

PRIMUS STANDARD FORM OF AGREEMENT MOBILE SERVICES

(version 211205)

This document:

- Is a standard form of agreement (“SFOA”) under section 479 of the Act;
- Replaces previous SFOA for Mobile Services;
- May be amended by Primus from time to time;
- Does not apply if and to the extent otherwise agreed between Primus and Customer.

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MOBILES SERVICE SCHEDULE

1. AGREEMENT FOR SUPPLY OF MOBILE SERVICES

Primus will supply a Mobile Service to Customer under the applicable Plan and Customer's Application and on the terms set out in this Standard Form of Agreement under section 479 Telecommunications Act 1997, which comprises this Service Schedule and the Core Terms.

2. INTERPRETING THIS SERVICE SCHEDULE

2.1 The definitions and rules of interpretation in the Core Terms apply to this Service Schedule.

2.2 "ACMA" means the Australian Communications and Media Authority.

2.3 "CDMA" or "Code Division Multiple Access" means a digital cellular technology that uses spread-spectrum techniques. CDMA is a form of multiplexing, which allows numerous signals to occupy a single transmission channel, optimizing the use of available bandwidth. The technology is used in ultra-high-frequency (UHF) cellular telephone systems in the 800-MHz and 1.9-GHz bands.

2.4 "CLI" means Calling Line Identification.

2.5 "Core Terms" means that part of this document with the heading "(Core Terms)".

2.6 "GPRS" or "General Packet Radio Service" means a GSM data transmission technique that does not set up a continuous channel from a portable terminal for the transmission and reception of data, but transmits and receives data in packets.

2.7 "GSM" or "Global System for Mobile communications" means a standard for digital cellular communications. The GSM standard is currently used in the 900 MHz and 1800 MHz bands.

2.8 "IMEI Number" or "International Mobile Equipment Identification Number" is a unique identification number for all GSM Mobile Devices. Press *#06# to find out your Mobile Device's unique IMEI Number.

2.9 "International Roaming" means a mobile phone service that allows Customer to use cellular services while travelling outside Australia.

2.10 "Minimum Term" means a period for which Customer has committed itself to acquire a Service.

2.11 "MNP" and "Mobile Number Portability" means the Porting of a mobile service number from one mobile carrier to another And "Porting" has a corresponding meaning.

2.12 "Mobile Device" means any device capable of sending or receiving GSM, CDMA or GPRS or other signals transmitting voice and data traffic and includes mobile phones, mobile handsets and network enabled PDA's.

2.13 "Mobile Service" means a carriage service that enables Customer to, subject to the capabilities of their Mobile Device:

2.13.1 make voice grade calls to, and receive voice grade calls from telephone numbers within Australia and internationally subject to network interconnection arrangements to which Primus is a party or has a right to benefit from;

- 2.13.2 send data traffic to and from computers, Mobile Devices and other devices.
 - 2.14 "PDA" means personal digital assistant.
 - 2.15 "Plan" means one of the different packages (taking into account choices of GSM or CDMA network, handset, length of Minimum Term, monthly access fee, call costs, etc) of Mobile Services from time to time offered by Primus.
 - 2.16 "Primus CDMA Service" means a Mobile Service provided by Primus utilizing the Telstra CDMA network within Australia and having only those features that may be made available to Primus by Telstra from time to time.
 - 2.17 "Primus GSM Service" means a Mobile Service provided by Primus utilizing the Telstra GSM (Global System for Mobiles) network within Australia and having only those features that may be made available to Primus by Telstra from time to time;
 - 2.18 "Resold Service" means a service that Primus acquires from an Other Supplier and re-supplies as a Service or part of a Service.
 - 2.19 "SIM" or "Subscriber Identity Module" is the removable chip used in a GSM Mobile Device. SIM chips provide the "identity" for a cellular phone, and can be swapped between phones and carry phone book entries.
 - 2.20 "SMS" or "Short Message Service" enables Customer to send and receive text messages using a Mobile Device.
3. NON-APPLICATION OF CORE TERMS
- 3.1 Clauses 7 and 15 of the Core Terms do not apply to this Service Contract.
4. SERVICE COVERAGE
- 4.1 A Mobile Service is not available in all areas within Australia. Primus will provide Customer with the opportunity to view Mobile Service coverage maps on request.
 - 4.2 The quality of the Mobile Service in each coverage area will vary. Capacity may not be available or be consistent within a Mobile Service coverage area and "drop-outs" may occur.
 - 4.3 International Roaming may not be available in all countries and is subject to coverage in those countries, commercial agreements with network providers in those countries and appropriate network conditioning.
5. SERVICE OPTIONS
- 5.1 This Service Schedule contains the terms and conditions on which Primus supplies:
 - 5.1.1 the Primus CDMA Service; or
 - 5.1.2 the Primus GSM Service.
 - 5.2 Primus will supply a Primus CDMA Service or Primus GSM Service on the Plan Customer has selected in the Application.

