

Terms & Conditions

25 March 2018

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1. Definitions and interpretation

1.1 Definitions

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

Acceptable Use Policy means Nelson Bay Online's acceptable use policy (as modified from time to time) which may be found on <https://www.nelsonbay.com/files/AcceptableUsePolicy.pdf>

Accrued Charges means all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies Nelson Bay Online of the cancellation of a Service and any outstanding amounts that to cover installation costs or Equipment Charges where Nelson Bay Online owned equipment can be used by the Customer in connection with services provided by any third party.

Agreement means the agreement between Nelson Bay Online and the Customer for provision of the Service which agreement is comprised in the Application and these terms and conditions. Business Application means the Customer's online application to Nelson Bay Online for provision of the Service which sets out the Minimum Term, Service Description, pricing plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

Business Customer means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes other than resale, and for who complete an application for a Business Grade Service.

Business End User means any person:

- (a) to whom a Business Customer asks Nelson Bay Online to supply the Service directly;
- (b) to whom a Business Customer (with Nelson Bay Online's prior permission) re-supplies the Service or allows to distribute the Service;
- (c) who a Business Customer allows to use the Service; or
- (d) to whom a Business Customer supplies any goods or services which use or rely on the Service.

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

Cancellation Date means:

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

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 in the context of ADSL1 for which the losing service provider or carrier and gaining service provider or carrier are participants of the Rapid Transfer Facility. In the context of Long Distance pre-selection for which the losing service provider or carrier and gaining service provider or carrier are participants.

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

Consumer Application means the Customer's online application to Nelson Bay Online for provision of the Service which sets out the Minimum Term, Service Description, Pricing Plan and details of any charge such as Equipment Charge, any fees such as access fees, administration fees, suspension fees, cancellation fees, late payment fees, payment dishonour fees, reconnection fees or reactivation fees payable by the Customer and any refund or rebate to which a Customer may be entitled.

Consumer Customer means any Customer who is a person who acquires and uses the Service for personal, domestic or household use only and who complete an application for a Residential Grade Service.

Customer means the person who submits an Application to Nelson Bay Online and who acquires and uses the Service from Nelson Bay Online.

Equipment Charge means any payment to Nelson Bay Online for use of equipment.

Nelson Bay Online means AlphaCall Pty Ltd T/As Nelson Bay Online ABN 24 615 989 154.

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

Industry Participant means the Communications Alliance Limited, and the Telecommunications Industry Ombudsman

Insolvency Event means:

- (a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- (b) any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- (c) any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- (d) any step that is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- (e) the Customer suspends payment of the Customer's debts generally; or
- (f) the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (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 a party's reasonable control which interferes with the operation of the network Nelson Bay Online uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

Minimum Term means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

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

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

Party means a party to the Agreement.

Personal Information means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating. Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of Nelson Bay Online, includes the employees, agents, contractors or other representatives of any Nelson Bay Online Group Company.

Premises means locations:

- (a) at which Nelson Bay Online supply the Service, and/or
- (b) to which Nelson Bay Online needs to have access to supply the Service.

Pricing Plan means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

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

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

Related Corporation of a company means another company that is related to that entity in any of the ways specified in section 50 of the Corporations Act 2001 (Cth). Roaming means the ability to use the network of overseas mobile carriers when traveling 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 provided or to be provided by Nelson Bay Online to the Customer in connection with that service.

Service Description means the part of the Application which describes the Service provided or to be provided by Nelson Bay Online to the Customer.

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

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

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

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

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

Consumer Act.

Unusually High Use means high usage of the Service on a short term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

1.2 Interpretation

- (a) The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
 - (i) Carriage service;
 - (ii) Carriage service provider;
 - (iii) Carrier; and
 - (iv) Content service.
- (b) A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- (c) The singular includes the plural and vice versa.
- (d) Different grammatical forms of the same word(s) have the same meaning.
- (e) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (f) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

2. Terms

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

3. Variation to Agreement

- 3.1 Nelson Bay Online may vary any part of the Agreement:
 - (a) with the Customer's consent; or
 - (b) without the Customer's consent provided Nelson Bay Online complies with the Telecommunications Legislation.
- 3.2 If Nelson Bay Online varies a Fixed-Term Agreement under clause 3.1:
 - (a) Nelson Bay Online must if the variation affects the Customer and it is not a change of a type listed in clause 3.3:
 - (i) comply with the provisions of the Telecommunications Legislation;
 - (ii) giving the Customer twenty-one (21) days' notice in writing of the change before the change occurs; and
 - (iii) offer the Customer the right to cancel the Service (within forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.
 - (b) Nelson Bay Online must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and
 - (c) if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the

