

## ***Protel's Customer Terms & Conditions v3 022024***

### **Introduction**

This is Protel Professional Solution's Standard Form of Agreement called our 'Customer Terms'.

### **ABOUT OUR CUSTOMER TERMS**

#### **What is 'Our Customer Terms'?**

Our 'Customer Terms' sets out our standard customer terms, which apply to all services and to all our corporate customers. Protel only supply services to Registered Australian Businesses and not Consumer / Residential customers.

To understand your rights and obligations you need to read the General Terms which apply to you and the sections that relate to you and your service.

#### **1. Customer Contracts**

We supply Service under a Customer Contract or Contract that includes and range of services or associated hardware.

#### **2. Plans**

(a) Many Services are available under different Plans, each with its own features, entitlements, contract period, Charges and special conditions.

(b) Your Contract also includes the terms of any Plan you select.

#### **3. Peak & Off-peak**

(a) A Plan may specify certain days and/or times as Peak or Off-peak.

(b) Different Charges, entitlements or terms may apply in Peak and Off-peak periods. The Plan will indicate how that applies in each case.

#### **4. Periodic Entitlements**

(a) A Plan may include the right to use a certain amount of a Service during a certain period.

eg. An Internet Plan might let you download 100 gigabytes of data each month at no extra cost.

eg. A local call Plan might let you make 50 local calls each month at no extra cost.

We call these Periodic Entitlements.

(b) Unused Periodic Entitlements do not carry forward and are not redeemable for cash or other credit.

(c) If you exceed your Periodic Entitlement, extra Charges may apply or a Service may be limited in some way. Your Plan will give details.

## **5. Prepaid Plans**

For a Prepaid Plan:

- (a) Prepayments are not redeemable for cash or other credit.
- (b) The Plan may specify a Use-by Date i.e. a period after which any prepaid entitlements that are not used expire without refund. Unless a  
  
Plan specifies otherwise, a Use-By Date of one year applies to all Prepaid Plans.
- (c) Prepayments are not transferable between Plans – if you change Plans, there is no credit for unused prepaid entitlements (unless the Plan states otherwise).
- (d) We may specify minimum and/or maximum prepayments that you may make.
- (e) When your prepaid entitlements are used up we may cease providing Service. We are not responsible for the consequences of Service ceasing.

## **6. Acceptable Use Policies**

- (a) We may publish an Acceptable Use Policy for a Service or Plan.
- (b) An Acceptable Use Policy will be directed against abusive, antisocial, illegal and/or grossly unreasonable use of a Service.
- (c) You must comply with an applicable Acceptable Use Policy.

## **7. Legal Compliance Policies**

- (a) We may publish a policy directed to ensuring that the use of a Service complies with all Laws.
- (b) You must comply with such a policy.

## **8. Operational Directions**

- (a) Acting reasonably, we may give Operational Directions about a Service.
- (b) Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when reasonably necessary.
- (c) You must comply with an applicable Operational Direction.

## **9. Fixed terms**

A Plan may specify a particular, fixed or minimum term. If it does:

- (a) A Contract for the Plan is a contract for at least that specified term.
- (b) Either you or we can terminate the Contract as at the end of that specified term, by giving 30 days' termination notice.

(c) If neither of us gives a termination notice, it becomes month-to-month after that specified term.

(d) **3CX Hosted Phone Licence** - Some services do have specific contract terms such as 3CX Hosted IP Phone Licences. These are 24 months for the initial contract period then a recurring 12 month contract from the renewal date there after. Cancellation requests require 30 days notice before the renewal date.

#### **10. Month-to-month, casual or 'no contract' terms**

If a Plan or Contract is described as month-to-month, casual or no contract or similar, you or we may terminate it on 30 days' notice without penalty.

#### **11. Bundled Equipment**

(a) Under some of our Plans, you will be supplied with Equipment (eg a mobile handset or modem) without paying its full purchase price on delivery (Bundled Equipment).

(b) Bundled Equipment may be:

(i) free – in which case we absorb its full cost;

(ii) amortised – in which case you pay \$0 up-front and we recoup the cost from you as part of Charges over a minimum term; or

(iii) subsidised – in which case we absorb part of the cost and pass the balance on to you, either by cash or amortised payment.

(c) Clause 21 to 23 explains when ownership of Bundled Equipment passes to you.

