charges that *you* incur which are not a direct result of something *we* have done.
- (e) We are not liable to *you* for *loss* *you* may suffer arising from the lack of availability of *satellite* bandwidth for any reason, including *system reconfiguration* or failure of a *satellite*, even if that lack of availability arises from our negligence or negligence of a third party. Operation of the *satellite network* does not form part of the *service*.
- (f) Where we are liable to *you* for *interruptions* to the *service* as a result of the breach of this Agreement or our negligence, *our* liability is limited at our election to:
  - (i) the remedy specified in paragraph (b)(ii) above; or
  - (ii) repairing or replacing *your equipment* or resupplying any relevant or equivalent services which are capable of being resupplied, or in either case paying *you* the cost of doing so.
- (g) Except for clause (f) above, our total liability for any *claim* or series of connected *claims* based on:
  - (i) breach of this *agreement* (other than statutory implied terms); and
  - (ii) negligence arising in connection with this *agreement*,
 is limited in aggregate to \$5 million to the extent that the exclusions and limitations in paragraphs (a) to (e) above do not apply.
- (h) *You* acknowledge that no *supplier* is liable to *you* in any circumstances (including in negligence) in relation to any *service* supplied to *you*, any delay in supplying the *service* or failure to supply the *service*.

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## 24. Assigning the agreement to a third party

### 24.1 How can we assign our responsibilities to a third party?

- (a) We may assign some or all of our rights under the *agreement* (where those rights are assignable) to any person. Any assignment is subject to DCITA's prior written consent.

- (b) We may transfer some or all of our obligations under the *agreement* to any *Elders group company* that is able to perform those obligations.
- (c) We may perform any of our obligations under the *agreement* by arranging for them to be performed by another person, including a *supplier* or another *Elders group company*. We will still be responsible for the performance of the obligations.

## **24.2 How can you assign your responsibilities to a third party?**

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

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## **25. Broadband Connect registration**

- 25.1** If we propose to terminate our registration as a *Broadband Connect provider* with DCITA, we will give you 40 *working days* written notice of the registration with DCITA of the termination.
- 25.2** If we terminate our registration as a *Broadband Connect provider*, ownership of the CPE supplied and installed by us for you will reside with you.
- 25.3** If we propose to cease supplying the service and it is a *Broadband Connect service*, and also continue our registration and operation as a *Broadband Connect provider*, and DCITA agrees to vary its arrangements with us to this effect, we will:
  - (a) give you 30 days written notice of the proposed withdrawal of the *service*; and
  - (b) we will offer to migrate you from the *service* to be withdrawn to a comparable *Broadband Connect service* if such a service is available. Such a migration will not involve any additional charge to you by us. If you do not elect to migrate to a comparable *Broadband Connect service* we will provide reasonable assistance to you in transferring to a new service to be provided by another provider.

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## **26. General**

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

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

## **26.2 Can your personnel give consent on your behalf?**

- (a) We may need *your* consent to do certain things. *You* may nominate (in writing) *personnel* who are authorised to give *your* consent and to have access to our support and *maintenance* staff.
- (b) If *you* do not nominate any *personnel* we may rely on the authority of any of *your* employees who tell *us* they have authority to give *your* consent, as long as we act in good faith.

## **26.3 Intellectual property protections**

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

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

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

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

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

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

If *you* breach the *agreement* and we do not exercise a right that we have because of *your* breach, we do not waive:

- (a) that right unless we give *you* notice in writing setting out that we have waived that right; or
- (b) our right to insist that *you* perform any obligation *you* have under the *agreement*.

## 26.7 Receipt of financial support by us

We have received or may receive financial and other support from *DCITA* and *Broadband Connect* in providing the *service*. The provision of the *service* to *you* is a *Broadband Connect* project, assisted by funding from the Australian Government.

## 26.8 Payment of commission by us

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

## 26.9 Information about *your* rights

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

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## 27. What do terms in the agreement mean?

### 27.1 Definitions

**Acceptable use policy** means the most current version of the Elders Acceptable Use Policy prescribing the rules and guidelines which you must comply with in using the *service* available on the Elders' website:

[www.elderstelecommunications.com.au/goto/satelliteacceptableusepolicy](http://www.elderstelecommunications.com.au/goto/satelliteacceptableusepolicy).

**access fee** means the fixed payment for access to the *service* payable on a regular basis (often monthly). The *access fee* is payable regardless of the actual usage of the *service*. A minimum monthly charge and minimum monthly *service* charge are also *access fees*.

