

**PRIMUS STANDARD FORM OF AGREEMENT FOR DIGITAL DIRECT SERVICES**  
(version 211205)

This document:

- Is a standard form of agreement ("SFOA") under section 479 Telecommunications Act 1997;
- May be amended by Primus from time to time;
- Does not apply if and to the extent otherwise agreed between Primus and a Customer.

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**DIGITAL DIRECT SERVICE SCHEDULE**

1. AGREEMENT FOR SUPPLY OF DIGITAL DIRECT SERVICES  

Primus will supply Digital Direct Services to the Customer in accordance with the Customer's Application and on the terms of this standard form of agreement, which comprises this Service Schedule and the Core Terms (and where applicable the Service Schedule of the Internet SFOA).
2. INTERPRETING THIS SERVICE SCHEDULE
  - 2.1 The following definitions and those in the Core Terms apply in this Service Schedule.

- 2.2 "Broadband" or "Digital Direct Broadband" means Internet Services utilising Internet Access over the Primus Network by means of DSL (or alternative technology chosen by Primus).
- 2.3 "CSG Standard" means the Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2) as applicable from time to time.
- 2.4 "Core Terms" means that part of this Agreement with the heading "Core Terms".
- 2.5 "Corporate Customer" means a Customer who meets Primus criteria for acceptance as a Corporate Customer and to whom Primus supplies Services which Primus designates as being for its Corporate Customers.
- 2.6 "Customer Service Guarantee" means the duties imposed on Primus under the CSG Standard.
- 2.7 "Digital Direct Bundle" means a Digital Direct Service or several Digital Direct Services supplied under a contract with a Minimum Term agreed by Primus as constituting a bundled offer.
- 2.8 "Digital Direct Service/s" or "Digital Direct" or "Service/s" means, subject to the context, those of the following which are applicable, namely Voice and Digital Direct Broadband and ISDN BRA (and where the context allows, includes other Services of any type which Primus may agree to include in a Digital Direct Bundle).
- 2.9 "Early Termination Payment" means a Charge of \$110.00 in respect of each Service Component affected by or related to the event which gives rise to liability for the payment.
- 2.10 "Features" means those Services or attributes of Services which are identified as Features in this Agreement and any others offered and agreed to by Primus in the future.
- 2.11 "Internet Access" means being able to access the Internet such that data can be transferred to and from the user's computer.
- 2.12 "Internet Services" means Services that provide Internet Access and related Services, including if it is so agreed, access to email.
- 2.13 "Internet SFOA" means the Primus Standard Form of Agreement Internet Services.
- 2.14 "ISDN BRA (Integrated Services Digital Network Basic Rate Access)" means a Service providing two (2) 64kb/s voice or data channels utilising ETSI protocol.
- 2.15 "Minimum Term" bears the meaning given in the Core Terms. (For avoidance of doubt, a month-to-month contract term is not a Minimum Term).
- 2.16 "Ordinary Telephone Service" means telephone service of the usual type, equivalent in function to that known as POTS, with a minimum of 4 lines unless Primus otherwise agrees;
- 2.17 "Service Component" means each component of a Digital Direct Bundle, and where the context permits, each telephone line or other individual component of a Digital Direct Service, including a mobile handset or a Broadband Service.

- 2.18 "Special Tariff" (which may also be referred to by Primus as a Bundle Tariff or by some other name) means the Charges applicable to a Digital Direct Bundle for a Customer who complies with any specified pre-requisites.
- 2.19 "Standard Tariff" means the Charges for each Digital Direct Service for a Customer who is not eligible for a Special Tariff.
- 2.20 "Voice" means a telephone service connected to the Primus Network being an Ordinary Telephone Service that is supplied by Primus as a Digital Direct Service.