6. MOBILE DEVICE OPTIONS

- 6.1 Primus provides the Mobile Service only and not Equipment. Primus does not, except when specifically stated in writing by Primus, provide the Mobile Device Customer selects to use in connection with the Service. The Mobile Device is generally supplied by a third party and Primus makes no warranty as to:
 - 6.1.1 the suitability of the Mobile Device for use in connection with the Mobile Service;
 - 6.1.2 the suitability of the quality or features of the Mobile Device;
 - 6.1.3 the safe operation of the Mobile Device.
- 6.2 Risk and title in the Mobile Device passes to Customer on delivery.
- 6.3 Customer must ensure that the relevant regulatory authorities and the mobile network provider approve any Mobile Device that he/she uses in connection with a Service.
- 6.4 Mobile Devices may interfere with sensitive biomedical devices. An affected Customer should seek medical advice before using a Mobile Device.

7. PLAN CHANGES

- 7.1 Customer may change a Plan after the end of any Minimum Term. Customer will not be charged for the change. The terms and conditions, including the Charges and Minimum Term of the new Plan will apply from when the Plan change takes effect.
- 7.2 Customer may change to any Plan comprising higher fixed monthly charges at any time during the Minimum Term without extra charge. The new Charges will apply from the time the change takes effect.
- 7.3 If Primus allows Customer to change to a Plan comprising lower fixed monthly charges Primus may apply an additional Charge. Primus will advise Customer of that Charge before the change takes effect.

8. SERVICE VARIATION OR SUSPENSION

- 8.1 Primus may vary a Mobile Service if reasonably required for technical, operational or commercial reasons.
- 8.2 In addition to Primus' other rights, Primus may suspend a Service immediately where:
 - 8.2.1 repair, maintenance or servicing of any part of the GSM or CDMA networks is required; or
 - 8.2.2 problems are experienced interconnecting a GSM or CDMA network with any other network.
- 8.3 Primus will endeavor to give as is reasonably practicable when varying or suspending Service under clauses 8.1 or 8.2, however is not obliged to do so.

9. NO REBATE FOR UNUSED ENTITLEMENTS

- 9.1 If a Plan includes an allowance for a certain volume of calls in a period:

9.1.1 there is no rebate if Customer makes a lesser number or volume of calls; and

9.1.2 unused calls do not carry forward.

10. EARLY CANCELLATION OR DISCONTINUANCE

If Primus agrees to allow Customer to cancel a Plan or Service Contract before the end of any Minimum Term (which it is not obliged to do) or if, before the end of any Minimum Term, a Service Contract is terminated or a Service discontinued by reason of the failure of Customer to comply with any of its obligations, then (subject to Australian Communications Industry Forum Guideline for Consumer Contracts, if that Guideline is applicable to Customer) Customer must pay, at Primus' option;

10.1 any:

10.1.1 cancellation fee specified in the Plan (and if none is specified, a fee of \$20.00); plus

10.1.2 cancellation or other fee that Primus is obliged to pay any Other Supplier as a result; or

10.2 the total of any other Fixed Charges that would have been payable to Primus over the balance of the Minimum Term of the Plan if it had not been cancelled; or

10.3 if a Charge applicable for the Plan is less than it would have been without Customer's commitment to the Minimum Term, Primus may recalculate the Charge, applicable from the commencement of the Plan, disregarding the amount of the reduction, and back bill for the additional Charge.

10.4 Primus is not obliged to make a refund of Charges paid.

11. LOST AND STOLEN MOBILE DEVICES

11.1 Customer is responsible for the security of his/her Mobile Device.

11.2 Customer must report a lost or stolen Mobile Device to Primus immediately. On receiving a report of a lost or stolen Mobile Device Primus may;

11.2.1 Suspend Customer's Service so no calls may be made;

11.2.2 If Customer provides Primus with the IMEI number of the lost or stolen Mobile Device, take action to block calls from the Mobile Device and prevent connection of the Mobile Device to a network of another provider.