### **General Terms**

#### **12. Application for Service**

(a) You must comply with any application form or process we specify.

(b) All information you provide in connection with an application must be true, correct, complete and not misleading.

#### **13. Processing an application**

(a) We do not have to accept an application.

(b) Before we confirm that we can and will provide Service, if you take any step (e.g. terminating a service from another supplier) on the assumption we can or will do so, you do so at your own risk.

(c) In processing your application, we may make any relevant enquiries, including obtaining credit information in accordance with clauses 40 to 43.

#### **14. Relevant dates**

(a) The date when you make an application is the Application Date.

(b) The date when we confirm that we can and will provide Service is the Contract Date.

(c) The date when we notify you that Service is available for use (or the date you first use the Service, if that is earlier) is the Service Start Date.

### **15. Providing Service**

(a) We will commence Service as soon as reasonably practicable after the Contract Date, and we may commence billing you as soon as the service is provisioned.

(b) We may provide Service using Our Facilities and/or third party Partner Facilities, as we decide from time to time.

### **16. Use of Service by others**

(a) Unless we appoint you in writing as a reseller or wholesale customer, you must not share, resell or resupply a Service for remuneration or reward.

(b) A person who makes use of a Service with your consent or from your premises or using your equipment or log-in credentials is your End User.

(c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.

(d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Customer Contract if done (or not done) by you.

### **17. Using a Service**

(a) When using a Service, you must comply with:

(i) your Customer Contract (including any applicable Acceptable Use Policy); and

(ii) any applicable Laws.

(b) You must not use a Service:

(i) in breach of any Law;

(ii) to breach the rights of any person;

(iii) to copy, download, supply to anyone else or communicate to the public copyright material without permission;

(iv) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute;

(v) to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;

(vi) to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the Spam Act;

(vii) in a way that is misleading or deceptive, where that is contrary to Law;

(viii) in a way that results, or could result, in damage to property or injury to any person; or

(ix) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.

### **18. Telephone numbers**

(a) In connection with a Service, you may be allocated with telephone numbers.

(b) We must comply with the Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.

(c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.

(d) You must not knowingly and deliberately:

(i) do anything that causes us to breach the Numbering Plan or which makes it more difficult for us to comply with it, or

(ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.

(e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Contract ends.

### **19. IP addresses, email addresses and domain names**

(a) In connection with a Service, you may be allocated IP addresses, email addresses, domain names or Internet identifiers.

(b) These Internet identifiers are licensed, controlled and administered not by us but by independent authorities. These authorities make, and may change, their own rules and regulations that bind us and you.

(c) We are not responsible for anything done, or required to be done, by these authorities.

(d) You do not own any Internet identifier allocated to you, and (except where rules of the relevant authority permit you to transfer an Internet identifier to another service provider) you have no right to retain them when your Contract ends.

## **20. Dynamic IP addresses**

- (a) Unless your Internet Service specifies that we shall provide you with a static (ie non-changing) IP address, we may provide it using dynamic IP addresses (that change periodically).
- (b) The periodic changing of dynamic IP addresses is normal network behaviour and not a fault.
- (c) It may be difficult or impossible to operate an Internet server (e.g. a mail server or a web server) using an Internet Service with a dynamic IP address. If you intend to operate such a server you should use an Internet Service with a static IP address.

## **21. Supplied Equipment**

- (a) This clause applies if we supply Equipment to you.
- (b) You assume risk in Equipment upon delivery.
- (c) We or our Partners retain title to Equipment:
  - (i) for Equipment rented or loaned to you – at all times;
  - (ii) for Bundled Equipment – until completion of the minimum term; and
  - (iii) for any other Equipment – until full payment has been made – each a Security Period.
- (d) While we or our Partners retain title to Equipment, you hold it in a fiduciary capacity as bailee for us.
- (e) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment.
- (f) If you use in connection with a Service any Equipment we have not approved or provided:
  - (i) it must comply with all applicable Laws, and technical standards and requirements including those set by its supplier or the manufacturer;
  - (ii) you are responsible for ascertaining what those technical standards and requirements are, since we will not be familiar with the Equipment; and
  - (iii) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
    - (A) our negligence, or
    - (B) our breach of the Consumer Guarantees.