### 3. DIGITAL DIRECT AVAILABILITY AND CONDITIONS

- 3.1 Digital Direct is designed for and offered to Corporate Customers only (and not, unless Primus otherwise agrees, its Residential Customers).
- 3.2 Primus does not supply or offer to supply Digital Direct in all areas or in all locations within an area. Without limiting the previous sentence, Primus does not supply or offer to supply Digital Direct at any location which is outside a geographic area in which Primus offers supply nor at any location within such area at which Primus judges that it may be unable, for any technical or other reason, economically to effect and maintain supply.
- 3.3 Availability of Digital Direct depends on the access network and the continuing suitability of the Customer's line.
- 3.4 Customer acknowledges that the IAD (integrated access device) and any other Equipment for Digital Direct that is installed by Primus at a Site is and remains Primus Equipment, except to the extent otherwise specifically agreed.
- 3.5 Customer is responsible for providing and maintaining a suitable power supply for Digital Direct and acknowledges that an interruption to the power supply may cause an interruption to Digital Direct Services.
- 3.6 If a Service is suspended or disconnected because of anything for which the Customer is responsible (for example late payment of account) Primus may, without affecting its right to cancel the Service, charge a reconnection fee.
- 3.7 The Customer acknowledges that some services are not compatible with Digital Direct Services or may not function properly or at all over that telephone line or may only function if additional equipment is installed. Where additional equipment is so required, Customer agrees to install it at its cost.

### 4. CANCELLATION AND EARLY TERMINATION

- 4.1 If Customer withdraws or cancels an Application in respect of a Service before that Service is activated by Primus, Customer will be liable to pay to Primus a cancellation fee of \$50.00 for each Service Component comprised in that Service. This constitutes agreed compensation for work done and expense incurred by Primus in respect of that Application.
- 4.2 The Customer will become liable to pay to Primus an Early Termination Payment in respect of each Service Component, in either of the following events, namely:
  - 4.2.1 if Service or a Service Component is, at the request of Customer or for any reason as a result of anything for which the Customer is

responsible, discontinued or disconnected within the Minimum Term; or

4.2.2 if within a Minimum Term, the Customer ceases to be eligible for a Special Tariff.

4.3 Customer acknowledges that the Early Termination Payment is a reasonable pre-estimate of anticipated loss to Primus.

## 5. RELOCATION

If the Customer requests Primus to relocate a Digital Direct Service to a new Site following relocation by the Customer:

5.1 Customer must comply with the reasonable requirements of Primus;

5.2 if Primus is able to relocate the Service, Customer will pay \$100.00 administration fee for each Service Component which is to be relocated, plus the cost of any necessary labour and Equipment;

5.3 if Primus is not able to relocate the Service, Primus may terminate this Agreement in respect of that Service and if that is during a Minimum Term, Customer will be liable to pay an Early Termination Payment in respect of each affected Service Component.

## 6. CHARGES, TARIFFS

6.1 The Standard Tariff will apply to each of the Digital Direct Services unless Customer is eligible for a Special Tariff (and if a Customer ceases to be eligible for a Special Tariff, the Standard Tariff will apply from the time of cessation).

6.2 A Customer will be eligible for a Special Tariff only if each of the following conditions is (and continues to be) satisfied:

6.2.1 Customer has made and not withdrawn an Application for a Digital Direct Bundle and that Application has been accepted by Primus;

6.2.2 Primus continues to provide to the Customer a Digital Direct Bundle;

6.2.3 Customer maintains preselection of Primus as the preferred carriage service provider for all Ordinary Telephone Service calls and does not use override codes to direct calls to another provider;

6.2.4 the place or places at which the Customer wishes to receive the Digital Direct Services are places to which Primus is able and willing to provide them;

6.2.5 Customer complies with the terms of this Agreement;

6.2.6 Customer satisfies any other conditions applicable in respect of a Digital Direct Bundle or a Special Tariff.

6.3 Primus has the right at any time (and will give notice, if any, required by law) to change any of the Charges and to impose other Charges.

## 7. MINIMUM TERM

7.1 The Customer accepts that it is committed for the period of any applicable Minimum Term. The commencement date of the Minimum Term will be the day on which Primus commences to provide the last Service Component of

the Digital Direct Services. After a Minimum Term expires, this Agreement will continue on a month-to-month basis.

- 7.2 If during a Minimum Term, Customer for any reason changes any Service Component of Digital Direct Services (by way of addition, deletion or substitution), a new Minimum Term (of a period stated on the Application or failing that, a period of 12 months) will commence from the time of the change.