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

- 3.3 Nelson Bay Online may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:
- (a) required by law;
 - (b) in relation to the cost of international services or roaming;
 - (c) in relation to a fee or charge to account for a tax imposed by law;
 - (d) in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, Nelson Bay Online offers the Customer:
 - (i) a right to cancel the Service without incurring fees or charges other than Accrued Charges;
 - (e) to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to Nelson Bay Online to allow supply of the Service increases the price they charge Nelson Bay Online for the content service or premium service) provided that if the change affects the Customer, Nelson Bay Online:
 - (i) gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
 - (ii) allows the Customer to elect to not use the content or premium service without attracting any additional charges;
 - (f) as a result of another carrier or service provider varying the agreement Nelson Bay Online has with it in relation to a carriage service and as a result Nelson Bay Online needs to make changes to the Agreement, provided that if the change affects the Customer, Nelson Bay Online gives the Customer:
 - (i) notice in writing of the change; and
 - (ii) forty-two (42) days from the date of the notice in which the Customer may cancel the Service without incurring fees or charges other than Accrued Charges.
- 3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without Nelson Bay Online's prior consent.
- 3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.
- 3.6 Nelson Bay Online may give the Customer notice in writing of a changes to the Agreement by:
- (a) delivering notice of the change to the Customer by mail; or
 - (b) sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
 - (c) by including a message or insert in an invoice sent to the Customer; or
 - (d) (in the case of a pre-paid Service) by posting the information on Nelson Bay Online's website or in Nelson Bay Online's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

4. Application for the supply of the Service

- 4.1 You may make an application for supply of a Service by:
- (a) completing and submitting an online application form located on our Website;
 - (b) telephone by asking our customer representative to complete the application form on your behalf and to read the Material Terms to you;
 - (c) any other means agreed by you and us to be an Application.
- 4.2 Each Service selected by you on your Application is described in more detail in the Service Description applicable to that Service.
- 4.3 Subject to our acceptance of your Application in accordance with clause 4.6, our Agreement commences on:

- (a) if you apply online, the date you submit the application form;
- (b) if you sign an application form, the date you sign the application form;
- (c) if you apply by telephone and the Material Terms are read to you, the Material Terms apply from the date you accept the Material Terms and the remaining terms of our Agreement commence on the Service Start Date;
- (d) in any other case the Service Start Date.

Subject to clauses 4.3(c) and 4.3(d), you agree to the terms and conditions contained in the Agreement by making an Application.

- 4.4 You must provide us with all information that we reasonably require for the purposes of this agreement (including for the purposes of an investigation by us of a suspected misuse of the Service or breach of this Agreement by you). We rely on the information you supply being accurate, truthful and correct.
- 4.5 You must promptly advise us of any changes that are relevant to your account or the Service including changes to your account details (such as registered address or billing address) debit or credit card details (including expiry dates).
- 4.6 When you make an Application, we decide(in our absolute discretion) whether to accept your Application and to supply the Service to you based on any factors that we deem to be relevant, including:
 - (a) your eligibility for that Service;
 - (b) its availability to you;
 - (c) you meeting our credit requirements;
 - (d) the information you provide to us; and
 - (e) your prior conduct or history in respect of any previous supply by us or any Nelson Bay Online Entity of any goods or services to you, including your compliance with the relevant terms and conditions under which those goods or services were supplied.
- 4.7 Please ensure that you carefully check the telephone number you provide in your Application. An incorrect number will result in charges for any calls made on the line you have nominated. This may also mean you will be paying for someone else 's telephone calls. In the event you have provided an incorrect phone number, we will not take responsibility or accept liability for any errors made or costs incurred.
- 4.8 Nelson Bay Online may refuse the Customer's Application at its sole discretion.

5. Privacy

- 5.1 Nelson Bay Online may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other Nelson Bay Online Group Companies.
- 5.2 Nelson Bay Online may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of Nelson Bay Online Group Companies and other organisations.
- 5.3 Nelson Bay Online may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:
 - (a) a credit reporting agency or credit provider;
 - (b) another Nelson Bay Online Group Company;
 - (c) Third parties who are not related to Nelson Bay Online, including Nelson Bay Online's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;
 - (d) Suppliers who need access to the Customer's personal information to provide Nelson Bay Online with services to allow supply of the Service; an
 - (e) Joint venture partners of Nelson Bay Online Group Companies
- 5.4 Nelson Bay Online may be permitted or required by applicable laws to collect, use or disclose personal information about

the Customer, including to:

- (a) the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- (b) emergency services organisations; and
- (c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.5 Where Nelson Bay Online will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:

- (a) Nelson Bay Online may give information about the Customer to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Customer; and/or
 - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
- (b) Such information is limited to:
 - (i) identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
 - (ii) the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
 - (iii) the fact that Nelson Bay Online is a current credit provider to the Customer;
 - (iv) loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
 - (v) advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
 - (vi) information that, in the opinion of Nelson Bay Online, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
 - (vii) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- (c) The Customer agrees that:
 - (i) Nelson Bay Online may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
 - (ii) Nelson Bay Online may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
 - (iii) Nelson Bay Online may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (A) to assess an application by the Customer for credit;
 - (B) to notify other credit providers of a default by the Customer;
 - (C) to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
 - (D) to assess the Customer's credit worthiness.
 - (iv) Such the information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to Nelson Bay Online.

5.7 If the Customer is an individual, the Customer is entitled to:

- (a) gain access to the Customer's personal information held by Nelson Bay Online, unless Nelson Bay Online is permitted or required by any applicable law to refuse such access; and

- (b) correct any personal information held by Nelson Bay Online.
- 5.8 If the Customer does not provide part or all of the personal information requested by Nelson Bay Online then Nelson Bay Online may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.
- 5.9 By providing the Customer's personal information to Nelson Bay Online and obtaining the Service, the Customer acknowledges and consent to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with Nelson Bay Online's privacy policy a copy of which will be made available by Nelson Bay Online on request or may be viewed on Nelson Bay Online's website www.nelsonbay.com/privacy.php
- 5.10 If the Customer has authorised Nelson Bay Online to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Nelson Bay Online of a password to be used for Nelson Bay Online's verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:
 - (a) to keep confidential such password;
 - (b) that Nelson Bay Online may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Nelson Bay Online in connection with the Service on behalf of the Customer;
 - (c) that the Customer will not hold Nelson Bay Online liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Nelson Bay Online; and
 - (d) that all calls made to or from Nelson Bay Online's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.
- 5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to Nelson Bay Online's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.

6. Using the Service

- 6.1 The Customer must reasonably co-operate with Nelson Bay Online to allow Nelson Bay Online, or a supplier, to establish and supply the Service to the Customer safely and efficiently.
- 6.2 Nelson Bay Online will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Nelson Bay Online will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 6.3 When using the Service, the Customer must comply with:
 - (a) all laws;
 - (b) all directions by a regulator;
 - (c) all notices issued by authorisation of or under law;
 - (d) the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service); and
 - (e) reasonable directions by Nelson Bay Online.
- 6.4 The Customer must not use, or attempt to use, the Service:
 - (a) to break any law or to infringe another person's rights;
 - (b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised;
 - (c) in any way that may expose Nelson Bay Online to liability; or
 - (d) in any way which or which may damage, interfere with or interrupt the Service, the Nelson Bay Online network or a supplier's network used to supply the Service.
- 6.5 Nelson Bay Online may require the Customer to stop doing something which Nelson Bay Online reasonably believes is in breach of clauses 6.3 or 6.4. The Customer must immediately comply with any such request failing which Nelson Bay Online may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4.

- 6.6 The Customer acknowledges that, where the Service is a carriage service, Nelson Bay Online, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.
- 6.7 Nelson Bay Online may (but is not obliged to) contact the Customer if Nelson Bay Online becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such event, Nelson Bay Online may ask the Customer to make a pre-payment usage charge under clause 9.5. Nelson Bay Online is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.
- 6.8 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose network the Customer's data traverses.

7. Equipment

- 7.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:
 - (a) all laws;
 - (b) all directions by a regulator;
 - (c) all notices issued by authorisation of or under law; and
 - (d) reasonable directions by Nelson Bay Online. failing which Nelson Bay Online may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.
- 7.2 In relation to equipment:
 - (a) any Nelson Bay Online owned equipment remains Nelson Bay Online's property;
 - (b) the Customer is responsible for any Nelson Bay Online owned equipment from the time when the Customer receives it;
 - (c) the Customer must not mortgage or grant a charge, line or encumbrance over any Nelson Bay Online owned equipment; and
 - (d) the Customer may purchase equipment from Nelson Bay Online to use in connection with the Service. In such event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.
- 7.3 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.
- 7.4 Unless otherwise agreed between the parties, the Customer must allow Nelson Bay Online's personnel (and no other person) to service, modify, repair or replace any Nelson Bay Online owned equipment.
- 7.5 The Customer is responsible for any lost, stolen or damaged Nelson Bay Online owned equipment, except where caused by Nelson Bay Online or Nelson Bay Online's personnel.
- 7.6 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from Nelson Bay Online, even when that equipment is lost, stolen or damaged.