**agreement** means the terms and conditions on which we supply the *service* to *you*.

**appendices** means any appendices containing information relevant to the *service*.

**application** means the part of the *agreement* which is the written, verbal or on-line *application* *you* complete to request that we supply the *service* to *you*.

**broadband** is a data transmission rate that is significantly faster than standard dial-up modem transmissions. *Broadband* can carry voice, video and data (including Internet) traffic.

**Broadband Connect** means the *Broadband Connect* program established by the Commonwealth of Australia as represented by *DCITA* and as more fully described in the *Broadband Connect guidelines*.

**Broadband Connect guidelines** means the *Broadband Connect* Program Guidelines published by *DCITA* on the *Broadband Connect* website.

**Broadband Connect provider** means a *service provider* registered under the *Broadband Connect* and with whom *DCITA* has a *Broadband Connect agreement*, who is providing *Broadband Connect services* under *Broadband Connect*, other than *us*.

**Broadband Connect service** means an Internet *service* meeting the requirements of the *Broadband Connect guidelines* for registration under *Broadband Connect*, other than the *service*.

**cancel the service** means that the *service* is cancelled and the *agreement* is terminated.

**cancellation date** means:

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

**cancellation fee** means the *cancellation fee* or termination charge which may be payable on cancellation of the *service*, as set out in Schedule 1.

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

**claim** means any *claim*, demand, action or proceeding, whether in contract or tort, pursuant to statute, or otherwise which is made or brought in connection with:

- (a) the provision or use by any person of the *service*; or
- (d) the *agreement*.

**consequential loss** means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator* and any *loss* that is an indirect *loss*.

**constitute prices** means the price charged for each element of the *service* which, when added together, forms the total price to *you* for the *service*.

**content** means:

- (a) all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined; and
- (e) any *content service*,

sent and received across a *network*.

**CPE** stands for customer *premises* equipment, for example: *your* computer, the *satellite* dish and the modem.

**Customer Service** means the *Elders* Customer Help desk which is contactable at the email address: ethelp@elders.com.au.

**Credit rating** means information about *your* credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the Privacy Act 1998 (Cth).

**data allowance** means the amount of maximum *data usage* that can be used at high-speed in a given billing month as set out in *your pricing plan*. *Data allowance* is measured in Megabytes (MB) (1 Gigabyte (GB) = 1000 MB).

**data speed** means the speed at which data bits, comprising both protocol headers and data payload, are carried by the *service*.

**data usage** means the amount of data that *you* have *downloaded* in a given billing month. *Data usage* is measured in MB.

**DCITA** stands for the Department of Communications, Information Technology and the Arts.

**download** means to move data from *our network* to *your* modem or connected device.

**Elders group company** means *Elders* and each of its *related corporations*.

**Elders** means Elders Telecommunications Pty Ltd (ACN 117 261 864).

**Elders owned equipment** means any equipment or cabling *we*, or our *personnel*, may provide or lease to *you* to use in connection with the *service*.

**eligible customer** means the same meaning as in the *Broadband Connect guidelines*, and includes:

- (a) a residential customer residing at *premises* primarily for non-business use;
- (f) a small business with 20 or fewer full time equivalent employees across Australia;
- (g) a *not-for-profit organisation* with 20 or fewer full time equivalent employees across Australia (other than an *Indigenous community council* to which this paragraph does not apply); or
- (h) a *not-for-profit organisation* who wishes to be supplied the *service* to supply a new *public access Internet facility* on a not-for-profit basis.

**eligible premises** means the same meaning as in the *Broadband Connect guidelines*, and includes a *premises*:

- (a) in a *service area* that:
  - (i) did not have access to a *metro-comparable service* as at 8 April 2004;
  - (ii) that did not gain access to a *metro-comparable service* by 31 December 2004 from *Telstra* in areas where that provider publicly identified, before 8 April 2004, it was intending to supply such *services*; or
  - (iii) where the *Telstra EZ Satellite Service* has not been installed or, if it was previously installed, if it cannot be supplied to *you* or has not been operating within the past five years; and
- (i) where *you* reside or conduct business, operate a *not-for-profit organisation* or intend to offer a *public access Internet facility* (as the case may be).

**end user** means any person:

- (a) to whom *you* ask *us* to supply the *service* directly;
- (j) to whom *you* resupply the *service*, or allow to distribute the *service*;
- (k) who *you* allow to use the *service*; or
- (l) to whom *you* supply any goods or *services* which use or rely on the *service*.

