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## FLASH FIBRES PTY LTD

### STANDARD TERMS AND CONDITIONS

This Standard Form of Terms and Conditions is between you (the customer) and Flash Fibres Pty Ltd and sets out the terms and conditions in which Flash Fibres Pty Ltd supplies services to you.

By signing our Residential or Commercial Broadband Application you agree to Flash Fibres Pty Ltd Standard Terms and Conditions of Service as outlined in this document.

### Standard Terms and Conditions of Service



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NOTE: SOME OF THESE TERMS HAVE IMPORTANT CONSEQUENCES FOR YOU. PLEASE READ THEM CAREFULLY. CERTAIN WORDS ARE USED WITH THE SPECIFIC MEANINGS SET OUT IN CLAUSE 15.



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## 1. ABOUT OUR CUSTOMER TERMS

### What is "Our Customer Terms"?

1.1 "Our Customer Terms" sets out our standard customer terms. It is divided into several sections:

- a. these Small Business Standard Terms and Conditions – which apply to all small business customers;
- b. consumer Standard Terms and Conditions – which apply to all consumer services when not acquired by small business customers;
- c. corporate Standard Terms and Conditions – which apply to all corporate customers; and
- d. particular sections – which each set out terms for a particular service or customer group (like the service features, call charges and maintenance commitments that apply to that service).

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

### Who is a small business customer?

- 1.2 You will be a small business customer (and these Small Business Standard Terms and Conditions will apply to you) if you are a business or non-profit organisation (including body corporate, sole trader, partnership, trust, or registered charity), and:
  - a. you are using your service for primary purpose of business use;
  - b. you did not have a genuine and reasonable opportunity to negotiate the terms of your contract with us; and
  - c. you had or will have an annual spend with us which is, or is reasonably estimated by us to be, less than \$20,000, as long as you are not acquiring a service for the purposes of resale.

*Business use is a use that is not personal, domestic or household use.*

- 1.3 You will also be a small business customer (and these Small Business Standard Terms and Conditions will apply to you) if you are not a business or non-profit organisation, but are using your service for the primary purpose of business use.
- 1.4 In addition to clauses 1.2 and 1.3, you will also be a small business customer (and these Small Business Standard Terms and Conditions will apply to you) if:
  - a. you are using your service for the primary purpose of personal, domestic or household use; and

- b. your service is of a kind ordinarily acquired for business use, regardless of whether you are a business or non-profit organisation.

### Reference to Standard Terms and Conditions

#### Telecommunications legislation

- 1.5 In relation to any particular service, if these Small Business Standard Terms and Conditions apply to you, then references to "Standard Terms and Conditions" in all other sections of Our Customer Terms or our other communications refer to these Small Business Terms and Conditions.
- 1.6 Telecommunications legislation allows us to set out our standard customer terms in a "Standard Form of Agreement". Our Customer Terms is our "Standard Form of Agreement". Under the legislation:
  - a. you and we must comply with Our Customer Terms unless you and we have agreed differently;
  - b. if we change Our Customer Terms and it would cause detriment to you, we must first publish an advertisement or tell you directly; and
  - c. **if we change Our Customer Terms and it does not cause detriment to you, we can make the change without having to first publish an advertisement or tell you directly**

#### Inconsistencies

- 1.7 If anything in these Small Business Standard Terms and Conditions is inconsistent with something in a particular section of Our Customer Terms, then the particular section applies instead of these Small Business Standard Terms and Conditions to the extent of the inconsistency.

## 2. BECOMING OUR CUSTOMER

### Accepting your application

- 2.1 When you ask for a service, we decide whether to supply it to you based on:
  - a. the particular terms for that service; and
  - b. your eligibility for the service; and
  - c. its availability to you; and
  - d. you meeting our credit requirements.
- 2.2 We try to connect some services within particular timeframes. If such timeframes apply, we tell you at the time of applying for the relevant service (or in other material we provide to you). For other services where no timeframes apply, we try to connect you service within a reasonable time.