## **22. Delivery of Equipment**

- (a) We will try to deliver Equipment to you on the delivery date (Delivery Date) and at the address (Site) indicated on your Application during normal business hours in that area.
- (b) Variations at your request to Delivery Date or Site:

- (i) are at our discretion; and
- (ii) may be subject to conditions, including extra Charges.

### **23. Installation and connection of Equipment**

- (a) This clause only applies if we expressly agree to install or connect Equipment.
- (b) We will install the Equipment at the Site within a reasonable time after the Delivery Date to connect you to the Service during normal business hours in that area. You must provide us with safe access.
- (c) You must prepare the Site for the installation (in accordance with any directions or specifications we issue) at your own expense, including providing:
  - (i) appropriate electricity supply;
  - (ii) appropriate electrical and mechanical fittings;
  - (iii) appropriate environmental conditions;
  - (iv) a secure location for the Equipment, including if applicable a suitable point for mounting an external satellite dish without obstructions;
  - (v) all relevant facilities for the location of the Equipment;
  - (vi) access to all relevant personnel including your technical personnel;
  - (vii) where relevant, permission for us and our representatives and agents to enter the Site and install the Equipment including making any minor physical modifications reasonably necessary for the purpose.
- (d) You warrant to us that as at the date of installation and connection to the Service, you will have notified any relevant parties and obtained all relevant consents for us to enter onto the Site, install Equipment and connect you to the Service.
- (e) You must indemnify us against any claim made against us, or loss incurred by us (including legal costs on a full indemnity basis) in connection with such entry and installation, except to any extent that we cause or contribute to it by:
  - (i) our negligence, or
  - (ii) our breach of the Consumer Guarantees.
- (f) You must obtain and maintain, at your expense, any permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the Equipment and connection to the Service.
- (g) If installation must be rescheduled because you breach this clause, we may make a reasonable Charge for our additional costs.

### **24. Installation Charges**

- (a) We will charge you installation Charges as stated (or indicated by) in your Contract.
- (b) We will try to inform you in advance of any installation fees that may be charged by our Partners.
- (c) If we find that installation will be more costly because of factors beyond our reasonable control, we may decline to proceed with installation unless you agree to the revised Charges.

#### **25. Additional Equipment services**

- (a) You may ask us to supply additional services in relation to Equipment including without limitation, e.g. repairs.
- (b) If we agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time (which may include materials supplied by our Partners at rates they determine).

#### **26. Lost, stolen and damaged Equipment**

- (a) You are responsible for any lost, stolen and damaged Equipment owned by us, except if it is caused by us or our personnel.
- (b) You must pay for Equipment that is lost, stolen or damaged, except if that is caused by us or our personnel.

#### **27. Return of Equipment**

On the termination of your Contract for any reason, you must return all our Equipment without delay.

#### **28. Service Level Agreements**

If a Service or a Plan includes a Service Level Agreement (SLA):

- (a) we are liable for any remedy or rebate specified by the SLA; and
- (b) subject to clauses 50 to 53, and to the express terms of the SLA, our liability for breach of the SLA is limited to such remedy or rebate.

Exclusion of implied terms and limitation of liability:

- (c) Any representation, warranty, condition or undertaking that would be implied in your Contract by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Contract to the fullest extent permitted by law.
- (d) We do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- (e) We are never liable to you for, and you release us from any Claim for, any Contract Loss.

#### **29. Your liability to us – General**



- (a) You must pay us all Charges and other amounts due under your Contract.
- (b) You must pay us the fair value of any Equipment that you fail to return to us when required.
- (c) You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- (d) You must indemnify us for any loss or damage we suffer as a result of or in connection with:
  - (i) your breach of your Contract;
  - (ii) your use of a Service or Equipment; or
  - (iii) a claim against us by an End User in relation to a Service we supply to you.
- (e) You indemnify us for any loss or damage we suffer in connection with any claim made against us by a third party arising out of or in relation to your use of Services or Equipment.
- (f) Your obligations under this clause survive termination of your Contract.

**30. Your liability to us – legal requests, etc**

- (a) This clause applies where we reasonably incur expense as a result of or in connection with:
  - (i) a police request for information or evidence in relation to you or your use of a Service; or
  - (ii) a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
  - (iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- (b) You must reimburse our expenses on request.

**31. Your liability to us – (alleged) illegal use, etc**

- (a) This clause applies where:
  - (i) your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
  - (ii) we suffer loss or reasonably incur expense as a result.
- (b) You must make good our loss and reimburse our expenses on request.