8. Network maintenance, fault reporting and rectifications

- 8.1 Nelson Bay Online may conduct maintenance on the Nelson Bay Online network and maintenance may be conducted on a supplier's network used to supply the Service. Nelson Bay Online will endeavour to conduct scheduled maintenance on the Nelson Bay Online network outside normal business hours.
- 8.2 Nelson Bay Online will provide a 24 hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to Nelson Bay Online, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not Nelson Bay Online owned equipment.
- 8.3 The Customer must provide all reasonable assistance to enable Nelson Bay Online or Nelson Bay Online personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant of the premises.

8.4 Nelson Bay Online will repair faults within the Nelson Bay Online network used to supply the Service [this means, Nelson Bay Online will repair faults within the core network and any Nelson Bay Online supplied equipment only]. Unless the Service Description expressly provides otherwise, Nelson Bay Online is not responsible for repairing any fault in the Service where the fault arises in or is caused by:

- (a) a supplier's network; [this means the network and components that exist between the point of interconnect with the Nelson Bay Online core network and the suppliers network and the point of service delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF A-Side in an MDU or the first Phone Socket in an SDU].
- (b) equipment that is not Nelson Bay Online owned equipment; or [this means any equipment required to use the service that is not owned by Nelson Bay Online].
- (c) facilities outside the Nelson Bay Online network. [this means any facility in a network not owned or operated by Nelson Bay Online, including customer premise network equipment or facilities on the customer side of the services delivery or demarcation as defined by the ACMA at the customers premise. This is typically the MDF B-Side (including all on-premise cabling) in an MDU or socket and cabling beyond the first Phone Socket in an SDU].

8.5 Where:

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

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

8.6 Where a fault arises in or is caused by equipment that is not Nelson Bay Online owned equipment, Nelson Bay Online is not responsible for the repair of that fault. Nevertheless:

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

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

9. Fees and charges

9.1 The Customer must pay:

- (a) the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
- (b) any additional fees and charges noted in the Agreement (including in the Application) or notified by Nelson Bay Online in accordance with the Agreement from time to time.

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

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

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

- 9.5 Nelson Bay Online may also ask the Customer to make a pre-payment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).
- 9.6 Nelson Bay Online will calculate fees based on billing information generated or received by Nelson Bay Online which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.
- 9.7 If the Customer uses the services of a third party, the Customer will be billed at the third party's applicable rates and charges. Where Nelson Bay Online invoices the Customer for the Customer's use of the services of a third party, it will be in Nelson Bay Online's capacity as that third party's billing agent only.
- 9.8 Nelson Bay Online may offer the Customer a Special Offer from time to time. In such event, Nelson Bay Online will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the minimum term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.
- 9.9 Some fees and charges for the Service are subject to variation such as charges relating to:
 - (a) international services or roaming; and
 - (b) content or premium services.

The Customer should inform Nelson Bay Online before using the Service from outside Australia.

10. Payments

- 10.1 Nelson Bay Online will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request Nelson Bay Online to send a copy of the invoice electronically.
- 10.2 Service usage records are obtained by Nelson Bay Online from a wholesale supplier. Nelson Bay Online will make reasonable efforts to supply these records in a timely manner to the Customer via the online Secure Users Facility or where otherwise agreed to by Nelson Bay Online and the Customer, by post or facsimile.
- 10.3 If Nelson Bay Online receive usage records in time from the wholesale supplier, Nelson Bay Online will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of Nelson Bay Online, Nelson Bay Online will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.
- 10.4 Where usage records are provided by the wholesale supplier to Nelson Bay Online outside the relevant billing period, Nelson Bay Online will incorporate these and associated charges on a subsequent or later invoice. This is called back billing. Nelson Bay Online will not backbill for usage that has occurred 160 days or more previously, if Nelson Bay Online has not already advised the Customer of the charges.
- 10.5 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.
- 10.6 If the Customer's payment is not honoured for any reason, Nelson Bay Online may charge the Customer a fee.
- 10.7 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Nelson Bay Online.
- 10.8 If the Customer does not pay the invoice by the date the payment is due, Nelson Bay Online may:
 - (a) charge the Customer a late fee which is payable until all outstanding amounts are paid;
 - (b) require the Customer to provide reasonable security to Nelson Bay Online to secure the payment of future amounts due under the Agreement;
 - (c) suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If Nelson Bay Online suspends or cancels the Service, Nelson Bay Online may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
 - (d) engage a mercantile agent to recover the

money the Customer owes Nelson Bay Online and charge the Customer a recovery fee;

(d) institute legal proceedings against the Customer to recover the money the Customer owes Nelson Bay Online and recover from the Customer its legal costs; and/or

(e) on-sell any unpaid amounts to a third party.