## 8. SERVICE LEVELS AND CUSTOMER SERVICE GUARANTEE

- 8.1 The Customer Service Guarantee applies to some Voice services (including "standard telephone services" and "enhanced call handling features" as defined in the CSG Standard) subject to exceptions specified in the CSG Standard. (It does not apply for example to a Customer ("Excepted Customer") to whom Primus supplies more than 5 telephone services of the type and in the circumstances specified in the CSG Standard). The Customer Service Guarantee sets service levels in relation to matters such as the connection and rectification of the specified services, as well as the keeping of appointments in relation to those activities.
- 8.2 Expressions in quotes in this clause are used in the CSG Standard.
- 8.3 Primus offers its customers, as defined in the CSG Standard, (excluding Excepted Customers) the service levels as set out in Customer Service Guarantee in relation to the services and features to which the Customer Service Guarantee applies, subject to the terms of, and any exception or limitation in, the CSG Standard, which include exemptions in specified circumstances related to:
  - 8.3.1 credit standing of Customer;
  - 8.3.2 circumstances beyond reasonable control of Primus;
  - 8.3.3 unreasonable behaviour of Customer.
- 8.4 Under the CSG Standard, the "guaranteed maximum connection periods" for those Voice Services to which it applies are:
  - 8.4.1 where the Site has an "in-place connection", 2 "working days" after the Customer request is received by Primus;
  - 8.4.2 where the Site is "in close proximity to available infrastructure", not later than 5 "working days" after the Customer request is received by Primus;
  - 8.4.3 where the Site is "not readily accessible to infrastructure", not later than 1 month after the Customer request is received by Primus.
- 8.5 Voice Services are in most cases provided by Primus using Unconditioned Local Loop Service ("ULLS") which is made available to Primus by Telstra. If ULLS has not already been made available to Primus at the time the Customer request is received, the guaranteed maximum connection period will be that of 1 month as specified in the preceding clause.
- 8.6 Under the current CSG Standard, the "guaranteed maximum rectification period" for "faults or service difficulties" for a Site in an "urban center" with a population of 10,000 or more people ends at the end of 1 "working day" after Primus receives a report of the fault or service difficulty.

- 8.7 Where the Customer Service Guarantee is applicable, Primus will arrange and keep appointments with Customers for connecting or rectifying a fault or service difficulty in a manner consistent with the CSG Standard.
- 8.8 The Customer Service Guarantee entitles Customer to compensation if the CSG Standard is not met. Subject to the terms of the CSG Standard, Customer is entitled to specified compensation if Primus does not comply.
- 8.9 In the case of an Excepted Customer, Primus agrees under this Agreement, in respect of those services to which the Customer Service Guarantee would have applied if the Customer were not an Excepted Customer, that it will use reasonable endeavours to deliver equivalent service levels to those in the CSG Standard (except that the guaranteed maximum connection periods under the CSG Standard will not apply, nor will the compensation provisions of the CSG Standard).
- 8.10 Primus working hours on "working days" are from 8:00 am to 5:00 pm. A request or report received by Primus after 5:00 pm will be regarded as having been received at the beginning of the next "working day".
- 8.11 Primus will use its best endeavours to achieve for Digital Direct Services the following service levels (for the purposes of which pre-arranged maintenance carried out by Primus outside its normal working hours will be disregarded):
- 8.11.1 the Primus Network on which Digital Direct Services are delivered will be operative at least 99.9% of the time, measured over a rolling 3 month period;
- 8.11.2 outages of the Voice Service, indicated by the non-availability of dial tone, at any applicable Customer Site, will not exceed 8 hours in any period of 31 consecutive days.
- 8.12 Subject to any obligations imposed on Primus by Customer Service Guarantee, Customer is responsible for providing, maintaining and repairing cable and other Equipment which is on the Customer side of the MDF (main distribution frame), other than Equipment supplied by Primus under this Agreement.
- 8.13 If Primus agrees to provide repair services in the following circumstances it may charge for those services at its prevailing Charges for work and materials:
- 8.13.1 those caused by anything done in breach of this Agreement by the Customer or person for whom the Customer is responsible under this Agreement;
- 8.13.2 those carried out outside normal working hours at the specific request of the Customer;
- 8.13.3 those carried out by Primus at the request of Customer in respect of Equipment for which Customer is responsible.

## 9. VOICE

- 9.1 The Voice telephone service includes installation of the Service, a telephone number, access to agreed Features and call types and a fault repair service in accordance with this Agreement.

