



ELDERS STANDARD TERMS

1	ABOUT THESE STANDARD TERMS	3
2	THE AGREEMENT	3
2.1	The <i>agreement</i>	3
2.2	When does the <i>agreement</i> apply?	3
2.3	What happens if there is an inconsistency between the different parts of the <i>agreement</i> ?	4
2.4	When does the <i>agreement</i> start?	4
2.5	When will we start providing the <i>service</i> to you under the <i>agreement</i> ?	4
2.6	For how long will we provide the <i>service</i> to you in accordance with the <i>agreement</i> ?	4
2.7	What happens at the end of the <i>minimum term</i> if the <i>agreement</i> is a <i>fixed-length agreement</i> ?	4
2.8	How can we change anything in the <i>agreement</i> ?	5
2.9	How can you change anything in the <i>agreement</i> ?	8
2.10	Responsibility for persons who you allow to use the <i>service</i>	8
3	YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE	8
3.1	What is the <i>service</i> ?	8
3.2	When may we refuse your <i>application</i> ?	8
4	HOW WE DEAL WITH YOUR PERSONAL INFORMATION	9
4.1	Collection, use and disclosure	9
4.2	Opting-out	9
4.3	Gaining access to and correcting your personal information	9
4.4	Providing your personal information	10
4.5	Consent	10
5	USING THE SERVICE	10
5.1	Connecting the <i>service</i>	10
5.2	Quality of the <i>service</i>	10
5.3	Permitted uses of the <i>service</i>	10
5.4	Unusually high use	11
5.5	Compliance with third party rules	11
6	EQUIPMENT	11
6.1	What are your responsibilities in relation to equipment?	11
6.2	Who owns the equipment?	11
6.3	Installation of the equipment	12
6.4	Maintenance and repair of any <i>Elders owned equipment</i>	12
6.5	Lost, stolen and damaged equipment	12
7	NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION	12
7.1	Maintenance on the <i>network</i> used to supply the <i>service</i>	12
7.2	Reporting faults	12
7.3	Assisting us in investigating and repairing a fault	12
7.4	Our responsibility for repairing faults	12
8	FEES AND CHARGES	13
8.1	What are the fees and charges for using the <i>service</i> ?	13
8.2	Types of fees and charges (including administration charges and other charges)	14
8.3	How do we calculate fees and charges?	14
8.4	<i>Specials</i>	14
9	PAYMENTS	14



9.1	How often will we bill you?	14
9.2	What will appear on your bill?	15
9.3	We may use a billing agent to bill you.....	15
9.4	What types of payment methods may you use?	15
9.5	When must you pay your bill?	15
9.6	What happens if you do not pay your bill by the due date?	15
9.7	What happens if you have overpaid as a result of a billing error?	15
9.8	Taxes (including GST).....	16
10	COMPLAINTS AND DISPUTES.....	16
10.1	Making complaints.....	16
10.2	Suspension of payment obligations	16
10.3	Complaints about loss of access to the service	16
11	CANCELLING THE SERVICE.....	16
11.1	Your right to cancel the service	16
11.2	Our right to cancel the service - non fixed-length agreement	17
11.3	Our right to cancel the service - non fixed-length agreement and fixed-length agreement.....	17
11.4	How can you cancel the service?.....	18
11.5	When will the service be cancelled?	18
11.6	What happens when the service is cancelled?	18
12	SUSPENDING THE SERVICE.....	19
12.1	Our rights to suspend the service	19
12.2	What happens when the service is suspended.....	20
13	WHAT ARE YOU AND WE LIABLE FOR.....	21
13.1	Your liability to us	21
13.2	Our liability to you.....	21
14	ASSIGNING THE AGREEMENT TO A THIRD PARTY	22
14.1	How can we assign our responsibilities to a third party	22
14.2	How can you assign your responsibilities to a third party	22
15	GENERAL	23
15.1	Which laws and courts govern the agreement?	23
15.2	Intellectual property protections	23
15.3	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?.....	23
15.4	What happens if you become a carrier or carriage service provider?	23
15.5	When do we waive a right we have under the agreement?	24
15.6	Payment of commission by us	24
15.7	Information about your rights	24
16	WHAT DO TERMS IN THE AGREEMENT MEAN?	24
16.1	Definitions.....	24
16.2	Interpretation	28

PLEASE READ THESE STANDARD TERMS CAREFULLY AS THEY MAY HAVE IMPORTANT CONSEQUENCES FOR YOU.