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

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

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

11. Complaints and disputes

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

11.2 Nelson Bay Online will handle all complaints in accordance with its complaints procedure which is available from Nelson Bay Online on request or on Nelson Bay Online's website: <https://www.nelsonbay.com>

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

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

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

12. Cancelling the Service

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

(a) giving Nelson Bay Online thirty (30) days notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Agreement); or

(b) giving Nelson Bay Online notice, if Nelson Bay Online breaches a material term of the Agreement and Nelson Bay Online either:

(i) cannot remedy that breach; or

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

12.2 If a Consumer Customer acquires the Service from Nelson Bay Online through a sales method regulated by door-to-door sales legislation in the Customer's state or territory, the Consumer Customer may cancel the Service before the end of the cooling-off period set out in the relevant legislation.

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

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

- 12.5 Nelson Bay Online may cancel the Service at any time, without liability, if:
- (a) there is an emergency;
 - (b) Nelson Bay Online reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
 - (c) any amount owing to Nelson Bay Online in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Nelson Bay Online gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
 - (d) Nelson Bay Online reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to Nelson Bay Online or any Nelson Bay Online Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
 - (e) the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after Nelson Bay Online gives the Customer notice requiring the Customer to do so;
 - (f) Nelson Bay Online is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law; g. the Customer suffers an insolvency event and Nelson Bay Online reasonably believes Nelson Bay Online is unlikely to receive payment for amounts due;
 - (g) the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Nelson Bay Online reasonably believes Nelson Bay Online is unlikely to receive payment for amounts due;
 - (h) the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
 - (i) any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
 - (j) Nelson Bay Online is otherwise entitled to do so under the Agreement or Acceptable Use Policy.
- 12.6 Nelson Bay Online may cancel the Service under clause 12.5 as soon as Nelson Bay Online gives the Customer notice, unless otherwise set out in the Agreement. However, Nelson Bay Online may cancel the Service immediately if there is an emergency.
- 12.7 If the Customer elects to have an equivalent service to the Service supplied by another carrier, carriage service provider or service provider (including, by churning) and that carrier, carriage service provider or service provider informs Nelson Bay Online that the Customer has elected to have the Service supplied by them or have churned to them, the Service will be deemed to have been cancelled by the Customer immediately. This will be without prejudice to Nelson Bay Online's rights under the Agreement with respect to the Service.
- 12.8 If the Service is cancelled:
- (a) the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
 - (b) the Customer authorises Nelson Bay Online to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
 - (c) subject to clause 12.8(b) and unless otherwise set out in the Service Description, Nelson Bay Online will refund any over payment on the Customer's account and any money that the Customer has paid in advance for the Service which is being cancelled on a pro-rata basis to the Customer;
 - (d) if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises Nelson Bay Online to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;
- 12.9 No cancellation fee shall be payable by the Customer:
- (i) if the Agreement is not a Fixed-Term Agreement; or
 - (ii) if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.

- 12.10 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises):
- (a) before the Service Start Date, the Customer must pay Nelson Bay Online all infrastructure and installation costs incurred by Nelson Bay Online in connection with preparations for supplying the Service to the Customer;
 - (b) during the minimum term, the Customer must pay Nelson Bay Online a cancellation fee or such higher amount as may be provided in clause 17; and
 - (c) the Customer must pay Nelson Bay Online all costs incurred to rectify the Customer's breach of the Agreement.
- 12.11 If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to Nelson Bay Online provided that if the Service is cancelled as a result of circumstances attributable to the Customer and Nelson Bay Online reinstates the Service, then the Customer may have to pay Nelson Bay Online a reconnection or reactivation fee or such higher amount as may be provided in clause 17.
- 12.12 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

13. Suspending the Service

- 13.1 Nelson Bay Online may suspend the Service at any time, without liability:
- (a) in any of the circumstances described in clause 12.5(a) to (h) and (k);
 - (b) if it is necessary to allow Nelson Bay Online or a supplier to repair, maintain or service any part of the Nelson Bay Online network or a supplier's network used to supply the Service;
 - (c) if Nelson Bay Online reasonably believes there has been an unusually high use of the Service; or
 - (d) problems are experienced interconnecting the Nelson Bay Online network with any supplier's network used to supply the Service.
- 13.2 Nelson Bay Online may suspend the Service under clause 13.1 as soon as Nelson Bay Online gives the Customer notice, unless otherwise set out in the Agreement. However, Nelson Bay Online may suspend the Service immediately if there is an emergency.
- 13.3 If Nelson Bay Online suspends the Service, Nelson Bay Online may later cancel the Service for the same or a different reason.
- 13.4 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.
- 13.5 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non Nelson Bay Online owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.
- 13.6 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Nelson Bay Online a suspension fee.
- 13.7 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to Nelson Bay Online provided that if the Service is suspended as a result of circumstances attributable to the Customer and Nelson Bay Online reactivates the Service, the Customer may have to pay Nelson Bay Online a reconnection or reactivation fee or such higher amount as may be set out in clause 17.