11.3 Unless otherwise specified by Primus, Customer remains responsible for and must pay the Charges for the Minimum Term in accordance with the Plan.

12. PHONE NUMBERS

12.1 All phone numbers are selected in accordance with the ACMA's numbering plan and numbering directions. In order to comply Primus may from time to time, be required to suspend, withdraw, vary or re-assign a number. Primus will endeavor to give Customer as much notice as possible.

12.2 If Customer ceases to acquire a Mobile Service the right of the Customer to use the phone number ceases unless Customer follows the approved procedures to transfer the number to another mobile services provider.

- 12.3 Customer acknowledges that Primus or Telstra may be required by law enforcement or other agencies to intercept communications to or from a Mobile Service.
13. MOBILE NUMBER PORTABILITY
- 13.1 Customer may be able to retain (Port) their existing mobile phone number if Customer transfers to or from a Mobile Service provided by Primus.
 - 13.2 When deciding to change providers Customer should note:
 - 13.2.1 Only the active phone number may be Ported. Value Added or other Services may not be transferred.
 - 13.2.2 Customer may have outstanding contractual obligations, usually associated with minimum term contracts, with Customer's existing provider and may be required to pay termination fees;
 - 13.2.3 Customer may need a new phone if Porting between the GSM and CDMA networks;
 - 13.2.4 Any conditions that apply if Customer has a prepaid account, including whether or not unused credits may be refunded to Customer or whether Customer needs to remove any SIM security or network locking; and
 - 13.2.5 There may be a brief interruption in service during Porting.
14. CLI AND IPND
- 14.1 If Customer does not bar CLI when making a call from Customer's Mobile Device, Customer's phone number may be displayed on the equipment of the called party.
 - 14.2 Primus, like other service providers, is required by law to supply Customer's name, address, telephone number and other customer details to the Integrated Public Number Database (IPND). Unlisted service information is marked and controlled in the IPND to prevent its disclosure to, for example, directories or directory assistance services. The information in the IPND may only be used for approved purposes, which include assisting emergency services or law enforcement agencies.
15. GENERAL
- 15.1 Primus may be required by law enforcement agencies or government bodies to intercept calls without notice to Customer. Customer consents to this interception.
 - 15.2 Primus may impose such rules regarding the supply of the services as it considers from time to time. Such rules may include but will not be limited to the number of Mobile Services a Customer may have with Primus.
 - 15.3 A Customer should contact Primus customer service to make a complaint or report a fault.
 - 15.4 Primus may block a Mobile Device by invalidating the IMEI Number when Primus considers, in its absolute discretion, that the Mobile Device may have been lost or stolen.

15.5 Customer is solely responsible for any content accessed using the Mobile Service. Primus does not monitor or control content.

CORE TERMS

1. DEFINITIONS AND INTERPRETATION

The following definitions and interpretations apply unless the context requires otherwise:

- 1.1 "Agreement" means these Core Terms, and where the context allows, the Service Contract of which these Core Terms form part;
- 1.2 "Act" means the Telecommunications Act 1997;
- 1.3 "Application" means an application, in any format acceptable to Primus, for Service or Services submitted by a Customer to Primus;
- 1.4 "Charges" means amounts payable to Primus by a Customer for the Services;
- 1.5 "Confidential Information" of a party means all information (except information that is in the public domain other than as a result of a breach of an obligation of confidentiality) regarded by that party or any Related Body Corporate as being confidential, whether the other party became aware of the information before or after entering into this Agreement. The Confidential Information of Primus includes the terms of this agreement;
- 1.6 "Consumer Legislation" means Trade Practices Act 1974 (C'ith), the Fair Trading Acts of the states and other equivalent or like legislation of an applicable jurisdiction;
- 1.7 "Customer" means a person who submits an Application or to whom Primus supplies a Service;
- 1.8 "Customer Equipment" means Equipment (including Equipment Sold) owned by, or in the possession, custody or control of a Customer and which is not Primus Equipment;
- 1.9 "Due Date" means the date by which a Charge is payable and, unless a Service Contract specifies another date, is the date which is 14 days after the date of the Invoice on which that Charge first appears;
- 1.10 "Emergency" means any actual or apprehended event or condition that in the reasonable opinion of Primus may endanger the safety or health of a person, or damage any property or cause interruption to any Service or affect in any way the normal operation of the Primus Network or any interconnected network or expose any person to legal liability or to any loss, damage or expense;
- 1.11 "Equipment" means any hardware, software or other infrastructure used in connection with a Service;
- 1.12 "Equipment Sold" means Equipment sold by Primus to Customer under this Agreement;
- 1.13 "Fixed Charge" means a Charge that is fixed, and is not calculated by reference to volumes of data transferred or stored, or time online, or other variable factors;
- 1.14 "GST" means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.15 "Invoice" means an account rendered by Primus for Charges;
- 1.16 "iPrimus" means that business name and/or trademark owned and used by Primus;