**32. Maintenance and faults**

- (a) Maintenance

From time to time, the Network requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

(b) Reporting faults

(i) You may report faults in relation to a Service or the Network by contacting our help line during its operating hours.

(ii) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment which is not part of the Network.

(iii) You must not report a fault directly to one of our Partners unless we ask you to do so.

(iv) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

(c) Repairing faults

(i) We will use reasonable efforts to repair faults in Our Facilities within a reasonable period.

(ii) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.

(iii) You are responsible for maintaining and repairing your own equipment (except where we supplied it and you have warranty rights in relation to a fault).

(d) Cost of repairs

If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

**General power to vary your Contract**

We may vary your Contract from time to time but:

(a) Variations do not have retrospective effect.

(b) If a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:

(i) the nature of the variation; and

(ii) the means by which notice is to be provided; and

(iii) the length of time remaining before the variation is to occur; and

(iv) any other matter that is reasonably relevant.

**33. Customer transfers**

(a) Transfer to us

(i) If you wish to transfer from another supplier to us, you must first check whether your contract with your current supplier imposes any restrictions or costs of doing so.

(ii) By making an application for Service, you instruct and authorise us to arrange with your current supplier to transfer the Service to us, and authorise us to act on your behalf with your current supplier to transfer the Services to us.

(iii) You must promptly pay your current supplier all amounts you owe it.

(b) Transfer from us

(i) If you transfer a Service to another supplier, you must pay our Charges that accrue before completion of the transfer.

(ii) If you transfer a Service to another supplier before the end of any minimum term or fixed term, Early Termination Fees apply – Refer to clause 52.

(iii) Some of Protel's Wholesale Carriers will charge Port Out fees if phone numbers are Ported away to another Carrier. Protel will on-charge these costs to the customer. For example: 13/1300/1800 number will incur a Port Out charge. There is no cost to Terminate a phone number, however 30 day's notice is required.

#### **34. Charges & payment (1)**

We have various kinds of Charge, including:

(a) installation Charges e.g. for installing Equipment,

(b) set up Charges e.g. a one-off Charge when you start on an Internet Service,

(c) periodic Charges e.g. a fixed monthly Charge for an ADSL Service,

(d) usage Charges e.g. a Charge per call made on a local call Service,

(e) prepaid Charges e.g. a Charge for call credit on a mobile telephone service,

(f) call connection Charges e.g. a Charge incurred when a telephone call connects,

(g) miscellaneous Charges e.g. a Charge for providing a second copy of a bill, and any Charge that an applicable code, regulation, determination or law specifically allows us to make,

(h) third party Charges e.g. an amount we must pay to a Partner to install a second telephone line in your premises,

(i) equipment Charges e.g. the price of a modem we sell to you – and other Charges that we state as part of a Plan.

#### **35. Charges & payment (2): Prices**

(a) Our prices are as stated in your signed Contract Plan.

(b) Our current prices at any time are referred to as our 'Price List'.

#### **36. Charges & payment (3): spot priced Services**

(a) We may designate a Service as a spot priced Service.

(b) Spot priced Services will consist of resupplied or rebilled Services where our buy price or other third party charges can vary with little or no notice.

(c) International telephone calls and international roaming are spot priced Services.

### **37. Varying Charges**

We may vary the Charges or add new Charges from time to time.

### **38. Special Promotions**

(a) We may offer Special Promotions to you, on particular terms.

(b) The particular terms of the Special Promotion will prevail to the extent of any inconsistency with other parts of your Contract.

### **39. Bundled Plans**

(a) We may offer a group of Services as a package (bundle) for discounted total Charges (compared to the total Charges that would apply if you acquired the same Services not as a bundle). e.g. We might offer bundled 'Phone & Internet Access for \$89.95 a month' where our Charges for the individual Services would be \$99.95 a month.

(b) Each Service in a bundle is subject to a separate but dependant Contract.

(c) If you stop acquiring any Service in a bundle:

(i) You have 'broken' the bundle, and

(ii) We may bill you non-discounted Charges for the remaining Service/s.

### **40. Credit management (1): Guarantees and security**

(a) We can make supply of Service conditional on you giving us, and maintaining, security and/or Service you are to acquire.