**equipment charge** means any charge for equipment obtained from *us* including, for example, phones or modems and includes the cost of any software or *licences* supplied to operate in conjunction with that equipment.

**excess data charge** means the charge for data *downloaded* to *your* modem in excess of the *data allowance*.

**excluded event** means:

- (a) a breach of the *agreement* by *you*;
- (m) a negligent or fraudulent act or omission by *you* or any of *your personnel*;
- (n) a failure of any of *your* equipment;
- (o) a failure of the *service* as a result of *sun transit*;
- (p) *maintenance* which does not exceed any period determined or agreed in accordance with our standard practices and procedures from time to time; or
- (q) an *intervening event*.

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

**higher bandwidth service** means any Internet access *service* that provides access from the Internet at a peak *data speed* of at least 256 kbps and to the Internet at a peak *data speed* of at least 64 kbps.

A change to this *agreement* will **impact you** if *you* have used or been billed for the *service* affected by the change during the six (6) months before our notice and *we* reasonably consider that the change will have more than a minor detrimental impact on *you*.

**Indigenous community council** has the same meaning as in the *Broadband Connect guidelines* and is an entity which can substantiate its status as such, if requested, to DCITA.

**insolvency event** means:

- (a) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt;
- (r) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors;

- (s) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business;
- (t) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business;
- (u) *you* suspend payment of *your* debts generally; or
- (v) *you* are, or become, unable to pay *your* debts when they are due or *you* are, or are presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

**installation charge** is the charge payable by *you* to *us* for the *purchased equipment* and installation of the *purchased equipment* (including cabling and labour) at the *location*, as set out in the *application* or Schedule 1. The *installation charge* does not include: installation at a *location* that is not listed in the *application*, *non-standard installation* (we reserve the right to charge a *non-standard installation charge* for *non-standard installations*, as set out in the *application*), any modification of *your* computer to make it comply with the required specifications for the *service*, any operating system upgrade or LAN software configuration.

**intellectual property rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**interruption** in the supply of goods or a *service* (including the *service*) means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that *service*.

**intervening event** is an event outside *your* or our reasonable control which interferes with the operation of the *network* we use to supply the *service* or the *satellite* bandwidth and results in ongoing disruption to the *service*. An *intervening event* includes *sun transit*, asteroids or other space calamities affecting a *satellite*, 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*).

**IP** stands for Internet protocol.

**ISDN** stands for Integrated Services Digital Network Service, which is a form of switched telephone *network*

**LAN** stands for local area *network* and is a *network* of connected computers that are in a limited geographic area.

**licences** means all *licences*, authorities, consents, approvals or permits which *we* or *you* (as the case may be) is required to hold or to have obtained in order to lawfully install equipment and transmit or receive telecommunications traffic.

**location** means the site including the *premises* to which *we* will provide the *service*, as specified in the *application*.

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

**maintenance** means the *service* provided by *us* to *you* for the repair and servicing of the *purchased equipment* at the *location*, as described in clause 15.5.

***maintenance period*** means the first three years after the *service start date*.

***metro-comparable service*** has the same meaning as in the *Broadband Connect guidelines*, and in broad terms means a *higher bandwidth service* supplied at prices no greater than the prices set out in the *Broadband Connect guidelines*' definition of *metro-comparable service*.

***minimum term*** means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start date* and runs for 18 months, unless otherwise stated on the *application*. On expiry of the *minimum term*, this *agreement* becomes a *non fixed-length agreement*, for which there is no *minimum term*.

***network*** means any interconnected telecommunications equipment, facilities, or cabling.

***new Broadband Connect service*** means a *Broadband Connect service* provided by a *Broadband Connect provider* to a customer who was not previously receiving a *higher bandwidth service* from that provider.

***non fixed-length agreement*** means an *agreement* that does not have a *minimum term*, or a *fixed-length agreement* where the *minimum term* has expired. A *non fixed-length agreement* includes a month-to-month *agreement*.

***non-standard installation*** means an installation in non-standard circumstances, as set out in the *application*.

***not-for-profit organisation*** means an organisation that is formed for social recreational, educational, charitable, philanthropic or other lawful purposes where any profit earned can only be applied to the organisation as a whole and not to individual members of the organisation, and excludes any Commonwealth, state, territory or local government agencies.

***one-off charges*** means those charges listed in clauses 3 and 4 of Schedule 1 or noted as a one-off charge.

***our network*** means the *satellite network* which is used to supply the *satellite* bandwidth, the Internet access gateway used to supply the *service* to *you* and any links between the two, including both software and hardware.