- 1.17 "Minimum Term" means any minimum period or one of successive minimum periods agreed by the parties as the duration of a Service Contract;
- 1.18 "Other Supplier" means Telstra Corporation Ltd or other third party supplier (whether to Primus or to Customer direct) of goods or services in relation to the Services;
- 1.19 "Other Supplier Infrastructure" means Equipment provided by Other Suppliers used in the provision of the Services;
- 1.20 "Primus" means the two companies so identified at the start of this Agreement or if only one of them supplies a particular Service and the context so admits, then that one of those companies;
- 1.21 "Primus Equipment" means Equipment supplied by or on behalf of Primus (other than Equipment Sold);
- 1.22 "Primus Network" means the telecommunications network owned or operated by Primus and includes the Primus Equipment and where the context permits includes any connected telecommunications network;
- 1.23 "Primus Telecom" means that business name and/or trademark owned and used by Primus;
- 1.24 "Related Body Corporate" has the meaning given to it in the Corporations Act;
- 1.25 "Residential Service" means a Service which is of a type, or which is supplied on terms, which Primus designates for residential or private use.
- 1.26 "Service" means each telecommunications service (including the provision of Primus Equipment and sale of Equipment Sold) which is of a type to which section 479 of the Act applies, provided by Primus to the Customer, whether the subject of an Application or not;
- 1.27 "Service Contract" means a contract for the supply of a Service, comprising the Application, if any, the terms and conditions of this Agreement and the Service Schedule, if any, applicable to that Service;
- 1.28 "Service Schedule" means all the terms on which Primus supplies a particular Service (being, unless it is otherwise agreed, those which are set out in a designated service schedule or those from time to time published or notified by Primus as being applicable to that Service or to the plan under which that Service is supplied to the Customer);
- 1.29 "Site" means a location owned, occupied or used by Customer at which there is Primus Equipment or Customer Equipment or to which Primus provides Services;
- 1.30 headings are for convenience only and do not affect the interpretation of this Agreement;
- 1.31 the singular includes the plural and conversely;
- 1.32 a gender includes all genders;
- 1.33 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.34 a reference to a person includes a body corporate, an unincorporated body or other entity and vice versa;

- 1.35 a reference to a party means Primus or a Customer and includes the party's successors and permitted assigns;
- 1.36 a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

2. APPLICATIONS

- 2.1 Customer will, if required by Primus, submit an Application for each Service, but acknowledges that this Agreement will, unless it is agreed otherwise, also apply to Services supplied by Primus at the request of the Customer, in respect of which Customer has not submitted a formal Application.
- 2.2 Customer undertakes that all information given by the Customer in relation to an Application is complete and correct and acknowledges that Primus is not obliged to accept any Application.
- 2.3 Where applicable, Customer authorises Primus, on its behalf, to obtain information from an existing provider to it of telecommunications services and to complete and sign documentation and to take all steps necessary to transfer its accounts and services from that existing provider to Primus.
- 2.4 Customer is responsible for amounts charged for goods and services supplied or to be supplied to Customer by that existing provider or any Other Supplier, including amounts billed direct, for example for override calls.

3. SERVICES

- 3.1 Primus will provide Services to the Customer on the terms of the Service Contract applicable to that Service.
- 3.2 Primus will supply the Services using the Primus Network and facilities and services of Other Suppliers as it reasonably sees fit.

