

# IMPORTANT CUSTOMER INFORMATION: YOUR RIGHTS AND OBLIGATIONS

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## SUMMARY OF PRIMUS STANDARD FORM OF AGREEMENT FOR INTERNET SERVICES

(version 201205)

This is a summary of Primus Standard Form of Agreement Internet Services ("SFOA") containing the terms on which Primus supplies Internet Services to Customers.

The SFOA:

- Is a standard form of agreement under section 479 of the Telecommunications Act 1997;
- May be amended by Primus in accordance with the Act and ACIF Consumer Contracts Code (where applicable);
- Does not apply if otherwise agreed between Primus and a Customer.

This summary is for information only; the SFOA itself has legal effect. Copies of the SFOA (and additional terms which apply to particular Services) are available on Primus website [www.iprimus.com.au](http://www.iprimus.com.au). Up to date copies of this summary are available from Primus on request.

### SERVICE SCHEDULE

Primus supplies Internet Services under the Plan identified in the Customer's Application on terms in the Service Schedule and the Core Terms, subject to the Consumer Contracts Code, where it applies.

Customer acknowledges:

- Internet Access depends on factors beyond Primus' control;
- Primus has no control over the accuracy or appropriateness of any information on the Internet;
- Primus is not responsible for any software or data on the Internet;
- unless agreed otherwise, Customer is responsible for modem and other Equipment and for the standard telephone service or other connection to the Internet and for ensuring availability of access by a local or untimed call;
- Customer may lose pre-existing email addresses;
- there is no carry forward or allowance for data transfer or time online entitlements unused in a period;
- all I.P. addresses remain the property of Primus;
- Customer must regularly check Customer's Primus inbox for email from Primus;
- advice provided by Primus outside its direct responsibility is on a no liability basis;
- Primus may use: "kilobyte (KB)"=1000 bytes, "megabyte (MB)"=1000 KB; "gigabyte (GB)"=1000 MB and like rounded numbers for multiples of bits;
- Primus may cancel a secondary email address which has not been accessed for more than 90 days.

Customer must not:

- spread any virus, trojan or other harmful thing or engage in denial-of-service attacks or port scan;
- breach any law regulating Internet content or email;
- attempt to obtain access to or control of any other computer or network;
- contravene any privacy law or send spam mail;
- contravene Primus' Acceptable Use Policy;
- for a Residential Service, resell Service, establish multiple connections or connect to a LAN (except where the Service is one specified as supporting a LAN).

For security, Customer should:

- avoid unexpected charges by regularly monitoring data usage (Customer statistics are available in Account Toolbox on Primus website);
- protect its user identity, email address and password;
- exercise care in disclosing personal information (including credit card details) on the Internet;
- use current anti-virus software and firewall and keep current on Internet security issues;
- restrict access to Customer Equipment;
- be careful accepting emails or files from unknown sources;
- protect users from unsuitable Internet content;

- be aware that premium rate "190" and international "0011" telephone call charges can be incurred inadvertently when accessing certain Internet sites.

#### Early Cancellation

The Consumer Contracts Code gives Customer the right to terminate an Agreement with a Minimum Term early in limited circumstances. In all other cases, Primus' policy is that cancellation will not be permitted during a Minimum Term unless Customer satisfies it that special circumstances apply. If Primus in its absolute discretion agrees to early termination, the following clauses apply.

If, during a Minimum Term, a Service is terminated by the Customer or by reason of Customer's breach ("Early Cancellation") Customer must pay

In the case of an ADSL Internet Access Service:

- price of any modem or other Equipment sent to Customer (unless returned to Primus at Customer's cost in its unopened original packing within 7 days of cancellation, in which case a handling fee of \$50.00 applies) plus a charge for installation actually carried out or for which Primus is liable; plus
- EITHER if the Early Cancellation occurs before Customer's first log-in, a cancellation fee of \$200.00 (less any establishment fee already paid);
- OR if the Early Cancellation is after Customer's first log-in:
  - if Minimum Term of Plan is 12 months or less, Customer must pay the total (not exceeding \$1,000.00) of Fixed Charges that would have been payable over the balance of the Minimum Term; or
  - if the Minimum Term is more than 12 months, Customer must pay the total of Fixed Charges that would have been payable over balance of the Minimum Term up to a period of 12 months from the date on which the Plan commenced and 30% of Fixed Charges after that (capped at \$1,500.00).

In the case of Early Cancellation of a dial up Internet Access Service, Customer must pay the total of Fixed Charges payable over the balance of Minimum Term (capped at 6 months).

In the case of Early Cancellation of an Internet Service, other than ADSL Internet Access Service or dial up Internet Access Service, Customer must pay the establishment or set-up fee and any amount for a modem or other Equipment and any cancellation or other fee that Primus is obliged to pay any Other Supplier and the total of any Fixed Charges over the balance of Minimum Term.