(b) If we become entitled to suspend or terminate Service, we may make the resumption of Service conditional on you giving us, and maintaining, security and/or third party guarantees to our reasonable satisfaction.

(c) We may use a security payment to pay any billed Charge that is overdue, where you have not disputed the Charge.

### **41. Credit management (2): Credit reports**

(a) Acknowledgment and authority that credit information may be given to a credit reporting agency

You acknowledge that section 18E(8)(c) of the Privacy Act allows us to give a credit reporting agency certain personal information about you, and you authorise us to do so. The information which may be given to a credit reporting agency is listed by Section 18E(1) of the

Privacy Act and includes:

- (i) the fact that you have applied for credit, and the amount,
- (ii) the fact that we are a credit provider to you,
- (iii) payments which become overdue more than 60 days,
- (iv) advice that payments are no longer overdue,
- (v) in specified circumstances, that in our opinion, you have committed a serious credit infringement,
- (vi) that the credit provided to you by us has been discharged.

(b) Authority for us to obtain certain credit information

If you apply to us for personal or commercial credit, you authorise us:

- (i) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to personal credit provided by us,
- (ii) to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to commercial credit provided by us,
- (iii) to obtain a report containing information about your commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by us,
- (iv) to obtain a report from a credit reporting agency and other information in relation to your commercial credit activities.

(c) Authority to exchange information with other credit providers

In accordance with Section 18N(1)(b) of the Privacy Act, you authorise us to give to and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency, information about your credit arrangements. You acknowledge that this information can include any information about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

You acknowledge that the information may be used for the following purposes:

- (i) to assess your application,
- (ii) to assist you to avoid defaulting on your credit obligations,

(iii) to notify other credit providers of a default by you,

(iv) to assess your creditworthiness.

#### **42. Credit management (3): Services you acquire for others**

If you enter a Contract where you will not be the main actual user of the Service (e.g. you arrange an Internet Service for your children):

(a) You are responsible for all use of the Service and all Charges incurred under the Contract.

(b) If you give anyone else sufficient information about your Service (e.g. by giving them your user name, password or other credentials), they may be able:

(i) to uncap or unlimit any cap or other limits that apply to it,

(ii) to change Plans,

(iii) to disconnect Service, and

(iv) to do anything else that you could do.

You should treat all information that allows control of your Service as secret.

(c) Internet and telephone Services can be used to buy goods and services from third parties. You may be liable for debts incurred to these third parties.

When we can bill

(a) Your Billing Period is the period between bills. Our standard Billing Period is monthly, but PROTEL reserves the right to vary it.

(b) We can bill a part-period e.g. to align your Billing Period with the first day of each month.

(c) We may bill for Charges as follows:

Type of Charge: payable:

(i) set up Charge immediately

(ii) periodic Charge 14 days before the start of the period it relates to

(iii) usage Charge at the end of each Billing Period

(iv) prepaid Charge when you buy a prepaid Service

(v) call connection Charge at the end of each Billing Period

(vi) miscellaneous Charge at the end of each Billing Period

(vii) third party Charge immediately

(viii) Equipment Charge when or before we dispatch the Equipment

(d) In any case, we may bill you for any Service we have already provided.

#### **43. Bills – General**

(a) You agree that you can incur a Charge without us issuing any invoice, statement or Bill.

(b) You agree that we need not offer payment by mail as a payment method for any Service, including a Standard Telephone Service.

(c) If we do provide an invoice, statement or bill for a Service, we can send it to you in the same way as any other notice, including via your Account Page.

#### **44. Extra Charges for bills and information**

(a) We may charge you an extra Charge if:

(i) you request non-standard information about your bill or Charges, or

(ii) you ask us to deliver a bill by a method that is not the standard method for a Plan.

(b) If you request a paper bill when that is not the standard method for a Plan, the extra Charge is \$5.00 per bill, or as otherwise notified in our Price List.

#### **45. Itemised Billing**

(a) We require notice in order to supply itemised billing details to you.

(b) Unless we advise you otherwise, the notice period is:

(i) 14 days where the information relates to Charges first billed within the last 12 months;

(ii) 21 days where the information relates to Charges first billed within 12 to 24 months; and

(iii) otherwise – 28 days.

#### **46. GST**

(a) In this clause, an expression within a pair of asterisks means the same as in the GST Act.

(b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.