4. CHARGES

- 4.1 The Charges for each Service are those that are specified in this Agreement; otherwise, they are those that are from time to time fixed by Primus as the Charges for each Service (details of which are on the Primus website or can be obtained from Primus on request and in respect of any changes to which Primus has given such notification as is required by law).
- 4.2 The Customer must pay Primus the Charges by the Due Date, in a manner specified in the Invoice.
- 4.3 If Customer has elected to pay by credit card, Primus may without further notice, debit to the credit card, at times when they are due for payment, all Charges, whether Fixed Charges or otherwise.
- 4.4 Customer is responsible for payment of Charges arising out of the use of a Service by Customer or by any other person, whether with or without the consent of the Customer. Customer is therefore advised to prevent any unauthorised person from accessing the Service.
- 4.5 If a Service is used to access the facilities or services of an Other Supplier, amounts charged by that Other Supplier are, unless this Agreement specifies otherwise, the responsibility of the Customer, who will indemnify Primus. If those amounts are charged to Primus, Primus may include them in the Charges.

- 4.6 If any Charge is not expressed to be GST inclusive, the Customer will pay to Primus at the same time an amount equal to the amount of GST on the supply. Primus will issue a tax invoice to the Customer.
- 4.7 If Customer does not pay an Invoice by the Due Date, Primus may charge a fee not exceeding \$15.00 to cover additional administration. Primus may also charge interest at the rate in the Penalty Interest Rates Act 1983 (Victoria) on overdue Charges from the Due Date until paid, together with any expense incurred by Primus as a result of the default by the Customer.

5. INVOICES

- 5.1 Primus will usually render Invoices at or about monthly intervals, or at other intervals as are agreed, but Primus may, where it is reasonable to do so, vary the timing or frequency of Invoices. Primus may include in an Invoice Charges in respect of previously unbilled Services which were performed in an earlier period, (but where the Billing Code is or would be applicable, not Charges which are older than 190 days from the date when the Charge was incurred).
- 5.2 Unless otherwise agreed, Charges that are Fixed Charges will be payable in advance and other Charges will be payable in arrears.
- 5.3 Unless shown to be incorrect, an Invoice is sufficient evidence of the provision of the Services and of the entitlement to make the Charges to which the Invoice relates.

6. PERSONAL INFORMATION / CREDIT CHECKS

- 6.1 Customer authorises Primus to conduct credit checks and searches and to use that information to assess Customer's credit worthiness. Primus may give to a credit reporting agency the following information:
 - 6.1.1 identity particulars (as permitted by the Privacy Commissioner's determination);
 - 6.1.2 the fact that Customer has applied for credit and the amount;
 - 6.1.3 the fact that Primus is a current credit provider to Customer;
 - 6.1.4 payments which become overdue more than 60 days and for which collection action has commenced;
 - 6.1.5 advice that payments are no longer overdue;
 - 6.1.6 cheques drawn by Customer which have been dishonoured more than once;
 - 6.1.7 in specified circumstances, that in the opinion of Primus, Customer has committed a serious credit infringement;
 - 6.1.8 that the credit provided to Customer by Primus has been paid or otherwise discharged.
- 6.2 Primus may give to or seek from any credit provider named in a credit report issued by a credit reporting agency information about Customer's arrangements. Customer understands that this information can include any information about Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other (Section 18N(1)(b) Privacy Act). Customer understands the information may be used for the following purposes:

- 6.2.1 to assess an application for Customer for credit;
 - 6.2.2 to notify other credit providers of a default by Customer;
 - 6.2.3 to exchange information with other credit providers as to the status of this credit where Customer is in default;
 - 6.2.4 to assess Customer's credit worthiness.
- 6.3 If Primus considers it relevant to assess Customer's application for personal credit, Customer agrees that Primus may:
- 6.3.1 obtain a report about Customer's commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of persons;
 - 6.3.2 obtain from a credit reporting agency a credit report containing personal credit information about Customer in relation to commercial credit provided by Primus;
 - 6.3.3 receive from a credit reporting agency a credit report containing personal information about Customer in relation to collecting overdue payments.
- 6.4 Customer acknowledges and agrees that:
- 6.4.1 Primus may use Customer's personal information in connection with the Services and for this purpose may share it within the Primus Group and with other entities which provide services to Primus related to the provision of the Services;
 - 6.4.2 Primus may use it to inform Customer about other services offered by Primus and business partners and associates of Primus (Customer may elect not to have personal information used in that manner on request to Primus);
 - 6.4.3 Customer has the right to obtain access to certain Customer personal information held by Primus;
 - 6.4.4 Customer will inform Primus whenever a change occurs in Customer personal information;
 - 6.4.5 Primus Privacy Policy and Privacy Statement are available at <http://www.iprimus.com.au/privacy.asp>;
 - 6.4.6 Customer will not do anything that will cause Primus to breach any law relating to privacy or protection of personal information.