1 ABOUT THESE STANDARD TERMS

- (a) These are Elders' Standard Terms. They set out our standard customer terms.
- (b) The meaning of the words printed *like this* is set out at the end of the *standard terms*.
- (c) These *standard terms*, together with *your application*, the *service description*, the *standard pricing table* and the *appendices*, forms the *agreement with us*. To understand *your* rights and obligations *you* need to read all of the documents that relate to *you* and the *service you* select.
- (d) The *service description* is a detailed description of each of the services Elders offers, including the different features, options and availability of a service.
- (e) The *standard pricing table* sets out the fees or charges *we* may charge *you* for *your* use of the *service*. It also contains other information such as eligibility criteria and specific details of any *pricing plans* and some *specials we* offer. Please check the *standard pricing table* carefully to see what fees and charges apply to *your* use of the *service*.
- (f) The *appendices* contain further information that may apply to *your* use of the *service*, such as details of certain call charges, *our* usage policies and some *specials*. The *service description* or *standard pricing table* will refer *you* to an *appendix* if it is relevant to *your* use of the *service*.
- (g) *You* may obtain a copy of the latest version of the *standard terms*, *service description*, *standard pricing table* and *appendices* from *us* or on *our* website at <http://www.elderscommunications.com.au>.

2 THE AGREEMENT

2.1 The agreement

- (a) The *agreement* is made up of:
 - (i) *your application*,
 - (ii) *these standard terms*,
 - (iii) *the service description*,
 - (iv) *the standard pricing table*, and
 - (v) *the appendices* (if any).
- (b) The *agreement* is either a *fixed-length agreement* or *non fixed-length agreement*.

2.2 When does the agreement apply?

The *agreement* applies if you are a *consumer* or business.

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

- (a) If anything in these *standard terms* is inconsistent with a provision in another part of the *agreement*, then unless otherwise stated, the *standard terms* prevail to the extent of the inconsistency.
- (b) Clause 13, 'What *you* and *we* are liable for', below prevails over all other terms.

2.4 When does the agreement start?

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

2.5 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*.

2.6 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* until the *service is cancelled* in accordance with clause 11, '*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 the *minimum term*, or
 - (ii) until the *service is cancelled* in accordance with clauses 11.1 or 11.3 below, or
 - (iii) if neither *you* nor *we* *cancel the service* at the end of the *minimum term* (see clause 2.7 below), until the *service is cancelled* in accordance with clauses 11.1 to 11.3 below.

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

- (a) If the *agreement* is a *fixed-length agreement* and neither *you* nor *we* *cancel the service* at the end of the *minimum term*, the *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 11, '*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 the end of the *minimum term*, *we* will give *you* notice of this (in accordance with clause 11, '*Cancelling the service*', below) by giving *you* 30 days notice before the end of the *minimum term*.

- (d) If we wish to change the terms of the *agreement*, including any fees or charges, at the end of the *minimum term*, we will give you notice of this (in accordance with clause 2.8 below) before the end of the *minimum term*.

2.8 How can we change anything in the *agreement*?

Please read this clause carefully.

In some circumstances (paragraphs (b)(iii), (c)(iv), (c)(vi) and (d)(i) below), we give you a right to cancel the *agreement* if we change it.

If you choose to *cancel the service*, in addition to paying usage charges or access fees, you may also have to pay us a lump sum amount equal to the outstanding equipment charges.

- (a) We can make the following types of changes to the *agreement*:
- (i) we can make any type of change to a ***fixed length agreement*** or a ***non-fixed length agreement*** if we get your consent to the change;
 - (ii) we can make any type of change to a ***fixed length agreement*** or a ***non-fixed length agreement*** without your consent provided that we comply with the *Telecommunications Legislation* by giving you reasonable notice of the change if we reasonably expect the change to adversely affect you; and

Please note that under the *Telecommunications Legislation*, we do not have to give you reasonable notice of the change if we do not reasonably expect the change to adversely affect you.

If the change is to a ***fixed length agreement***, we may be required to comply with our additional obligations under the *agreement* set out at (iii) below.

- (iii) We can make changes to ***fixed length agreements*** provided we comply with our obligations under paragraph (ii) above and our additional obligations under the *agreement* as follows:
 - (A) we can make changes to *fixed length agreements* if the change ***impacts you*** and it is not a change of the type listed in paragraph (c) below, however when we do so we must comply with paragraph (b) (by giving you notice and the right to *cancel the service* – see paragraph (b) below for details);
 - (B) we can make changes to *fixed length agreements* even if the change we make ***impacts you***, if the change we make is of the type listed in paragraph (c) below and we comply with any additional notice provisions in paragraph (c) – see paragraph (c) below for details); and
 - (C) we can make changes to a *fixed length 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. In this case you may have the right to *cancel the service*

under paragraph (d) (see paragraph (d) below for details).