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- 2.3 We may need to install cables at your premises to connect your service. You have to arrange and pay for any trenching or other equipment needed to house the cabling. If you arrange for us to do this work, we will try to give you an estimate of the costs involved. However, this will depend on your location and the type of work needed to be done.
- 2.4 We decide the route and technical means that we use to provide your services.
- 2.5 If we need to carry out work at a premises to provide you with your service, you can nominate a person who is at least 18 years old as your 'appointed agent' in which case, you acknowledge and agree that:
  - a. We may disclose your personal information to your 'appointed agent'; and
  - b. Your 'appointed agent' will on your behalf:
    - i. be present at the location and at a time agreed with us to connect your service;
    - ii. make any decisions necessary to connect your service (including the locations of wiring and wall sockets);
    - iii. accept or reject quotes from us; and
    - iv. accept all charges for the work undertaken by us at the premises.

#### Transferring your service

- 2.6 You can transfer legal responsibility for your service if you get our written consent first.

### 3 USING YOUR SERVICE

#### Our aim of providing continuous and fault-free services

- 3.1 We will use reasonable care and skill in providing our services and will provide our service in accordance with Our Customer Terms. However, given the nature of telecommunications systems (including our services' reliance on systems and services that we do not own or control), we cannot promise that our services will be continuous and fault-free.

#### Maintenance and repair

- 3.2 The particular sections of Our Customer Terms set out our maintenance commitments that apply to our services. Generally, we maintain all of our services for as long as they are offered to customers. Also particular timeframes for repairing your Basic Telephone Service may be set out in our [Universal Service Policy](#), in the [Customer Guarantee Standard](#) or under our Priority Assistance policy.
- 3.3 Where use of our services involves equipment that does not belong to us and that is at your premises, you have to maintain and repair that equipment. This

includes carrying out any maintenance or repairs, that we reasonably think is required within a reasonable timeframe or when we ask you to do so.

- 3.4 Where your equipment causes a fault in your service that we need to repair, we can charge you a call-out fee and our reasonable charges for repairing the fault. We will tell you the amount of the call-out fee and hourly rates we charge for repairing faults before we start work.

#### Use for intended purpose

- 3.5 Our Customer Terms may state that a service is provided for a particular purpose. You must allow the service to be used for that purpose.

#### Your responsibility

- 3.6 **You are responsible for and have to pay for any use of your service, whether you authorise it or not.** Also, if you do not disconnect your service when you leave your premises, you have to pay for any use of the service by later occupants or others. We recommend you consider taking measures to protect yourself from unauthorised use of your services. Any person who uses your service, or allows someone else to use it, after you have vacated your premises, is jointly and individually liable with you for any charges relating to that use.

#### Excessive or unusual use

- 3.7 In some circumstances we may monitor usage of your service for excessive or unusual usage patterns, but we do not promise to do so.

#### Breaking the law

- 3.8 You must not use a service to commit an offence or allow anybody else to do so.

#### Causing interference

- 3.9 You must do what we tell you to do if your use of service interferes (or threatens to interfere) with the efficiency of our network (including because you have inadequate capacity).
- 3.10 You have to make sure that no-one interferes with the operation of a service or makes it unsafe.

#### Your responsibility for equipment

- 3.11 You are responsible for any equipment at your premises (including any that belongs to us). You have to pay us for any loss or damage to our equipment at your premises, except for fair wear and tear.



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#### Power supply

- 3.12 You have to arrange and pay for any electricity supply needed for a service at your premises. The service may not work if the electricity supply stops.

#### Compliant equipment only

- 3.13 You must only connect equipment that complies with relevant technical standards and other relevant requirements. For these standards see the Australian Communications and Media Authority site at <http://www.acma.gov.au/web/>.
- 3.14 You must make any changes we ask to your equipment to avoid any danger or interference it may cause.

#### Tell us if things change

- 3.15 You have to tell us about any relevant changes to your services or equipment that may affect our ability to provide your service to you.