7. PRIMUS EQUIPMENT AND EQUIPMENT SOLD

- 7.1 This clause applies if the Services include the provision of Equipment to Customer.
- 7.2 Customer agrees to buy from Primus the Equipment Sold on the terms set out in this clause (unless otherwise agreed) namely:
 - 7.2.1 Primus will deliver the Equipment Sold to the agreed Site;
 - 7.2.2 Customer will pay Primus for the Equipment Sold upon delivery;
 - 7.2.3 In the case of goods, Primus will provide you with benefit of warranties given by the manufacturer or vendor of the Equipment Sold to Primus.

- 7.3 Title to an item of Equipment Sold will not pass to Customer until payment in full of the purchase price of that item.
 - 7.4 Risk in any Equipment Sold and in Primus Equipment will be with the Customer from the time of its delivery to a Site.
 - 7.5 Primus retains ownership of all the Primus Equipment and Customer will hold as bailee any Primus Equipment in its possession.
8. CUSTOMER OBLIGATIONS
- 8.1 Customer will not use a Service or any of the Primus Network other than in accordance with this Agreement or as otherwise authorised by Primus.
 - 8.2 Customer will comply with any reasonable directions from Primus regarding the Primus Network, the Customer Equipment and the Services.
 - 8.3 Customer will use a Service only for the purpose for which, and subject to the restrictions or conditions on which, it is supplied by Primus.
 - 8.4 The Customer agrees to use a Residential Service only for residential or private use and not for business or commercial purposes.
 - 8.5 Customer will provide to Primus timely and safe access to each Site and all the Equipment and any reasonable assistance and facilities that Primus may require for the purpose of inspection, maintenance, repair, or removal.
 - 8.6 Customer will use only Customer Equipment approved by Primus and will ensure that all Customer Equipment meets standards from time to time specified by Primus and is compatible with the Primus Network and is at all times in good working order. Without limitation, Customer acknowledges that the availability of local calls through the Primus Network depends on the suitability of Customer Equipment.
 - 8.7 Customer will not resupply to another person a Service except to the extent permitted under the relative Service Contract or with the consent of Primus and then only if Customer first obtains from that other person undertakings in writing that that person is aware of and will comply with the obligations imposed by this Agreement in relation to the Service. Customer will ensure that no other person does anything which if done by the Customer would constitute a breach of this Agreement.
 - 8.8 For the benefit of Other Suppliers, as well as Primus, Customer agrees in respect of each of the Services to comply with (and to ensure that no other person fails to comply with) the following obligations:
 - 8.8.1 not publish, copy or distribute material that is defamatory, offensive, abusive, obscene, menacing, threatening, harassing or illegal under any law at any place where transmissions are sent from, viewed or received;
 - 8.8.2 not publish, copy or distribute material where it has no right to do so (for example, someone else's copyrighted works or confidential information);
 - 8.8.3 comply with the law;
 - 8.8.4 not do anything which may expose Primus or the Customer or any Other Supplier to civil or criminal liability;

- 8.8.5 not do anything which may damage, interfere with or make unsafe the Primus Network or any Other Supplier Infrastructure;
 - 8.8.6 obtain any necessary consents and provide safe access to Other Suppliers (and to Primus) to Other Supplier Infrastructure on any Site and to indemnify Other Suppliers (and Primus) against any claim by the owner or occupier of a Site;
 - 8.8.7 if any Other Supplier (or Primus) requires modifications to any Customer Equipment to avoid danger or interference, to make those modifications;
 - 8.8.8 not without having appropriate authority, to connect to or allow to be or remain connected to Other Supplier Infrastructure (or to the Primus Network) any Equipment which does not meet any applicable standards made or declared by the Australian Communications Authority under the Act;
 - 8.8.9 comply with such other requirements of Other Suppliers as are notified to the Customer by Primus.
- 8.9 Customer acknowledges that:
- 8.9.1 no Other Supplier makes any warranties, whether express or implied, to Customer in respect of the Services or has any other liability to the Customer in respect of a Service; and
 - 8.9.2 no Other Supplier is responsible to the Customer for any damage arising from or in connection with any of the Services (including loss of data, delays, non-deliveries, mis-deliveries or service interruptions) caused by any Other Supplier's acts or omissions, intentional, negligent or otherwise or for any content accessed through a Service (including without limitation, offensive, illegal, inaccurate, incomplete or out of date information);
 - 8.9.3 Primus may, unless to do so would be contrary to its agreement with the Customer, at any time impose on Customer any variation, price increase, limitation, exclusion or other provision which becomes a term of supply by any Other Supplier.