In this clause 2.8, we consider that a change will *impact you* if you have used or been billed for the service affected by the change during the 6 months before *our* notice and we reasonably consider that the change will have more than a minor detrimental impact on you.

- (iv) When we have to give *you* notice in writing of a change to the *agreement* under paragraphs (b)(ii) or (c)(vi)(A) below, we can do so by: delivering notice of the change to *you* in person, sending it to *you* by mail; sending it to *your* email address (if *you* have agreed to allow *us* to tell *you* about changes to the *agreement* by email); by bill message or bill insert, or by making the information available on our website or at retail outlets and informing *you* (by recorded message, text message or in writing) of how to obtain the information.

- (b) If the *agreement* is a *fixed-length agreement*, subject to paragraph (c) below, we cannot make any changes to the *agreement* that *impact you* without:
 - (i) complying with the provisions of the *Telecommunications Legislation*;
 - (ii) giving *you* 21 days notice in writing of the change before the change occurs, and
 - (iii) offering *you* the right to *cancel the service* (within 42 days from the date of the notice) without incurring fees or charges other than:
 - (A) 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
 - (B) 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).

- (c) If the *agreement* is a *fixed-length agreement*, so long as we comply with the provisions of the *Telecommunications Legislation*, we can make changes to the *agreement* even if they *impact you*, if the change is:
 - (i) required by law;
 - (ii) in relation to the cost of international services or *roaming*;
 - (iii) in relation to a fee or charge to account for a *tax* imposed by law;
 - (iv) 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*:
 - (A) use of a reasonable alternative at no fee or charge; or

- (B) 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*),
- (v) to increase the price of a content 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* or premium service within the previous six (6) months; and
 - (B) allow *you* to elect to not use the *content* or premium service without attracting any additional charges;
- (vi) 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 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:
 - (aa) 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
 - (ab) 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).
- (d) If the *agreement* is a *fixed-length agreement*, so long as *we* comply with the provisions of the *Telecommunications Legislation* relating to standard forms of agreement, *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 (c)** *we*:
 - (i) will offer *you* the right to *cancel the service* without incurring fees or charges other than:
 - (A) 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
 - (B) 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

- (ii) 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*:

- if we decrease a call 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 *your* 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*.

2.9 How can *you* change anything in the *agreement*?

Unless expressly allowed in the *agreement*, *you* cannot make any changes to the *agreement* without first obtaining *our* consent.

2.10 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*.

3 YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE

3.1 What is the *service*?

The *service* *you* have selected is detailed in the *service description*.

3.2 When may *we* refuse *your* application?

We may refuse *your* application if:

- (a) *you* do not provide satisfactory proof of identification;
- (b) *you* do not meet the eligibility criteria for the *service*;
- (c) the *service* is not available at the location where *you* wish to acquire the *service*; or
- (d) *you* do not have an appropriate *credit rating*.

4 HOW WE DEAL WITH YOUR PERSONAL INFORMATION

4.1 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) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

4.2 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.

4.3 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*.

4.4 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*.

4.5 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 4. Further information about how Elders handles personal information more generally is set out in our privacy policy. *You* may obtain a copy of *our* privacy policy from *us* or on *our* website at <http://www.elderscommunications.com.au>.

5 USING THE SERVICE

5.1 Connecting the *service*

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

5.2 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.

5.3 Permitted uses of the *service*

- (a) When *you* use the *service*, *you* must comply with:
- (i) all laws;
 - (ii) all directions by 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*, the *Elders 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.
- (d) *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.

5.4 Unusually high use

We may contact *you* if we become aware of an *unusually high use* of the *service* by *you* (including to verify any costs or charges which *you* may have incurred), however we are under no obligation to do so. For example, if *you* suddenly make an unusually high volume of calls to international destinations using the *service*, we may contact *you* to determine whether that use is likely to continue. If so, we may ask *you* to make a pre-payment usage charge under clause 8.2(b). Please note that we may also be entitled to suspend the *service* under clause 12.1(a)(iv) for an *unusually high use* of the *service*.

5.5 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.

6 EQUIPMENT

6.1 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 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.