If the Consumer Contracts Code applies:

- amounts charged for breach or Early Cancellation will not exceed a reasonable estimate of Primus' loss
- if Early Cancellation is pursuant to an offer of early release under the Consumer Contracts Code Customer must only pay (a) usage or network access Charges up to the end of the Agreement and (b) outstanding installation costs and (c) outstanding costs of equipment that can be used with another service provider.

#### Prepaid Internet Services

- Unless topped-up, will expire (and email addresses cancelled) when specified usage level is reached or at the end of the validity period or use-by date (whichever earliest) specified in prepaid kit or at time of top-up;
- Will also be subject to any terms specified in Prepaid kit;
- Unused hours will not be carried forward and not be the subject of a refund;
- Queries or complaints re a Prepaid kit to be directed to merchant who sold the kit (or, if the ACIF Complaint Handling Code applies, to Primus).

#### ADSL (and other xDSL) Internet Access Services

- Not available in all areas or to all telephones. Some areas will be subject to an additional regional charge;
- Commencement date of service may be delayed by factors beyond Primus' control;
- Depending on the nature of the Customer equipment additional charges may apply;
- May be incompatible with some other services;
- 'Inclusive Data' is amount of data, which can be downloaded in a month without incurring 'Excess MB' charges;
- 'Excess MB' charge applies for amounts of data in excess of 'Inclusive Data' allowance, downloaded in any month;
- Data transmission speeds are shown as downstream/upstream speeds e.g. 256/64 represents 256kbps downstream/64kbps upstream;
- Approximately once every 24 hours, connection will be interrupted for approximately 30 seconds for billing record update;
- If the Customer requests Primus to relocate the Service (and produces to Primus telephone bills for both the old and new Site) then if Primus is able to relocate the Service, Customer will pay \$200.00 relocation fee (plus the cost of any necessary additional Equipment and installation charges);
- If Primus is unable to relocate Service, Primus will release the Customer, subject to payment of all charges up to the date of release, plus if that is within the first 6 months of the Minimum Term, a \$200 cancellation fee.

- If Service is suspended or disconnected because of anything for which the Customer is responsible (e.g. late payment of account or interruption to Customer's telephone service) Primus may, subject to Consumer Contracts Code, treat it as an Early Cancellation (as above) or may continue Service subject to \$100 reconnection fee.
- Where Consumer Contracts Code applies, non-relocation charges / cancellation fee and late payment / breach / Early Cancellation charges will not exceed a reasonable estimate of Primus' loss.

#### Virtual Web Site Hosting

SFOA contains terms that apply specifically to Virtual Web Site Hosting and only if Primus has agreed to provide a Virtual Web Site Hosting service to Customer.

#### Email Virus Protection and Email Spam Protection

These are additional Services at extra charge. Either party on notice can terminate them. Customer must pay to end of the current month.

They do not protect against spam or viruses from sources other than incoming email to Customer's nominated Primus email address. Customer should also use a current and reputable desktop security program.

Brightmail Inc and Symantec as Licensor to Primus do not have any liability to the Customer.

These Services cannot be configured to the individual requirements of the Customer and are not foolproof.

Email Virus Protection may not identify all viruses and some email may be delayed or lost.

Email Spam Protection scans incoming email for probable spam which is diverted to Customer's Primus Spam Folder, where it is held for 7 days, then automatically deleted, without further notice. It may not correctly identify all spam and some email may be wrongly identified as probable spam. Customer should check Spam Folder at least every 7 days, to move items which Customer wishes to retain. Email in the Spam Folder counts towards volume of Customer data usage and mail box limit.

#### iSpeed

iSpeed is a download acceleration Service at extra cost to selected Primus dial-up Customers. Not effective with all data types or websites and does not increase upload speed from Customer. Not compatible with all hardware and software. Contracts are monthly and can be cancelled from the end of any month.

### CORE TERMS

#### TRANSFER OF SERVICES

Where applicable, Primus is authorised to transfer accounts and services from an existing service provider. Customer remains responsible for amounts charged by existing provider.

#### CHARGES

Subject to Consumer Contracts Code (where applicable) and any agreement to the contrary, Charges may be varied by Primus. Current Charges may be viewed on Primus website or obtained from Primus. Where Consumer Contracts Code applies and contract has fixed term, Primus will give 21 days notice of increases including offer of early penalty-free release from contract – limited exceptions apply.

#### INVOICES AND PAYMENT

Unless otherwise specified, Invoices are sent monthly, by mail. Invoices are payable within 14 days, by cheque or otherwise as specified on the Invoice. Late billing policy: Primus policy is not to late bill by more than 190 days charges covered by the ACIF Billing Code.