14. Liability

- 14.1 The Customer is liable to Nelson Bay Online for any breach of the Agreement that causes foreseeable loss to Nelson Bay Online.
- 14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to Nelson Bay Online for any consequential losses Nelson Bay Online suffers or for any costs, expenses, loss or charges that Nelson Bay Online incurs which are not a direct result of something the Customer has done.
- 14.3 Nelson Bay Online is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Nelson Bay Online fully indemnified

against any loss or damage incurred in connection with any claim against Nelson Bay Online by a Business End User in relation to:

- (a) the use (or attempted use) of the Service; or
- (b) the equipment used in connection with the Service.

14.4 Nelson Bay Online has responsibilities and obligations under the law, including under:

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

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

14.5 Nelson Bay Online may be liable to the Customer for:

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

14.6 Other than as provided in clauses 14.4 and 14.5, Nelson Bay Online is not liable to the Customer under this Agreement.

14.7 If the Customer has contributed to any loss or damage the Customer is claiming against Nelson Bay Online, Nelson Bay Online's liability is reduced to the extent of the Customer's contribution.

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

14.9 In relation to a Business Customer, to the extent permitted by law, Nelson Bay Online's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

15. Assignment and transfer

15.1 Nelson Bay Online may:

- (a) assign some or all of its rights under the Agreement to any person;
- (b) transfer some or all of its obligations under the Agreement to any Nelson Bay Online Group Company that is able to perform those obligations; and/or
- (c) perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Nelson Bay Online Group Company provided Nelson Bay Online remains responsible for the performance of the obligations, and the Customer irrevocably authorises Nelson Bay Online to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

16. General

- 16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally reside and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.
- 16.2 Nelson Bay Online owns all material (including intellectual property rights) developed by Nelson Bay Online or Nelson Bay Online's personnel, at Nelson Bay Online's direction.
- 16.3 Nelson Bay Online may permit the Customer to use this material, or other material licensed by Nelson Bay Online, as part of the Service. This permission is subject to any conditions which Nelson Bay Online may impose from time to time and will cease when the Service is cancelled.
- 16.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, Nelson Bay Online may suspend or cancel the Service without notice.
- 16.5 If the Customer has been provided with a service equivalent to the Service by another carrier, carriage service provider or service provider and has elected to have that service replaced by the Service under the Agreement (including, by churning), the Customer authorises Nelson Bay Online to:
- (a) inform that carrier, carriage service provider or service provider that the Customer has elected to have the Service supplied by Nelson Bay Online or have churned to Nelson Bay Online; and
 - (b) to take such action (including give such notices and sign such documents) on behalf of the Customer as may be necessary or appropriate to effect the transfer or churning transaction.
- 16.6 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:
- (a) the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
 - (b) the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.
- 16.7 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer are or become a carrier or carriage service provider, Nelson Bay Online may immediately cancel the Service by giving the Customer notice.
- 16.8 If the Customer breaches the Agreement and Nelson Bay Online does not exercise a right that Nelson Bay Online has because of the Customer's breach, Nelson Bay Online does not waive:
- (a) that right unless Nelson Bay Online gives the Customer notice in writing confirming that Nelson Bay Online have waived that right; or
 - (b) Nelson Bay Online's right to insist that the Customer perform any obligation the Customer has under the Agreement.
- 16.9 Nelson Bay Online may pay a commission to any of Nelson Bay Online's personnel in connection with the Agreement.
- 16.10 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.
- 16.11 Information and advice about the Customer's rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in the Customer's state or territory.
- 16.12 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:
- (a) to the Customer at the Customer's e-mail address, address and/or facsimile number indicated on the Application or the Customer's latest e-mail address, address and facsimile number notified to Nelson Bay Online in writing; and
 - (b) to Nelson Bay Online at Nelson Bay Online's latest address and facsimile number indicated on Nelson Bay Online's website at <https://www.nelsonbay.com>.

Any such notice shall be deemed to be received:

- (a) in the case of delivery, at the time of delivery;
- (b) if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed;
- (c) in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error;
- (d) in the case of an e-mail, on production of a e-mail header indicating delivery without error.

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

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

17. Service Description and Specific Terms - nbn™ Services

17.1 Subject to the terms of this document the following nbn™ Services are available from us:

- (a) the nbn™ Fibre Service;
- (b) the nbn™ Fixed Wireless Service.