(c) Where any amount is GST inclusive, it is the gross amount, inclusive of any GST payable in respect of any \*taxable supply\* for which that amount is paid. Otherwise:

(i) The \*consideration\* payable by you represents the \*value\* of any \*taxable supply\* for which payment is to be made.

(ii) If we make a \*taxable supply\* for a \*consideration\*, which represents its \*value\*, then you must pay immediately the amount of any GST payable in respect of the \*taxable supply\*.

(d) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an \*acquisition\* of a \*taxable supply\* from a third party, the amount you must pay, reimburse or contribute will be the value of the \*acquisition\* by us less any \*input tax credit\* to which we are entitled plus, if our recovery from you is a \*taxable supply\*, any GST payable under this clause.

(e) We may recover any GST payable under this clause in the same manner as our Charges.

#### **47. Late billing**

(a) We may late bill.

(b) Some Charges in a Bill may relate to a previous Billing Period.

#### **48. When you must pay**

(a) Where a Direct Debit or credit card arrangement applies, we may Extract payment for Charges:

(i) after it is billed (if we issue a Bill for the Service); or

(ii) after the end of the current Billing Period (if we do not issue a Bill for the Service).

(b) If any Bill is overdue for payment, you must pay that Bill and any other Bill immediately.

(c) In any other case, you must pay a Bill within 14 days after its Bill Date.

#### **49. How you can Pay**

(a) If your Plan specifies 'Direct Debit only' (or similar) then:

(i) Direct Debit payment is a precondition to supply of Service to you.

(ii) We may suspend Service if Direct Debit arrangements are not maintained.

(iii) You must not cause to be reversed any Direct Debit payment to us, unless you have our prior written approval. Otherwise, you must pay our reasonable costs (including legal fees if necessary) of reinstating the transaction.

(b) In any other case:

(i) Direct Debit is our preferred payment method and incurs no surcharges.

(ii) You may pay by MasterCard or Visa or any other card we notify you that we accept.

(iii) Payments made using credit cards may be subject to a surcharge as notified on our bill.

(c) If any payment you make is dishonoured we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

#### **50. Late payment (1)**

If a Bill is not paid on time:



- (a) you are in breach of your Contract, and
- (b) we may also charge:
  - (i) interest at 1.5% a month from the Bill Date until it is paid in full, or
  - (ii) a reasonable late fee, and
  - (iii) any collection fees and expenses that we incur.

We will contact you to discuss payment and possible suspension of services to your business.

**51. Late Payment (2) – accounts over 60 days**

If your payment is 60 days or more overdue or we otherwise consider it is reasonable to do so –

- (a) we may refer it to an external collections agency;
- (b) we notify you that our collection fees and expenses under clause 73(b)(iii) may:
  - (i) include the external agency's collection fee and/or
  - (ii) include a minimum recovery charge.
- (c) we may suspend your services with Protel until the account is paid. Protel will provide reasonable notice before services are suspended.

**52. Early Termination Fees**

The amount of an Early Termination Fee that we are entitled to charge is,

- (a) the amount specified in or calculated in accordance with the relevant Plan; or
- (b) otherwise:
  - (c) You will be liable to pay cancellation charges if:
    - (i) you terminate an Individual Service, whole of account or part thereof before the end of the Minimum Period; or
    - (ii) we terminate an Individual Service, whole of account or part thereof prior to the end of the Minimum Period in accordance with clauses 57 and 58 inclusive of all sections.
  - (d) Except as expressly set out in a Service Schedule the cancellation charges are the sum of:
    - (i) the un-recovered proportion of the costs we have incurred in provisioning the Individual Service (where those costs have been amortised on a straight line basis over the Minimum Period);
    - (ii) any further costs that we will incur in connection with the Individual Service to the extent that we are unable to avoid such costs; and

(iii) an amount equal to 100% of your average actual monthly spend on the cancelled Individual Service as billed by us in the 3 months (or part thereof ) immediately preceding the month in which termination occurred, multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Period; and

(e) Actual monthly spend includes all call usage and any related service and equipment charges.

(f) If you have not been billed by us for 3 months, for whatever reason, the amount will be calculate from your last Service Providers invoice, in total, as supplied to us at the point of application.