9. FAULTS

- 9.1 Customer must report to Primus immediately, in such manner as Primus requires, any faults in relation to any Service or the Primus Network.
- 9.2 Primus will use reasonable endeavours to correct faults for which Primus is responsible, having regard to relative Service Contracts.
- 9.3 Customer will promptly correct faults in Customer Equipment which may affect any of the Services.

10. TERM AND TERMINATION

- 10.1 Each Service Contract will continue until it is terminated under this clause, either individually or collectively.
- 10.2 Except during any Minimum Term, when the rights of termination under this sub clause will not apply (unless the law requires otherwise), either party may terminate a Service Contract at any time:

- 10.2.1 in respect of Services which are Residential Services, on notice to the other party: and
- 10.2.2 in respect of other Services, on not less than 30 days notice to the other party.
- 10.3 Primus, without waiving any rights, may terminate this Agreement, or may terminate or suspend, for such period as Primus sees fit, any or all Services or Service Contracts, if:
 - 10.3.1 the Customer dies or becomes insolvent or bankrupt or has a receiver, manager, administrator or liquidator appointed; or
 - 10.3.2 the Customer fails to pay any Charge by the Due Date; or
 - 10.3.3 the Customer is in breach of any Service Contract; or
 - 10.3.4 the Customer has given to Primus in connection with an Application or request for a Service any information which Primus reasonably believes is not true; or
 - 10.3.5 the Customer or other user vacates a Site or ceases to use a Service without the prior approval of Primus; or
 - 10.3.6 the Customer or other user uses a Service in a manner which in the reasonable opinion of Primus is or may be illegal or exposes Primus to the risk of legal action; or
 - 10.3.7 Primus reasonably decides that such action is necessary to maintain, repair or protect any part of the Primus Network; or
 - 10.3.8 an Emergency occurs.
- 10.4 When a Service Contract is terminated:
 - 10.4.1 Primus may invoice any accrued Charges for each applicable Service, including any incurred after termination;
 - 10.4.2 Customer must pay all Charges when they are due;
 - 10.4.3 Primus has a lien over any Customer Equipment for unpaid Charges;
 - 10.4.4 Primus is entitled to unimpeded access to each Site in order to remove any Primus Equipment.
- 10.5 After any Service Contract ends:
 - 10.5.1 any right of action that arose before it ended survives;
 - 10.5.2 any provision that is expressly or by reasonable implication intended to survive termination continues to operate.

11. WARRANTIES

- 11.1 Where it is applicable, Primus will comply with the Customer Service Guarantee, the terms of which are set out on the Primus website www.primustel.com.au.
- 11.2 Primus acknowledges that Consumer Legislation may imply into this Agreement certain conditions and warranties that cannot lawfully be excluded, restricted or modified ("Statutory Warranties").

11.3 Subject to the Statutory Warranties and to any other warranties given specifically:

11.3.1 all conditions, warranties and other provisions which might otherwise have been implied into this Agreement or any Service Contract or otherwise in relation to the Services, are excluded;

11.3.2 because of the nature of telecommunications, Primus is not able to and does not give an implied warranty that any Service will be continuous or fault free or that any Service is suitable for or is supplied for an application that needs continuous fault free service.

12. LIMITATION OF LIABILITY

12.1 Where the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, and it is fair and reasonable to do so, the liability of Primus to the Customer is limited, at the option of Primus, to:

12.1.1 if the claim relates to goods, repair or replacement of the goods or payment of the cost of having the goods replaced; and

12.1.2 if the claim relates to services, supplying the services again or payment of the cost of having the services supplied again.

12.2 This sub clause 12.2 does not apply if the Services are supplied to the Customer as a "consumer" under applicable Consumer Legislation. If it does apply, it will in case of conflict, prevail over sub clause 12.1. To the extent permitted by law, the liability of Primus to the Customer or any other person, whether in contract, tort (including negligence), under statute or otherwise, arising out of or in any way relating to this Agreement:

12.2.1 except as expressly stated in this Agreement, is excluded;

12.2.2 where it cannot be excluded, is limited in total to \$20,000.00; and

12.2.3 excludes liability for any indirect, secondary or consequential loss or damage or for loss of income, profits or anticipated savings or loss of opportunity.