17.2 nbn™ Fibre is a high speed broadband access service where the service will be supplied using one of a mix of technologies that have a fibre component to them. The mix of technologies includes:

- (a) Fibre to the Premises (FTTP) where the fibre will run all the way to the premises;
- (b) Fibre to the Node (FTTN) where the fibre will reach a neighbourhood node or cabinet and from there uses NBN Co owned or controlled copper cabling to the customer's premises;
- (c) Fibre to the Building (FTTB) where the fibre will reach the basement of multi dwelling units and uses the existing copper in the building to supply connectivity between the unit in the building and the fibre in the basement.

17.3 nbn™ Fixed Wireless is a high speed broadband access service that is supplied using a point to point wireless service that is part of the nbn™ network. It is available to premises where nbn™ Fibre will not be made available. The service will require the installation of wireless radio equipment in the premises.

17.4 The nbn™ Service is only available within a nbn™ Service enabled area. All nbn™ Services are subject to availability and provisioning feasibility. We may refuse to provision a nbn™ Service in our absolute discretion.

17.5 In order to be able to receive the nbn™ Service:

- (a) your Premises must be connected to the nbn™ Access Network;
- (b) the NBN Co equipment must be installed by NBN Co or NBN Co approved installer; and
- (c) if using multiple devices, you will require and nbn™ ready router.

17.6 The nbn™ Service Plan you choose will stipulate the access connection speed for the Service. This is a speed nominated by NBN Co and represents the maximum speed that will apply to your service.

17.7 The actual speeds for the service may be slower and vary due to many factors including type/source of content being downloaded, hardware and software configuration, the number of users and performance of interconnecting infrastructure not operated by Nelson Bay Online. Devices connected by Wi-Fi may experience slower speeds than those connected by Ethernet cable.

17.8 nbn™ Access is only available at locations that NBN Co has activated. You may check whether your premises are nbn™ activated by using the coverage checker available on the Nelson Bay Online website. This is indicative only and Nelson Bay Online does not guarantee that it will be able to accept all applications for service.

17.9 The installation process will vary depending on whether your premises has been connected, meaning that NBN Co has

installed relevant facilities and network termination devices into the premises.

- 17.10 If the premises have already had a connection made to the nbn™ network, installation generally can be completed without the need for you to be physically present at the premises.
- 17.11 If the premises require NBN Co to install any infrastructure or equipment, you or your authorised representative will need to be present at the premises at a time and date that is nominated by us. In the absence of intervening factors, a NBN Co representative will attend the premises and install the necessary infrastructure and equipment. You must co-operate with the NBN Co representative and comply with all reasonable requests of the NBN Co representative.
- 17.12 If you wish to re-schedule an installation appointment you must provide us with at least 3 working days' notice. If you do not provide us with at least 3 working days' notice or you miss your scheduled appointment you may be charged a missed installation appointment fee. The NBN Co representative or Nelson Bay Online may reschedule an appointment with you. We are relying on NBN Co to tell us about a reschedule of your appointment and will give you as much warning as we reasonably can.
- 17.13 We will use due care in organising your appointment time and there may be other statutory guarantees, implied conditions or warranties under consumer protection laws that cannot be excluded which may apply. However, given that Nelson Bay Online is not solely responsible for the installation of your nbn™ Service or equipment needed to use the nbn™ Services, Nelson Bay Online cannot promise that your appointment time will be met and there may be circumstances where your appointment cannot go ahead at the scheduled time or date. To the extent reasonably permitted under consumer protection laws, Nelson Bay Online excludes liability to you for any damage or loss you suffer because the appointment did not occur at the scheduled time or date where the failure to meet the appointment time was not contributed to by Nelson Bay Online.
- 17.14 A range of NTD may be used by NBN Co. However, you must follow the reasonable instructions of the NBN Co representative or the manuals provided with the NTD. In general, both the NBN Co power supply unit and the modem must always be connected directly to mains power supply. If your mains power supply fails or the power is turned off, and you have no backup battery for the NTD and the modem, all services delivered through the nbn™ network will stop working.
- 17.15 Some services offered by third party carriers, such as PABX systems, certain fax services, EFTPOS and back-to-base alarms may be incompatible with the nbn™ service and may not be available to you after connection of the nbn™ service.
- 17.16 You may not resell, onsell or otherwise onward supply your nbn™ Access service. You must ensure that it is not made available or used by ISPs, Internet Cafés or Web Hosting Companies.
- 17.17 You agree that a nbn™ connection can only be used at one physical location and with one network system operation at this site. You may not use the connection for multiple locations.
- 17.18 You must ensure that you have compatible, working equipment installed to access and use your nbn™ service including, but not limited to router and cabling. We will not compensate you for access or performance problems caused by equipment which is not supplied by us.
- 17.19 If we have agreed to supply you with a piece of equipment, we reserve the right to and may supply an alternative model or brand of modem/router, of similar quality and technical specification to the one displayed on the Nelson Bay Online website when you registered.
- 17.20 Nelson Bay Online only provides technical support for makes and models of modem/router supplied by Nelson Bay Online. If you are using a model of modem/router not supplied by Nelson Bay Online, assistance may be available directly from the manufacturer's own technical support service.
- 17.21 We will only deliver ordered equipment to the delivery address supplied by you in your application for service.
- 17.22 In a situation where you are not available to receive delivered equipment and the equipment is returned to us, the cost of the return will be borne by you. In addition, we will charge you to redirect/resend the equipment. Shipping & handling fees are non-refundable.
- 17.23 You must ensure that the equipment installed is not covered in a way that prevents air circulating around the equipment.
- 17.24 While we will endeavour to make nbn™ services available to customers 24 hours a day, 7 days a week, nbn™ services are not fault free and we cannot guarantee uninterrupted service, or the speed, performance or quality of the service.
- 17.25 There are many factors outside of our control that may affect nbn™ services, such as the performance of third party suppliers and equipment, force majeure events and your hardware and software configuration.
- 17.26 You agree your nbn™ Service is provided to you by us and not NBN Co and you do not have a contract with NBN Co. You agree to report to us – and specifically NOT to NBN Co - any faults or other issues with the nbn™ Service that you are