***personal information*** means information about *you* from which *your* identity is apparent or can reasonably be ascertained. *Personal information* includes *your* name, address and other details, and *your* personal or commercial *credit rating*.

***personnel*** of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of any *Elders group company*.

***premises*** means the place of residence, business or for the operation of a *not-for-profit organisation*:

(a) at which *we* supply the *service*; and/or

(w) to which *we* need to have access to supply the *service*.

***pricing*** plan contains information about the terms and conditions and prices of the plan *you* have selected in the *application*. *You* may also hear a *pricing* plan referred to as a 'rate plan'. The *pricing* plans are set out in Schedule 1.

**primary email address** means the first email address provided with *your service*. The *primary email address* may receive communications related to the *service* from time to time.

**private IP address** means an *IP* address allocated to the *purchased equipment* which is not advertised to the Internet.

**public access Internet facility** means an Internet *service* that is provided principally for public access with or without charge.

**public IP address** means an *IP* address allocated to the *purchased equipment* which is advertised to the Internet.

**purchased equipment** means the equipment (including any applicable *CPE*) that we will sell to *you* for the *service* and consists of a *satellite modem* and associated drivers, solid state power amplifier, low noise block, *VSAT* antenna, acceleration client software (as required), associated cabling and mount.

**regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited, the Telecommunications Industry Ombudsman or any other relevant government or statutory body or authority.

**related corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth).

**relocation fee** means the fee that we will charge *you* for connecting the *service* to a site other than the *location*, as set out in Schedule 1.

**satellite** means a space *satellite* providing bandwidth that is accessed by the *service*.

**satellite network** means any one or more of, or any part or combination of, the following:

- (a) a *satellite*;
- (x) a *transponder*;
- (y) telemetry, tracking and control system;
- (z) *satellite* uplink equipment; and
- (aa) any other equipment or systems used in the transmission or management of signals to or via a *satellite*.

**satellite modem** means a device that sends and receives data, such as Internet traffic, across *satellite* bandwidth to provide Internet access.

**scheduled maintenance** means *maintenance*, modification or an upgrade of *our network*:

- (a) of which affected customers have been given prior notice; and
- (bb) which will result in all or part of the *service* being temporarily impaired or unavailable.

**service** means the *service*, with the features requested in the *application* as described in clause 3 above, and any related goods (including equipment) and ancillary *services* which we supply to *you* in connection with that *service*.

**service area** means the area for which we have registered with DCITA to offer *Broadband Connect*. This area encompasses the Australian mainland and Tasmania, excluding:

- (a) the metropolitan exclusion areas, which are defined by the *Broadband Connect guidelines* as:
  - (i) the capital cities of Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin; and
  - (ii) the adjacent high population centres of Wollongong (NSW), the Central Coast of NSW, Newcastle (NSW), Geelong (Vic), Palmerston (NT) and the Gold Coast (Qld) including Tweed Heads (NSW),

the boundaries of which are defined by the relevant Urban Centre/Locality boundaries published by the Australian Bureau of Statistics as at 30 September 2002 in 2909.0 – Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities (Issue 2001 released 30 September 2002, ISBN 0 642 47821 X) and described in section 3.2.1 of the *Broadband Connect guidelines*;

- (cc) any *location* that would require an antenna dish larger than 1.8m (larger antenna dishes may be required at any *location* that is north of 18.000 degrees latitude) to provide the *service* (and the antenna dish size will be determined by our *personnel* generally by entering customer data in a mapping tool to determine the longitude and latitude of a *location*, to calculate the antenna dish size required);
- (dd) the exclusion covers any *location* where *ISDN* is available;
- (ee) any *location* that is not accessible by road transport; and
- (ff) any *location* that we determine is unable to receive the *service* due to any other technical limitation (including, without limitation, clear line of sight to the our *satellite* (approximately north north east at an angle range of 40-70 degrees).

**service delivery point** means the point at which a *service* is made available for connection to *your* equipment or cabling.

**service provider** means a retail Internet *service provider*.

**service start date** for the *service* means the date on which we start supplying that *service* to *you*.

**small or medium enterprise customer** means any customer we classify as a small or medium enterprise and who is a business or non-profit organisation, (including a body corporate, sole trader, or partnership) using the *service* for business purposes, but not for the purposes of resale (except in the case of *not-for-profit organisations* who are supplied the *service* to supply a new *public access Internet facility* on a not-for-profit basis).