6.2 Who owns the equipment?

- (a) *Elders owned equipment*
 - (i) Any *Elders owned equipment* remains *our* property or the property of *our personnel*.
 - (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) Equipment purchased by *you* from *us* or any of *our personnel*
 - (i) *You may purchase equipment from us or any of our personnel to use in connection with the service.*
 - (ii) *You will own the equipment and be responsible for the equipment from when you receive it.*

6.3 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.

6.4 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.

6.5 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.*

7 NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION

7.1 Maintenance on the network used to supply the service

- (a) *We may conduct maintenance on the Elders 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 the Elders network outside normal business hours, but we may not always be able to do so.*

7.2 Reporting faults

- (a) *We will provide a 24 hour fault reporting service for you to report faults.*
- (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.*

7.3 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.

7.4 Our responsibility for repairing faults

- (a) *We will repair faults within the Elders network.*

- (b) Unless the *service description* expressly provides otherwise, 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 *the Elders 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) 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.

8 FEES AND CHARGES

8.1 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 the *standard pricing table* or in any applicable *special*; and
 - (ii) any additional fees and charges noted in the *agreement* (including in *your 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 10.3 below.

8.2 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 the *standard pricing table* for your *service*.
- (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* or if you want to activate *roaming*).

8.3 How do we calculate fees and charges?

- (a) To calculate fees and charges we look at billing information generated or received by us.
- (b) If you use the services of a third party, you will be billed at the third party's applicable rates and charges. We may bill you for your use of the services of a third party, acting in our capacity as that third party's billing agent only.

8.4 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 the *standard pricing table* for the relevant service, 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.

9 PAYMENTS

9.1 How often will we bill you?

We will bill you on a regular basis (either in advance or in arrears), unless otherwise set out in the *service description*.

9.2 What will appear on *your* bill?

We will try to include on *your* bill all charges for the relevant billing period. However, this is not always possible and we may include these unbilled charges in a later bill(s).

9.3 We may use a billing agent to bill *you*

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

9.4 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.

9.5 When must *you* pay *your* bill?

Subject to clause 10.2, *you* must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by *us*.

9.6 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. Any late fee is payable until all outstanding amounts are paid;
- (b) suspend or *cancel the service*, in accordance with clause 11 or 12 as relevant or the relevant *service description*. 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;
- (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.

9.7 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.

9.8 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.

10 COMPLAINTS AND DISPUTES

10.1 Making complaints

- (a) If *you* have any complaints in connection with the *service*, *you* may complain in writing (including by completing *our* feedback form on *our* website at <http://www.elderscommunications.com.au/goto/feedback> or by calling *us*).
- (b) *We* will handle *your* complaint in accordance with *our* complaints procedure. Details of *our* complaints procedure are available on *our* website at <http://www.elderscommunications.com.au/goto/feedback>.
- (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.

10.2 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. All other fees and charges that are not in dispute are due and payable.

10.3 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). The *service description* may set out the way in which any rebate or refund is calculated.

11 CANCELLING THE SERVICE

11.1 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 2.7(b) above); or
 - (ii) giving *us* notice, if:

- (A) we breach a material term of the *agreement* and we cannot remedy that breach; or
 - (B) 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 2.8 above. Clause 2.8 sets out the circumstances which give you the right to *cancel the service* if we change the *agreement*.

11.2 **Our right to cancel the service - non fixed-length agreement**

If the *agreement* is a *non fixed-length agreement*, we may *cancel the service* at any time by giving you at least 30 days notice.

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

- (a) We may *cancel the service* at any time, without liability, if:
 - (i) there is an emergency;
 - (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) business 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, clauses 5.1 and 5.3 or your obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* or breach clause 6.1) 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, clauses 5.1 and 5.3 or your obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* or breach clause 6.1) 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* in accordance with the *agreement* for more than 14 days; or
 - (xii) we are otherwise entitled to do so under the *agreement*.
- (b) 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.

11.4 How can you cancel the service?

- (a) You can ask us to *cancel the service* by calling us. Your call will be notice to *cancel the service*.
- (b) You may also be able to *cancel the service* by electing to have an equivalent service to the *service* supplied by another *carrier* or *carriage service provider* (including, by *churning*). That *carrier* or *carriage service provider* will inform us that you have elected to have the relevant service supplied by them or have *churned* to them and we will *cancel the service* immediately.

11.5 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*.