obtaining from us.

- 17.27 If your nbn™ Service is faulty, in most cases you will be required to be at the Premises where the nbn™ Service is installed for the fault to be fixed. If Nelson Bay Online requires you to be at the Premises during fault fixing, we or our contractor will contact you to arrange a suitable time.
- 17.28 If you lodge a fault on the nbn™ Service and a technician has attended your Premises, and the fault is found to be within your own equipment, you will be required to pay an Incorrect Call-Out Fee (as specified in the Summary of other charges at the end of this document).
- 17.29 There may be circumstances where Nelson Bay Online needs to escalate the fault to NBN Co. If NBN Co determines that the fault is caused by your equipment (for example faulty cabling or router), you will be charged a fee for Incorrect NBN Co Fault Lodged as set out in the Summary of other charges, at the end of this document.
- 17.30 You use the service at your own risk and we take no responsibility for any data downloaded and/or the content stored on your computer. You agree not to make any claim against us, our suppliers, employees, contractors or assignees for any loss, damages or expenses relating to, or arising from, the use of the broadband service and/or our email services.
- 17.31 Definitions in this Service Description

National Broadband Network means the network operated by NBN Co which is intended to provide all premises in Australia with access to a broadband Internet service through fixed line, wireless or satellite technologies.

NBN Co means NBN Co Limited ABN 86 136 533 741.

Network Boundary Point means the point where the NBN Service is provided to, which is:

- (a) in relation to nbn™ Fibre (FTTP), nbn™ HFC, or nbn™ Fixed Wireless the Ethernet port on the network termination device at your Premises;
- (b) in relation to nbn™ FTTB, your side of the main distribution frame, located in the multi-dwelling unit site where your Premises is located; and
- (c) in relation to nbn™ FTTN, the Telecommunications Outlet, or if present, the Passive NTD.

NTD means a network termination device that is a demarcation point between a carrier's network and customer cabling or equipment.

Required Equipment includes a modem and any other customer premises equipment that is required to access the Service.

Telecommunications Outlet means the first accessible point your Premises at which Required Equipment can be terminated and connected to a copper pair for the transmission of a nbn™ FTTB/FTTN Service.

18. Summary of other charges

\$2.00 Spam filter per @nelsonbay.com e-mail address

\$10.00 Failed Payment Fee

\$1.10 Per month if paying by credit card

\$100.00 Change of name or ownership

\$20.00 Per change of static IP address (on the 31st and each subsequent request)

\$30.00 Service e-mail address for 6 months after nbn™ service cancellation if you request it

\$45.00 Service web space for 6 months after nbn™ service cancellation if you request it

\$220.00 Incorrect Call Out Fee

\$220.00 Not in Attendance Fee

\$300.00 nbn™ New Development Charge applies if your premises is identified by nbn™ as being within the site boundary of a new development

Incorrect NBN Co Fault lodged

- No technician visit - \$50.00
- With technician visit - \$150 for first 2 hours, \$75/hour thereafter (Minimum charge \$150)

On Request Ad hoc, or any other charges will be advised at time of application, enquiry or request.