## 4 CHANGING OUR CUSTOMER TERMS – FIXED LENGTH CONTRACT CUSTOMERS

#### Our right to change other terms

- 4.1 We can change any other term of Our Customer Terms by:
- getting your consent; or
  - complying with this clause.

The steps we have to take depend on the type of change.

#### Changes that benefit you or have neutral impact on you

- 4.2 If we reasonably consider that a change to any term of Our Customer Terms is likely to:
- benefit you; or
  - have a neutral impact on you,

We can make the change immediately and do not need to tell you.

*Some examples of changes that will benefit you are:*

- offering additional bonus options or free services;*
- reducing monthly access fees or other charges; or*
- changes that increase our obligations or introduce new rights for you.*

*Some examples of a change that will have a neutral impact on you are*

- we change the name of a service or the way we provide a service to you including the technology we use to provide the service to you) in a manner that does not beneficially or detrimentally affect the functionality, features or your use of that service.*

#### Changes that have minor detrimental impact on you

- 4.3 If we reasonably consider that a change to any term of Our Customer Terms is likely to have a minor detrimental impact on you, we do not need to tell you individually beforehand. However, if we do not tell you individually beforehand, we will publish a notice in a national newspaper at least three business days beforehand and give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email). However, if you can demonstrate that such a change has more than a minor detrimental impact you, and the change is not of a type described in clauses 4.3 to 4.9 below, we will allow you to cancel the contract for that service on Fair Terms.

*Some examples of changes that we consider have minor detrimental impact on you:*

- Withdrawing a minor feature of the service*

#### Changing or imposing tax-based charges

- 4.4 We can change any term of Our Customer Terms that applies to your service to increase an existing charge or to introduce a new charge where that charge is tax imposed by law, and do not need to tell you individually beforehand. If you are an affected customer, but we do not tell you individually beforehand, we will publish a notice in a national newspaper at least three business days before the change takes place, and also give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email).

#### Changing or imposing charges for ancillary services

- 4.5 We can increase an existing charge or introduce a new charge for ancillary services (for example a billing fee or credit card transaction fee) provided we offer affected customers use of a reasonable alternative at no additional charge and notify affected customers of the change.
- 4.6 If we increase or introduce charges for an ancillary service, and it is a type of ancillary service for which we do not offer a reasonable alternative at the same or reduced cost, we do not need to tell you individually beforehand, but will allow affected customers to cancel any service to which that ancillary service relates on Fair terms. If you are an affected customer, but we do not



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tell you individually beforehand, we will publish a notice in a national newspaper at least three business days before the change takes place, and also give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email).

- *withdrawing a key advertised feature of the service, or a key pricing offer associated with the service without providing a reasonably comparable alternative feature or pricing offer; or*
- *changes that significantly increase the obligations or significantly limit the rights of the majority of our customers.*

#### Changing prices for content or premium services

- 4.7 We can change the charges for content and premium services provided by us to you where those content and premium services:
- are acquired by us from a third party for resale; or
  - incorporate or rely upon content and premium services provided to us by third parties.

And the change is a direct result of an increase in the price from our third party supplier. If we increase these charges, we will tell affected customers at least 10 days beforehand via a text message. You will be able to elect not to use the content or premium service without attracting additional charges.

*Note: Some services provided to customers are provided under a "credit provider" model, where the third party content provider actually supplies the content directly to customers and Flash Fibres bills the customer. In these cases the content provider sets the charges for the content.*

#### Urgent changes

- 4.8 We consider changes that are:
- required by law; or
  - necessary for security reasons, to prevent fraud or for technical reasons to be urgent changes.
- 4.9 We will try to tell affected customers three days before an urgent change to our customer Terms by any method we consider reasonable in the circumstances, including text message, voice recordings or public notice. Sometimes, due to the nature of the change, we may not be able to tell affected customers three days beforehand but we will give as much warning as we reasonably can.

#### All other changes

- 4.10 If the change to any term of Our Customer Terms is not of a type described in clauses 4.1 to 4.8 above, we may change the term by:
- giving affected customers notice of the change at least 30 days beforehand; and
  - allowing affected customers to cancel the contract for that service on Fair Terms within 42 days (from the date of our notice).