11.6 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 the *service description* and *standard pricing table* for your *service* 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);

- (iii) subject to paragraph (ii) above and unless otherwise set out in the *service description*, 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*; and
 - (iv) if *you* are required under the *service description* to pay for the *service* by direct debit payment (either from *your* credit card or from *your* nominated bank account), *you* authorise *us* to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from *your* credit card or bank account.
- (c) If the *service is cancelled* by you or 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 2.8, *you* must pay *us* the *cancellation fee*.
- (d) 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.
- (e) If *you* are able to use the *service* after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 11.6.

12 SUSPENDING THE SERVICE

12.1 Our rights to suspend the service

- (a) We may suspend the *service* at any time, without liability, if:
- (i) there is an emergency;
 - (ii) doing so is necessary to allow *us* or a *supplier* to repair, maintain or service any part of the *Elders 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) business 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, clauses 5.1 and 5.3 or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* or breach clause 6.1) 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, clauses 5.1 and 5.3 or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* or breach clause 6.1) 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 *the Elders 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.

12.2 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.

13 WHAT ARE YOU AND WE LIABLE FOR

13.1 Your liability to us

- (a) You are liable to us for any breach of the *agreement* that causes or contributes to foreseeable *loss* to us.
- (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 result of something you have done.

13.2 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 and compensation for any reasonable loss incurred;
 - (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 and *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 any *consequential losses* you suffer or for any costs, expenses, *loss* or charges that you incur which is 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 the *service* for any reason, even if that lack of availability arises from our negligence or negligence of a third party.

- (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*.

14 ASSIGNING THE AGREEMENT TO A THIRD PARTY

14.1 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.
- (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.

14.2 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*;
 - (C) has an appropriate *credit rating*, and
 - (ii) the *service* is available at the location where they wish to acquire the *service*.

15 GENERAL**15.1 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.

15.2 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.

15.3 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*.

15.4 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.

15.5 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*.

15.6 Payment of commission by us

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

15.7 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.

16 WHAT DO TERMS IN THE AGREEMENT MEAN?

16.1 Definitions

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 the appendices containing information relevant to the *service*.

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

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

cancel the service for convenience means to *cancel the service* in circumstances where *you* have not breached the *agreement* and there is no other event which triggers the right to *cancel the service*.

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*. Unless otherwise indicated in the *service description*, any *cancellation fee* payable is set out in the *standard pricing table*.

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

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*.

consumer means a person who acquires and uses the *service* for personal, domestic or household use only.

content means:

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

sent and received across a *network*.

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).

Elders group company means Elders Communications Pty Limited ABN 92 117 261 864 and each of its *related corporations*.

Elders network means the *Elders network* used to supply the *service*, as set out in the *service description*.

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*.

equipment charges means any payment 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.

excluded event means:

- (a) a breach of the *agreement* by *you*;
- (b) a negligent or fraudulent act or omission by *you* or any of *your personnel*;
or
- (c) a failure of any of *your* equipment.

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.

insolvency event means:

- (a) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt;

- (b) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business;
- (e) *you* suspend payment of *your* debts generally; or
- (f) *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).

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

intervening event is an event outside *your* or *our* reasonable control which interferes with the operation of the *network* we use to supply the *service* and results in ongoing disruption to the *service*. An *intervening event* includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the *Telecommunications Legislation*) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any *regulator*, any *supplier* or any of their *personnel*).

minimum term means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start date* and runs for the period of time stated on the *application*, unless otherwise set out in the *agreement*. For a non fixed-length *agreement*, there is no *minimum term*.

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

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

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.

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 locations:

- (a) at which we supply the *service*, and/or
- (b) 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 *your* application. *You* may also hear a *pricing plan* referred to as a 'rate plan'.

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).

roaming means the ability to use the *network* of overseas mobile *carriers* when travelling overseas.

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

service description means the part of the *agreement* entitled '*service description*', which is *our* standard service description describing the *service*.

service start date for the *service* means the date on which *we* start supplying that *service* to *you*, unless otherwise specified in the *service description*.

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

standard pricing table means the part of the *agreement* entitled '*standard pricing table*', which is *our* standard rate plan, pricing and charges list for the *service*.

standard terms means this document.

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*.

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*.

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

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*.

we means the *Elders group company* specified in the *service description* as supplying the *service* (and **us** and **ours** is to be construed accordingly).

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*.

16.2 Interpretation

- (a) The following words have the same means in the *agreement* as they have in the *Telecommunications Legislation*:
 - (i) *carriage service*;
 - (ii) *carriage service provider*;
 - (iii) *carrier*;
 - (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.