- 9.2 Primus offers Voice either on the basis that each line has a separate number or as a Hunt Group (as defined below) or otherwise as specified.
- 9.3 Primus will provide such Features at such Charges and on such terms and either individually or as part of a package as is specified in an Application or otherwise agreed or specified by Primus.
- 9.4 Customer acknowledges that Primus will place a bar on access override codes, which allow Customer to direct calls to other providers. Primus will lift that bar on request. However, use of an access override code may mean Customer ceases to be entitled to a Special Tariff.
- 9.5 Customer acknowledges that:
  - 9.5.1 it is responsibility of Customer to arrange directory listing in White Pages and elsewhere if required;
  - 9.5.2 some call types, for example calls to 190 numbers and reverse charge calls, will be directly billed to Customer by Telstra.
- 9.6 Without limit, the Features offered with Voice may include the following (without Primus being obliged to provide all or any of them except in accordance with a specific agreement with Customer):
  - 9.6.1 "3-Way Conference (3WC)" allows a Customer to place a call on hold, make a second call and join the two calls to establish a three way conference call.
  - 9.6.2 "Barring" allows a Customer to prevent the use of a service for making of specified types of outgoing calls.
  - 9.6.3 "Call Control" allows a Customer to turn on or turn off a pre-set Barring option.
  - 9.6.4 "Call Forward Busy (CFB)" is a Feature under which all calls to a telephone service when it is busy are automatically forwarded to a number selected by the Customer.
  - 9.6.5 "Call Forward Hunt Group (CFGDA)" is a Feature under which an incoming call is automatically forwarded to a number selected by the Customer if all lines in a Line Hunt group are busy.
  - 9.6.6 "Call Forward No Answer (CFD)" is a Feature under which all calls to a telephone service which are not answered within a predetermined time are automatically forwarded to a number selected by the Customer.
  - 9.6.7 "Call Forward Universal (CFU)" or "Call Forward Immediate" is a Feature under which all calls to a telephone service are automatically forwarded to a number selected by the Customer.
  - 9.6.8 "Call Hold (CHD)" allows a Customer to place a call on hold and to retrieve that call.
  - 9.6.9 "Call Transfer (CXR)" allows Customer to transfer a call, internally or externally.
  - 9.6.10 "Call Waiting (CW)" provides a special tone to indicate to a Customer using a telephone that a second call is being made to the service and enables Customer to answer the second call and change between calls as desired.

- 9.6.11 "Calling Line Identity (CLI)" transmits to the receiver of a call made from the Customer's service, data identifying the source of the call.
  - 9.6.12 "Calling Number Display (CND)" displays data identifying the source of a call to the Customer.
  - 9.6.13 "Line Hunt (DNH)" is a Feature under which a particular telephone number applies to more than one telephone line (a "Hunt Group") and incoming calls are allocated to those lines in a predetermined manner.
  - 9.6.14 "Local Number Portability (LNP)" enables a Customer to keep his/her existing telephone number on changing to or from the Primus Network.
  - 9.6.15 "Malicious Call Trace (MCT)" allows a Customer to seek the telephone number of a calling party (without limit it is subject to the privacy obligations and other legal constraints to which Primus is subject).
  - 9.6.16 "Reversal On Answer (ROA)" provides a signal that an outgoing call has been answered, to enable the Customer to record the duration of the call at the time of the call.
  - 9.6.17 "Silent Number" enables a Customer to ensure that the name, address and number of his/her service are not disclosed in relevant telephone directories or directory assistance.
  - 9.6.18 Such others as are offered and agreed to by Primus from time to time.
- 9.7 Customer acknowledges that Digital Direct does not support any of the following:
- 9.7.1 ring detection in Customer Equipment where the total Ringer Equivalence Number (REN) on a line is greater than 3;
  - 9.7.2 end to end signalling via earth, line conductors, Cailho or phantom circuits;
  - 9.7.3 data modems and facsimiles working at data signalling rates greater than 2400 bit/s;
  - 9.7.4 data modems and facsimiles not conforming to ITU-T recommendations V.18, V.21, V.27 ter or V.34; or
  - 9.7.5 2 or more telephones or equivalent apparatus in the off hook condition at the same time.

## 10. BROADBAND

- 10.1 The Internet SFOA Service Schedule applies to Broadband and other Internet Services which are Digital Direct Services, except as follows:
  - 10.1.1 in the event of inconsistency, this Agreement prevails;
  - 10.1.2 clause 6 of the Service Schedule of the Internet SFOA headed "Early Cancellation" does not apply to Broadband.
- 10.2 The speed and other characteristics of Broadband, the Charges and any applicable Features are those agreed, in the Application or otherwise, or as specified by Primus.

## 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 the 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](http://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.