*Examples of a type of change that may not be already described elsewhere in this clause:*

#### Who we consider to be affected customers

- 4.11 For the purpose of this clause 4, we consider a customer to be affected by a change of term in Our Customer Terms if that customer has used or has been billed for the service affected by the change during the six months before our notice and we reasonably consider that the change will have more than a minor detrimental impact on the customer.

#### What we mean by cancelling the contract for a service on "Fair Terms"

- 4.12 For the purpose of this clause 4, your service will be cancelled on "Fair Terms" if we have offered you the right to terminate the contract without incurring fees or charges other than:
- usage and network and call charges incurred up to the date of termination; and
  - installation fees and costs of equipment we have provided to you that you have not paid us for (as long as the equipment can be used in connection with services supplied by another provider).

#### How we can tell you about the changes

- 4.13 When we tell you about changes to Our Customer Terms under this clause, unless specified otherwise in the clause, we can do so by: bill message, bill insert, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email). In addition to this notice, we may also publish a notice in a national newspaper.

#### 5. CHANGING OUR CUSTOMER TERMS – CASUAL CUSTOMERS

- 5.1 You will be a casual contract customer if you are acquiring your service on a month by month basis or under a contract that has a fixed term but does not require you to pay an early termination charge if your service is cancelled before the end of that fixed term.

#### Our right to change all terms

- 5.2 We can change any term of Our Customer Terms by:
- getting your consent; or
  - complying with this clause.



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#### Changes that benefit you or have neutral impact on you

- 5.3 If we reasonably consider that a change to any term of Our Customer Terms I likely to:
- benefit you; or
  - have a neutral impact on you,
- we can make the change immediately and do not need to tell you.
- Some examples of changes that will benefit or have neutral impact on you are set out in clause 4.2 above.*

#### Changes that have minor detrimental impact on you

- 5.4 If we reasonably consider that a change to any term of Our Customer Terms is likely to have a minor detrimental impact on you, we do not need to tell you individually beforehand. However, if we do not tell you individually beforehand, we will publish a notice in a national newspaper at least three business days before the change takes place, and also give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email).
- Some examples of changes that will benefit or have neutral impact on you are set out in clause 4.3.*

#### Urgent Changes

- 5.5 We consider changes that are:
- required by law; or
  - necessary for security reasons, to prevent fraud or for technical reasons, to be urgent changes.
- We will try to tell affected customers three days before an urgent change to Our Customer Terms by any method we consider reasonable in the circumstances, including text message, voice recordings or public notice. Sometimes, due to the nature of the change, we may not be able to tell affected customers three days beforehand but we will give as much warning as we reasonably can.

#### Changing or imposing tax-based charges

- 5.6 We can change any term of Our Customer Terms that applies to your service to increase an existing charge or to introduce a new charge where that charges is tax imposed by law, and do not need to tell you individually beforehand. If you are an affected customer, but we do not tell you individually beforehand, we will publish a notice in a national newspaper at least three business days before the change takes place, and also give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email).

#### Changing or imposing charges for ancillary services

- 5.7 If we increase or introduce charges for an ancillary service, and it is a type of ancillary service for which we do not offer a reasonable alternative at the same or reduced cost, and we do not tell you individually beforehand, we will publish a notice in a national newspaper at least three business days before the change takes place, and also give you individual notice within 16 weeks of the change being implemented by bill message, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our Customer Terms by email).

#### Changing prices for content or premium services

- 5.8 We can change the charges for content and premium services provided by us to you where those content and premium services:
- are acquired by us from a third party for resale; or
  - incorporate or rely upon content and premium services provided to us by third parties, and the change is a direct result of an increase in the price from our third party supplier. If we increase these charges, we will tell affected customers at least 10 days beforehand via a text message. You will be able to elect not to use the content or premium service without attracting additional charges.