13. CUSTOMER INDEMNITY

The Customer indemnifies Primus, and where applicable each Other Supplier, against any loss, damage or expense in relation to or arising out of or in connection with a breach by the Customer of any of its obligations under this Agreement or the misuse by the Customer or any other person of any Service.

14. INTELLECTUAL PROPERTY

Customer acknowledges that (subject where applicable to the rights of Other Suppliers) Primus is the owner of all intellectual property rights, present and future, in all things related to the Primus Network or to the Services, including improvements developed during the term of this Agreement (whether or not those improvements are developed by or at the request of the Customer). To the extent necessary to give effect to this clause, Customer assigns and will assign to Primus all its interest in such intellectual property rights and will do all things reasonably necessary to give effect to such assignment.

15. NUMBERS

This clause is subject to the rights of the Customer in respect of a telephone number under the Telecommunications Numbering Plan 1997 and to any other legal rights that cannot be excluded. Numbers allocated by Primus to any Service may be varied by Primus from time to time. Customer will not transfer a number without consent of Primus. Customer has no legal interest or goodwill in any number allocated by Primus.

16. CONFIDENTIAL INFORMATION

Subject to this Agreement, each party agrees to keep in confidence and must not use or disclose any Confidential Information of the other party. This clause will not prevent Primus disclosing this Agreement to anyone undertaking due diligence enquiries or the like in relation to transactions to which Primus is a party.

17. FORCE MAJEURE

Primus is not responsible for any failure or delay in its performance of any obligation under this Agreement to the extent that the failure or delay is due to any cause beyond the reasonable control of Primus.

18. VARIATION

Primus reserves the right, subject to any agreement to the contrary and to compliance with the provisions of the Act, to vary any of the terms of any Service Contract.

19. NOTICES

19.1 A notice may be given by Primus to a Customer at any of:

19.1.1 in the case of a corporation, its registered office;

19.1.2 the fax number, email address, street or postal address specified in an Application or otherwise notified by the Customer to Primus (whether or not that address is the billing address);

19.1.3 an email address allocated by Primus under this Agreement for use by the Customer (and Customer consents to Primus sending by email to that address notices about this Agreement and other matters relating to the account of the Customer);

19.1.4 by display on a Primus website, the address of which has been or is notified by Primus.

19.2 A notice is duly given:

19.2.1 if personally delivered – at the time of delivery;

19.2.2 if posted by mail – at 10:00 am on the business day next following posting;

19.2.3 if emailed by Primus – 12 hours after sending;

19.2.4 if posted on a Primus website – 12 hours after posting;

19.2.5 if faxed - when the sender's fax machine indicates a successful transmission.

19.3 A notice from Primus need not be signed and, without limitation, may be incorporated on or enclosed with an Invoice.

19.4 A notice to Primus must be in writing delivered or sent by mail addressed to Primus General Counsel level 3 538 Collins Street Melbourne 3000.

20. GENERAL

- 20.1 If a provision of this Agreement is illegal, unenforceable, or invalid, it will be severed and the remaining provisions will not be affected.
- 20.2 The failure or delay by a party in enforcing any right under this Agreement is not a waiver of that right.
- 20.3 Subject to the Consumer Legislation if it is applicable, this Agreement contains the whole agreement between the parties to the exclusion of any prior or collateral agreement or understanding relating to the Services.
- 20.4 Where this Agreement is subject to legislation which prohibits it from being governed by the law of a place other than the state or territory in which it was entered into, then it is governed by the law of that state or territory; otherwise, to the maximum extent permitted by law, it is governed by and subject to the laws of Victoria. Each party submits to the exclusive jurisdiction of courts and tribunals in Victoria.
- 20.5 Customer will not transfer or assign any of its rights under this Agreement without the consent in writing of Primus. Primus will not unreasonably refuse to consent, or at its option to enter into a new contract with the prospective new customer, providing that Customer is not then in breach and that the prospective new customer meets the requirements of Primus for new customers.
- 20.6 Primus may assign all or any of its rights under this Agreement in connection with securing borrowings or other obligations or the sale, transfer or restructure of its business. Primus is not required to give notice in advance to Customer, but Customer will not be affected by the assignment until Primus does give notice.

21. SCHEDULE ACIF CODES

See also Schedule ACIF Codes: special rights and protections, which sets out additional Customer rights.