(g) In the event you preselect, port or transfer your call usage away to another Service Provider in any way, the termination charge will be calculated as follows:

(i) Service and Equipment:

(ii) an amount equal to 100% of your average actual monthly spend on the cancelled Individual Service as billed by us in the last 3 months immediately preceding the month in which the call usage component of your call traffic was transferred to another service provider, multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Period; and

(iii) reimbursement to us of any rebates, credits, technology funds, refunds or discounts, including but not limited to volume rebates, loyalty discounts and service credits (“Credits”) on the full amount of our standard charges, provided to you during the Agreement.

(h) Call usage is defined as: Outbound calls including but not limited to Local, National, fixed to mobile calls and international + inbound call including but not limited to calls made from 13/1300 and 1800 numbers.

(i) You agree that the cancellation charges are a reasonable estimate of our likely financial loss if the Individual Service is terminated early.

(j) We may invoice you for all or part of any cancellation charge payable. You will pay the invoice specifying the cancellation charges, by the date on the invoice and if no date is specified, then 30 days after the date of the invoice.

(k) In the event that you cancel your telecommunication services that are in contract with us because you are relocating to a new office or opening another office, you will be issued with an early termination fee unless your new services are supplied and billed by us.

(l) The amount of call usage must not reduce by an amount greater than 10% of the average spend for the 3 months prior to the cancellation request.

(m) In the event your call spend reduces by more than 10% as listed above we may be entitled to invoice you the difference on a monthly basis for the remainder of the contract.

### **53. Billing disputes**

(a) Our records of what you owe us are deemed to be right unless you show them to be wrong.

(b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.

(c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

#### **54. Billing for unauthorised use of your account**

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of Consumer Guarantees.

#### **55. Billing agents**

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

(b) Payment to our billing agent constitutes payment to us.

(c) Failure to pay our billing agent constitutes failure to pay us.

Payment for third party services

(a) Using a Service may depend on you having goods or services supplied by third parties. For instance:

(i) In order to use a dial up internet Service, you must have a telephone line, and your modem will make calls using it.

(ii) In order to use a local call Service, you must have a suitable handset.

(b) You are solely responsible for the costs of all third party goods and services you acquire.

#### **56. Your cooperation**

(a) You must give us all reasonable cooperation that we require in order to provide a Service to You, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have.

(b) You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or a Partner may be required:

(i) to intercept communications over the Service, and

(ii) monitor usage of the Service and communications over it.

#### **57. Termination & suspension by us (1): Early termination**

We may terminate a Contract, or suspend or restrict Service if, in relation to that or any other Contract or Service:

(a) you fail to pay us any money that is due,

(b) you threaten not to pay us money that you owe us, or will owe us in the future,

- (c) you cause to be reversed any Direct Debit or credit card payment to us (except with our prior written agreement),
- (d) you are in material breach of your Contract,
- (e) you become insolvent,
- (f) we reasonably believe that you have vacated your Premises without notice to us,
- (g) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm,
- (h) it becomes technically infeasible for us to continue Service,
- (i) you use a Service in a way that places unreasonable demands on our Network,
- (j) we are unable to obtain access to your Premises as required to provide, maintain or repair the Service,
- (k) there is an emergency that warrants it,
- (l) you have told us that you no longer require the Service,
- (m) if we reasonably suspect fraud or attempted fraud involving the Service,
- (n) we become entitled to suspend the Service, and the suspension continues for more than a month,
- (o) you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that), or
- (p) in any other circumstances stated elsewhere in our Customer Terms.

We may charge a reconnection Charge following action under this clause unless it resulted from our mistake.

**58. Termination & suspension by us (2): Other events**

- (a) We may terminate a Contract or suspend performance of our obligations under the Contract if you die or become bankrupt, insolvent or subject to a winding-up order or similar insolvency event, if we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract.
- (b) We may suspend or restrict the supply Service if there are reasonable grounds for believing:
  - (i) a serious threat or risk exists to the security or integrity of the Network, or
  - (ii) the provision of the Service may cause death, personal injury or damage to property.
- (c) We may suspend or restrict Service in cases of emergency, including for the provision of support to emergency and other essential services.

(d) We may terminate a Contract or suspend or limit or vary performance of our obligations under it to comply with:

(i) legislative or regulatory requirements, or

(ii) the order of a court or lawful direction of a competent authority – to the extent the legislative or regulatory requirements or order or direction unavoidably requires us to do so.

(e) We may suspend, intercept or terminate a service in order to comply with a warrant or other court order, or as otherwise required or authorised by law.