*Examples of content or premium services that are provided by us to you in which we resell or incorporate content and services provided to us by third parties are set out in clause 4.7.*

#### All other charges

- 5.9 We will tell affected customers at least 30 days before a change to Our Customer Terms if the change is not of type described in clauses 5.1 to 5.8 above.

#### Who we consider to be affected customers

- 5.10 For the purpose of this clause 5, we consider a customer to be affected by a change of term in Our Customer Terms if that customer has used or has been billed for the service affected by the change during the six months before our notice and we reasonably consider that the change will have more than a minor detrimental impact on the customer.

#### How we can tell you about the changes

- 5.11 When we tell you about changes to Our Customer Terms under this clause, unless specified otherwise in the clause, we can do so by: bill message, bill insert, direct mail or email (if you have an email address and have agreed for us to tell you about changes to Our



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Customer Terms by email). In addition to this notice, we may also publish a notice in a national newspaper.

funds in the account, you must also pay us a fee of \$10.00. These fees do not attract GST.

## 6. CHARGES AND PAYMENT

### Charges

6.1 Our Customer Terms set out the charges you must pay us for your services. Sometimes you have to pay a particular charge in advance.

6.2 If you use your service to access a service provided by someone else, and we are charged for that other service, you must also pay us for that other service.

### Bills

6.3 We issue bills for charges for your services regularly. We can also issue an interim bill at any time.

6.4 We try to include all charges relating to a billing period on that bill. Where that does not happen, bills may include charges from previous billing periods as long as we comply with the billing requirements in the Communications Alliance Code – Telecommunications Consumer Protections (C628).

6.5 We are required by various industry codes to ensure that our bills are accurate and verifiable and we are committed to complying with these requirements. Our records are sufficient proof that a charge is payable unless they are shown to be incorrect.

### Credit Card Payments

6.6 If your bill is paid by credit card, we can charge you a credit card payment processing fee. Refer to you bill for the amount of the fee.

### Late or dishonoured payments

6.7 If you do not pay a bill by its due date, we can charge you an administrative fee of:

- (a) \$15.00 if the amount outstanding on your bill is \$100.00 or more.
- (b) No administrative fee is charged if the amount outstanding on your bill after the due date is less than \$100.00.

6.8 We can also restrict, suspend or cancel your service, provided we comply with our rights to cancel or suspend your service set out in our rights to cancel or suspend your service under Clause 8.

6.9 If you pay a bill by cheque and the cheque is dishonoured, you must also pay us a fee of \$15.00. If you pay a bill by direct debit and there are insufficient

### Adjustments

6.10 We can round charges up or down to the nearest whole cent (0.5 cent is rounded up). If you pay a bill by cash, we can round the amount payable by you to the nearest multiple of five cents.

6.11 We can pay you amounts we owe you by deducting them from amounts you owe us.

6.12 If we require you to pay any charges in advance (e.g. monthly access fees) and they are varied or the service is cancelled, we refund you any overpayment and you have to pay us any underpayment.

6.13 In order to provide premium rate services to you, we enter into arrangements with other providers and may be charged by them. If the other providers charge us more than we charge you for the service, and we think your use of services has been excessive or unusual, we can charge you the difference to our charge.

### GST

6.14 If GST is imposed on any supply we make to you under Our Customer Terms and the consideration payable for the supply under any other clause of Our Customer Terms is not expressed to be inclusive of GST, you must pay us on demand by us, an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed.

### Bill Format

6.15 Our bills are available in the following formats:

- a. **Paper Bill** – Receive a summary or detailed paper bill in the mail.
- b. **Email Bill** – Receive a summary bill, standard bill or detailed bill by email in PDF format. Email bill is available to all customers with a 13 digit account number and most customers with a 10 digit account number ending in 0. Email bill is not available with a Paper Bill.

6.16 The following terms apply to **Email Bill**:

- a. We will send you a confirmation by email to the address you nominated for your Email Bill once you have been registered for Email Bill.
- b. If you register for Email Bill:
  - i. subject to clause (e) below, you may no longer receive a Paper bill;
  - ii. if you are also registered for Online Billing, your bill will be available for



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viewing online when you receive your Email Bill, but you will not receive a separate email notification advising you that your bill is available Online Billing.