Customer is responsible for payment of Charges arising out of the use of a Service by any person, with or without Customer's consent.

If Charges are not stated to be GST inclusive, Customer must also pay GST.

If Customer does not pay an Invoice within 14 days, Primus may charge a late payment fee, not exceeding \$15.00, including GST. Primus may also charge penalty interest under Interest Rates Act 1983 (Victoria) and may suspend or terminate Service. Suspension or termination will be in accordance with Consumer Contracts Code and / or ACIF Credit Management Code (where they apply).

#### PRIVACY

Primus Privacy Policy and Statement are available at [www.iprimus.com.au/privacy.asp](http://www.iprimus.com.au/privacy.asp). Please see that document for all privacy information.

#### EQUIPMENT

Primus retains ownership of all the Primus Equipment (except any which is sold to the Customer).

Title to Equipment that is sold to Customer will remain with Primus until payment in full of the purchase price.

Risk in Equipment will be with the Customer from the time of its delivery to a Site.

#### CUSTOMER OBLIGATIONS

- Customer will use a Service only for the purposes and subject to conditions specified by Primus.
- Customer will provide Primus access to each Site and all the Equipment.
- Customer will use only Customer Equipment approved by Primus.

- Customer will not, unless Primus agrees, resupply a Service. Customer will ensure that no other person using a Service does anything that would be a breach of the SFOA.
- Customer will not use a Service to distribute material or do anything else that is offensive or illegal or which may give rise to legal liability, for Primus or Customer or anyone else.
- Customer will comply with conditions imposed by any third party service provider ("Other Supplier").
- No Other Supplier has legal responsibility to Customer in relation to the Services.

#### FAULTS

Primus has a 24-hour fault reporting service for Internet Services. Primus will use reasonable endeavours to correct faults for which it is responsible. Customer is responsible for Customer Equipment.

#### TERMINATION

Unless minimum term or fixed period is applicable, either Primus or Customer may terminate Residential Services at any time; and may terminate any other Service on not less than 30 days notice.

Primus may terminate or may suspend Service if the Customer dies, becomes insolvent, breaches the SFOA, ceases to use a Service or if it is necessary to maintain, repair or protect the network or any Equipment.

Where Consumer Contracts Code applies:

- Primus will always give at least 30 days' notice of termination for its own convenience.
- Refund of unused credits may apply.
- Suspension or termination will be in accordance with Code and / or ACIF Credit Management Code (where it applies).

#### WARRANTIES

Primus gives the warranties that it is required to give by law, under the Trade Practices Act and consumer legislation. In the case of goods, Primus will provide you with the same warranty on any goods it supplies as the manufacturer / importer provides for those goods. Subject to those warranties and to any specific warranties Primus does not warrant that any Service will be continuous or fault free or suitable for any application that needs continuous fault free service.

#### CUSTOMER SERVICE GUARANTEE (CSG)

Customer Service Guarantee does not apply to Internet Services.

#### LIMITATION OF LIABILITY

Primus accepts liability imposed by Consumer Legislation, but where it is lawful to do so, Primus limits that liability: if a claim relates to goods, to repair or replacement of the goods or payment of the cost of having the goods replaced; and if a claim relates to services, to supplying the services again or payment of the cost of having them supplied again.

Subject to Consumer Legislation, if it is applicable, the total liability of Primus to Customer is limited to \$20,000.00 and Primus is not liable for any indirect, secondary or consequential loss or damage, including loss of profits or anticipated savings or loss of opportunity.

#### VARIATION

Subject to the Act and any specific agreement to the contrary, Primus may vary the terms relating to a Service, including the SFOA. Primus will notify Customer of variations by newspaper advertisement or by notice in writing (included with an invoice or otherwise), by notice on its website, or in other manner authorised by the Act. Customer consents to Primus sending it by email notices about SFOA and other matters. Where Consumer Contracts Code applies and contract has fixed term, Primus will give 21 days notice of changes in features, characteristics or Charges of Service, including offer of early penalty-free release from contract – limited exceptions apply.

#### COMPLAINTS

Primus aims to resolve Customer complaints quickly, efficiently and effectively and has a complaint handling policy in place. Contact 1300 85 44 85.

#### TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

Telecommunications Industry Ombudsman is available as a last resort to resolve disputes that cannot be resolved with Primus. The Office of Fair Trading in each State or Territory may also investigate consumer complaints about telecommunications services.

#### PRIMUS:

Web site: [www.iprimus.com.au](http://www.iprimus.com.au)

**IF YOU ARE A NON-ENGLISH SPEAKER OR HAVE A DISABILITY AND REQUIRE ASSISTANCE TO READ OR UNDERSTAND THIS SUMMARY OR NEED A LARGE PRINT COPY PLEASE CONTACT PRIMUS CUSTOMER SERVICE ON 1300 85 44 85.**