**special** means a *special* promotion or offer made by *us* in connection with the *service*.

**sun transit** means any period during which electromagnetic radiation from the sun causes interference or results in a failure of the *service* to meet its required performance levels.

**supplier** means any *supplier* of goods or *services* (including interconnection *services*) which are used directly or indirectly by *us* to supply the *service* to *you*. Where a *supplier*

supplies goods or *services* to *you* directly, that *supplier* is not acting in its capacity as *supplier*, but rather is a third party providing *services* directly to *you*.

**supported system requirements** means the pre-requisite computer hardware and operating systems software required for installation and customer support specified in the *application*.

**system reconfiguration** means any modification or variation to the *satellite network* undertaken by *us*.

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

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

**Telstra** means *Telstra Corporation Limited* (ACN 051 775 556).

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

**transponder** means that part of a *satellite* which is capable of receiving, amplifying, translating and re-transmitting telecommunications traffic, other than such a part which is not owned or leased by *our satellite* operator.

**unusually high use** means high out of pattern usage of the *service* on a short term basis or a sustained high usage which exceeds the general average usage of customers on a similar *pricing plan* or who have accepted a similar *special*.

**upload** means to move data from *your satellite modem* or connected device to *our network*.

**VSAT** stands for 'very small aperture terminal'.

**we** means *Elders*, the company who supplies the *service* to *you* (and *us* and *ours* is to be construed accordingly).

**working day** means a day other than:

- (a) Saturday or Sunday; or
- (gg) a day that is a public holiday or an Australian public *service* holiday in the relevant state or territory in which *you* live.

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

**your equipment** means any equipment (including any *CPE*) or facilities that are owned or controlled by *you* on *your* side of the *service delivery point* and used in connection with the provision of the *service*, including any *purchased equipment*.

## 27.2 Interpretation

- (a) The following words have the same means in the *agreement* as they have in the *Telecommunications Legislation*:
  - (i) carrier;

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

CONTACT DETAILS	
Customer Service	By email - <a href="mailto:ethelp@elders.com.au">ethelp@elders.com.au</a>  By phone - <b>1800 ET HELP (1800 384 357)</b>

# 1 Standard Pricing Table

## 1.1 Pricing plans

2 Way Services								
	Monthly Recurring Price incl GST #							
Monthly Allowance	500 MB	1 GB	2 GB	3 GB	5 GB	10 GB	15 GB	20 GB
<b>Speed</b> Ψ								
256/64 Throttled Plans	\$68.50	\$99.00	\$187.00	\$275.00	\$415.00	\$811.00	\$969.00	N/A
512/128 Throttled Plans	\$89.00	\$99.00	\$189.00	\$279.00	\$451.00	\$882.00	\$1,314.00	\$1,745.00
256/64 Excess Usage Plans	\$68.50	\$99.00	N/A	N/A	N/A	N/A	N/A	N/A
512/128 Excess Usage Plans	\$89.00	\$99.00	N/A	N/A	N/A	N/A	N/A	N/A

- (a) Included data is *your* monthly *data allowance*.
- (b) With Throttled Plans, the *service* is throttled to 64 kbps once the monthly *data allowance* is reached.
- (c) The excess data rate for all Excess Usage Plans is 20 cents per MB *downloaded*. If *you* exceed the monthly *data allowance* with Excess Usage Plans, the excess data rate will apply to all data *downloaded* in excess of *your data allowance*.
- (d) For the Excess Usage Plans above, once the total data *downloaded* reaches the following levels:
  - (i) for the 500MB, 256/64 Excess Usage Plan: 2GB;
  - (ii) for the 1GB, 256/64 Excess Usage Plan: 2GB;
  - (iii) for the 500MB, 512/128 Excess Usage Plan: 2GB; and
  - (iv) for the 1GB, 512/128 Excess Usage Plan: 3GB.

we will not continue to charge you the excess data rate for data *downloaded* beyond those amounts, however the *service* may be throttled to 64 kbps.

- (e) # These *services* all include *maintenance of purchased equipment* for the first 3 years after the *service start date*, unless cancelled earlier. *Maintenance* includes travel, except that for *locations* that are greater than 400km from one of our *Maintenance Centres* or where *you* are located outside of the Australian mainland or Tasmania, we reserve the right to quote for additional *maintenance* charges.
- (f) Ψ The first figure refers to *Data speed download* to *your* modem and the second figure refers to *Data speed upload* to the Elders *satellite* from *your* modem. Speeds are by kbps.
- (g) The prices above are the maximum prices we will charge *you* for the *service*. From time to time we may offer *specials* with lower prices. These *specials* may be notified by *us* from time to time by posting details of those *specials*, and the terms applicable to them, on *our* website.