- c. We will use our best endeavours to deliver your Email Bill to the email address nominated by you to receive it.  
If we cannot deliver your Email Bill to that email address, we may, in our discretion:
  - i. send you a Paper Bill
  - ii. change your billing delivery method to a Paper bill for future bills; and
  - iii. contact you to request that you update your email address.

If we need to send you a Paper Bill it will be sent to the billing address on your account so you need to make sure you notify us if you change that address.

- d. Provided that we use our best endeavours as set out in clause 6.16 (c ), you still need to pay your Flash Fibres account(s), whether or not you receive or read your Email Bill or any emails from us about your Email Bill.
- e. To help ensure you can continue to receive your Email Bill, it is your responsibility to:
  - i. notify us if your Email Bill email address changes;
  - ii. ensure that you have sufficient space available in your email mailbox to receive your Email Bill;
  - iii. check your junk email folder to see if your Email Bill has been delivered there instead of your inbox;
  - iv. contact us if you do not receive your Email Bill; and
  - v. keep your email account secure to protect the privacy of your personal and credit information contained in the Email Bill.
- f. If you request that we send your Email Bill to a person's email address, you nominate that person as your agent for the purpose of receiving your billing payment information
- g. Accessing your Email Bills and any related emails will count towards your usage allowance under your internet plan.
- h. If you no longer want to receive an Email Bill, you can change your bill delivery method by calling us.
- i. If you choose to receive a Paper Bill you need to tell us if you have changed your billing mailing address. It may take up to one billing cycle for requests to update your bill delivery method, or the change your Email Bill email address, to take effect.

## 7. YOUR RIGHTS TO CANCEL OR SUSPEND YOUR SERVICE

### Choosing to cancel your service

- 7.1 You can cancel your service at any time by telling us in writing at least 30 days beforehand. However, if you cancel your service before the end of any fixed length contract, we may charge you any applicable early termination charges as set out in the following table;

	Greater than 12 months remaining on contract	Greater than 6 months remaining on contract (not exceeding 12 months)	Less than 6 months remaining on contract
<b>Contract Payout Figure</b>	50% of remaining contract value	25% of remaining contract value	NIL
<b>Mandatory Cancellation Fee (charged in addition to contract payout figure)</b>	\$120.00 + gst	\$120.00 + gst	\$120.00 + gst

- 7.2 If you cancel a service before we have provided it to you, we can charge you any reasonable costs we incurred as a result of preparing to provide it to you.

### Material breach by us

- 7.3 You can cancel your service at any time if:
  - a. we are in material breach of Our Customer Terms (for example, because we fail to use reasonable care and skill in providing the service to you); and
  - b. you have told us in writing of our material breach and we have failed to remedy it within 14 days of you telling us; or
  - c. the breach is something which cannot be remedied (in which case you can terminate the service immediately by telling us).

We will not charge you any early termination charge if you cancel your service because of our material breach.

### Your other rights to cancel

- 7.4 You can also cancel your service by telling us with as much warning as you reasonably can if:



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- a. we become bankrupt or insolvent or appear likely to do so;
- b. the law requires you to do so; or
- c. provision of the service becomes illegal.

- d. tell you a reasonable period (but at least 30 days) beforehand or;
- e. transfer you to a reasonably comparable alternative service.

We will not charge you any early termination charge if you cancel your service in these circumstances.

*You will be a casual contract customer if you are acquiring your service on a month by month basis or under a contract that has a fixed term but does not require you to pay an early termination charge if your service is cancelled before the end of the fixed term.*

## 8. OUR RIGHTS TO CANCEL OR SUSPEND YOUR SERVICE

### Choosing to cancel your service - casual customers

8.1 If you are a casual contract customer, we can cancel your service at any time, if we;

- a. get your consent; or
- b. we take reasonable steps to appropriately offset the effect of the cancellation on you (for example, by providing a credit or rebate to you); or
- c. we transfer you to a reasonably comparable alternative service for the remainder of your fixed length contract; or
- d. we offer to transfer you to an alternative service for the remainder of your fixed length contract and take reasonable steps to offset any material detrimental effects of the transfer caused by any material differences between the cancelled service and the alternative service we offer.