#### **59. Early termination by you**

(a) You are not entitled to simply choose to terminate a Contract during its fixed or minimum term, unless our Customer Terms or the law says otherwise.

(b) Our Plans are priced on the basis that you will complete your Contract.

(c) Where you are entitled to terminate your Contract early (eg because we have offered you that option following a variation to your Contract), we may bill you for:

(i) any outstanding amounts for installation costs or equipment that can be used in connection with services provided by other suppliers, and

(ii) usage or network access charges incurred up to the date on which the Contract ends.

(d) If we agree that you may terminate it early in any other circumstances, we may bill you:

(i) an Early Termination Fee,

(ii) any applicable amounts under clause 60 to 63,

(iii) a reasonable administration Charge,

(iv) usage or network access charges incurred up to the date on which the Contract ends, and

(v) any other Charge (including an Early Termination Fee) that is specified in the applicable Plan or the Price List.

(e) Some of our Plans discount, defer or waive normal equipment or installation costs (e.g. include a \$0 up-front modem or zero set up fees) in exchange for a certain minimum or fixed term. If you want to terminate a Contract under such a Plan early (and if we agree that you may do so), we may also bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

#### **60. Termination by you**

(a) You may terminate your Contract:

(i) (except during a fixed or minimum term) at any time, on 30 days written notice; or

(ii) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 14 days.

(b) You may also terminate your Contract:

(i) in any other circumstances where your Contract provides for it; or

(ii) (in a case where you have a non-excludable legal right to do so) by transferring the Service from us to another supplier. We will cancel the Service and terminate your Contract immediately once the other supplier has informed us that you have elected to transfer the Service from us to that other supplier.

### **61. Post-termination**

If a Contract ends:

(a) Our obligations to you under that Contract are at an end.

(b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract.

(c) All bills are payable immediately.

(d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or Direct Debit them from your credit card or bank account if you normally pay by Direct Debit.

(e) You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)

(f) Any cause of action that either of us had against the other predating the termination is not affected,

(g) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,

(h) No other Contract is affected unless we also terminate it.

Otherwise, that Contract is at an end for all purposes.

### **62. Suspension of Service**

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency or your death), if:

(a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;

(b) you fail to pay any amount owing to us in respect of the Service under your Customer Contract (which is not the subject of a bona fide dispute) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;

(c) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach cannot be remedied;

(d) you breach your Customer Contract, including terms relating to your use of the Service or any Acceptable Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;

(e) you are the subject of an Insolvency Event;

(f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;

(g) we reasonably believe that you may be a credit risk in relation to the Service;

(h) you are a natural person (and not a company) and you die;

(i) there is an emergency;

(j) there is a threat or risk to the security of the Service or integrity of the Network;

(k) the Service may cause death, personal injury or damage to property;

(l) we are required to do so to comply with any law or direction of any Regulator;

(m) an Intervening Event occurs; or

(n) we are otherwise entitled to do so under your Customer Contract.

### **63. Charges during a period of suspension**

If we suspend Service:

(a) because of your fault or breach of your Contract – you remain liable for all Charges payable under your Contract during the period of suspension;

(b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

### **64. Errors in our documents**

(a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Contract, including any Plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.

(b) You are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints.

### **65. Carrier or Carriage Service Provider**

(a) You promise that you are not a carrier or a Carriage Service Provider.

(b) If you do become a Carrier or a Carriage Service Provider, then we or our Partners may immediately cancel the Service and terminate your

#### **66. Assignment**

(a) We may assign or novate all or part of our rights and obligations under your Contract without your consent.

(b) You cannot assign or novate all or part of your rights and obligations under your Contract unless we agree in writing.

#### **67. Governing law**

Your Contract is governed by and must be construed in accordance with the laws of Victoria. You and we submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.

#### **68. No waiver**

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Contract (such as a right that we have due to your breach of your Contract) does not operate as a waiver of the power or right.

#### **69. Commission**

We may pay a commission to any agent, employee, contractor or dealer in connection with the acquisition of the Services and your Customer Contract.

#### **70. 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.

#### **71. Complaints and assistance services**

Our contact details are available on our website.

You may contact us and make any complaint by contacting us or the following assistance services:

Customer Service – 1300 720 835 or email [customerservice@protel.net.au](mailto:customerservice@protel.net.au)