## 2 Installation charges

### 2.1 Standard installations

Installation with <i>Broadband Connect</i> Subsidy	Charge
For <i>services</i> eligible for a <i>Broadband Connect</i> subsidy. Installation 2 way (1 Watt, 0.96m, 1.2m & 1.8m)  Note: <i>Broadband Connect</i> subsidy is \$3,300 for a 2 way service.	\$129  Includes up to 50km round trip travel, additional travel will incur further charges.
Site Survey (where required)	\$360.00  Includes up to 50km round trip travel, additional travel will incur further charges.

### 2.2 Travel charges for installation

(These charges apply to multiple visits for installation of *Broadband Connect* only and are not applicable for *maintenance* visits.)

Distance (per round trip)	Charge
Over 50km roundtrip travel	\$1.35 per kilometre
<i>Broadband Connect</i> travel subsidy – only available in certain <i>locations</i>	
201 - 1,200km	\$1.10 per kilometre <i>Broadband Connect</i> subsidy
1,201+km	Nil <i>Broadband Connect</i> subsidy

**Example:** *Location* 150k from installation depot and at a *location* eligible for *Broadband Connect* travel subsidy. Return trip 300k

Travel Charge ... (300 – 50) = 250km @ \$1.35                      \$337.50

Less *Broadband Connect* travel subsidy

Kilometres over 200. (300 – 200) = 100km @ \$1.10              (\$110)

Net travel charge    \$227.50

### 2.3 *Non-standard installation*

We reserve the right to quote for *non-standard installations*. A site survey may be required to provide a quote.

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### 3 Additional service charges

Activity	Charge
Maintenance call-out	\$360.00 Includes up to 50km round trip travel and up to 2 hours on-site. Excludes the replacement of <i>purchased equipment</i> outside of the <i>maintenance period</i> . Additional travel will incur further charges.
Labour charge	\$100 per hour of additional time on-site
Relocation	We reserve the right to quote a <i>relocation fee</i> for <i>relocation</i> of the <i>service</i> .
Replacement SkyEdge 2 way <i>satellite modem</i>	\$1,350.00 This fee will be incurred where <i>satellite modem</i> is not covered by warranty or under a <i>maintenance plan</i> . Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.
Replacement 1.2m antenna	\$489.00 Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.
Replacement 1.8m antenna	\$1,315.00 Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.
Replacement LNB	\$154.00 Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.
Replacement 1 watt SSPA	\$475.00 Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.
Replacement 2 watt SSPA	\$1095.00 Fee includes equipment plus freight to <i>location</i> on Australian mainland, excludes installation.

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### 4 Other Charges

#### 4.1 Reconnection fee

- (a) If you wish to reconnect the *service* a fee of \$99 is payable where *service* reactivation can be completed without *us* attending the *location*.

- (b) If we are required to attend the *location* to reconnect the *service*, we will quote you a price for our attendance and any installation or other *services* required.

#### 4.2 Cancellation fee

If you wish to *cancel the service* before the end of the *minimum term*, we will charge you a *cancellation fee* of the monthly *access fee* times the number of months remaining of the *minimum term*.

#### 4.3 Change of applicant

If you wish to change the applicant who holds the (*Broadband Connect*) account, we will charge you a fee of \$129.

#### 4.4 Late Or Non-Payment Fees And Charges

- (a) If you do not pay all amounts you owe us by the date the payment is due, we may charge you a late fee of:

Unpaid Amount	Late Fee
Less than \$100	\$10 per month (no GST payable)
\$100 or more	\$10 per month plus 2% above the prime lending rate charged to us by the ANZ Bank calculated daily on the unpaid amount above \$100 (including any late fees already incurred).

- (b) This late fee is payable until all outstanding amounts are paid.

#### 4.5 Payment dishonour charges

- (a) We may charge you a dishonour fee of \$22 if your payment is dishonoured by your nominated financial institution or credit provider.
- (b) This fee is in addition to any fees that your financial institution or credit provider may charge you.

#### 4.6 Payments made through an Australia Post outlet

If you pay your account at an Australia Post outlet, you will be charged an account processing fee of \$0.55.

#### 4.7 Mercantile agent recovery fee

If we engage a mercantile agent against you to recover money you owe us, we may charge you a recovery fee of 15% of the outstanding amount.