If we cancel your service in this way, we will not charge you any early termination charge

*You will be a fixed length contract customer if you are acquiring your service under a contract that has a fixed term and the contract requires you to pay an early termination charge if your service is cancelled before the end of that fixed term or if you are a pre-paid customer.*

### Material breach by you

8.3 We can cancel your service at any time if:

- a. you are in material breach of Our Customer Terms; and
- b. we have told you in writing of your breach and you have failed to remedy it within 14 days of us telling you (or such longer period as we tell you or as set out in another section of Our Customer Terms); or
- c. the breach is something which cannot be remedied (in which case we can cancel the service immediately by telling you)

8.4 You will be in material breach of Our Customer Terms if you:

### Choosing to cancel your service – fixed length contract customers

8.2 If you are a fixed length contract customer, we can cancel your service before the end of your fixed length contract at any time if:

- a. we get your consent to do so; or
- a. breach your obligation to pay our charges for your service;
- b. use your service in a way which we reasonably believe is fraudulent, poses an unacceptable risk to our security or network capability or is illegal or likely to be found illegal ; or
- l. *using your service this way is also a breach that cannot be remedied.*

8.5 We can charge you the applicable early termination charge if you are a fixed length contract customer and we cancel your service before the end of the fixed term because of your material breach.

### Suspension during period before we cancel your service

8.6 We can suspend or restrict the provision of your service during the period before we cancel your service because you are in material breach of Our Customer Terms. If you ask us to reconnect your service following your suspension for failing to pay an account; you may have to pay us a reconnection fee.

### Our other rights to cancel, suspend or restrict your service

8.7 We can cancel, suspend or restrict your service by telling you with as much warning as we reasonably can if:

- a. the law requires us to do so;
- b. providing the service becomes illegal or we believe on reasonable grounds that it may become illegal;
- c. you die;
- d. there is an emergency that affects our ability to provide the service;
- e. we are not able to provide the service to you due to an event outside our reasonable control such as a failure in equipment that is not owned or operated by us, an industrial strike or an act of God); or
- f. we reasonably believe that providing the service may cause death, personal injury or damage to property.



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We will not charge you any applicable early termination charge if we cancel your service for one of these reasons.

8.8 We can also cancel, suspend or restrict your service by telling you with as much warning as we reasonably can if:

- a. we cannot enter your premises to do something in connection with the service that we need to do in order to supply the service or make the service or related equipment safe;
- b. you become bankrupt or insolvent or appear likely to do;
- c. you vacate the premises to which the service is connected;
- d. there is excessive or unusual use of the service; or
- e. we reasonably consider that you pose an unacceptably high credit risk to us.

*We consider that you pose an unacceptably high credit risk to us when there is some doubt as to your ability to pay by the due date based on factors such as:*

- *previous payment history and payment behaviour (e.g. late payments, dishonoured payments or failure to pay);*
- *any previous advice from you about a potential inability or unwillingness to pay;*
- *your usage is inconsistently high when compared with previous usage patterns;*
- *your response where we have told you of this unusually high usage; or*
- *pending bankruptcy or insolvency*

8.9 We can charge you any applicable early termination charge if you are a fixed length contract customer and we cancel your service before the end of the fixed period under the previous clause.

#### **Maintenance and repair work**

8.10 We can also suspend or restrict your service temporarily if we reasonably believe it is desirable or necessary to do so to maintain or restore any part of our network or a network used to supply your service. Where possible, maintenance and repair work will be attempted to be performed at times that will cause the least inconvenience to our customers. If we have no alternative but to cancel your service due to necessary maintenance or restoration of any part of our network or a network used to provide your service, we will not charge you any early termination charge.

#### **Refund of prepayments**

8.11 If we cancel your service under this clause, we will refund to you any unused portion of your monthly access fee or minimum monthly spend and any other amount you have prepaid. However, we can deduct from your refund any amounts that you owe to us (unless these terms say otherwise). For

example, we can deduct charges you have incurred before cancellation or any applicable early termination charge.

#### **If you use your Service for business purposes**

8.12 If we are providing your service to you mainly for your personal use and we reasonably believe that you are using the service mainly for business purposes, we can tell you of this and ask you to move to a suitable business service. If you do not agree to move to a business service, we can cancel your service by telling you 30 days beforehand and charge you any applicable early termination charge.

8.13 If you are or become or operate as a 'carrier' or 'carriage service provider' under the Telecommunications Act 1997, you have to tell us. We can refuse to provide a retail service to you if you tell us or we reasonably believe that you are operating and using retail services as a carrier or carriage service provider. We can also cancel or suspend your retail services by telling you in writing 30 days before we do so. You can enter into a written agreement with us for the supply of wholesale services, if you choose to do so. If we do not exercise a right under this clause fully or at a given time, we can still exercise it later.

8.14 We occasionally need your consent to do certain things. We can rely on the authority of any of your employees who tell us they have authority to give your consent, as long as we act reasonably.

8.15 If you are a business customer, government customer, charitable organisation or non-profit organisation, you can appoint a third party to act on your behalf in relation to Our Customer Terms if you get our written consent first. We will only withhold our consent (or withdraw our consent if previously given) on reasonable grounds (for example, grounds relating to a breach of the third party's obligations).

## **9. OUR LIABILITY TO YOU**

### **Interruption or delay**

9.1 If we fail to meet any of our service level obligations as a result of any interruption or delay to your service, we accept liability to you, but limit our liability to the applicable service level rebates or credits. Where you are not entitled to a service level rebate or credit, we limit our liability to an amount equal to the service charges billed for the affected services for the period of the interruption or delay.

### **Our breach of contract or negligence**

9.2 Subject to clause 9.5, we accept liability arising from our breach of contract or negligence:

- a. for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the Services;



b. for any damage to your real or tangible property resulting from the supply of the Services, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and

c. unless clause 9.1 applies, for any other cost or expense you reasonably incur that is a direct result of, and flows naturally from, such breach or negligence (but excludes loss of profits, likely savings and data), but we limit our liability for all such claims in aggregate to the total amount payable to us under Our Customer Terms for 12 months of acquiring the relevant services.

#### **When we are not liable**

9.3 Other than for the liability we accept under clauses 9.1 and 9.2, we exclude all other liability whether to you or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded as it is under this clause 9, our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods.

9.4 Notwithstanding anything else in this clause 9, our liability will be reduced to the extent the loss or damage is caused by you, your employees, agents or contractors.

#### **Beyond our control**

9.5 We will not be responsible for any loss or damage arising from circumstances outside our reasonable control.

#### **After cancellation or suspension**

9.6 These provisions relating to liability will continue unaffected by cancellation or suspension of your service.

### **10. YOUR LIABILITY TO US**

#### **Joint customers**

10.1 if you and one or more others are the customer for a service, each of you is jointly and individually responsible for all charges and other obligations.

#### **Liability and excluded types of loss**

10.2 You are liable to us for breach of contract or negligence under the principles applied by the courts. However, you are not liable to us for any loss to the extent that it is caused by us (for example, through our negligence or breach of contract).

#### **After cancellation or suspension**

10.3 These provisions relating to liability will continue unaffected by cancellation or suspension of your service.

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### **11. ACCESSING YOUR PREMISES**

#### **When we can access your premises**

11.1 We may need access to your premises. You agree to provide us safe access to your premises to:

- a. install equipment for a service to be provided; and
- b. inspect, test, maintain, repair or replace equipment; and
- c. recover our equipment after your service is cancelled or after we transfer you to another service in accordance with our rights under clause 8.

11.2 You owe us the value of our equipment as a debt due if we cannot access your premises to recover it.

#### **Owner's permission**

11.3 If you do not own your premises, you have to get the owner's permission for us to access the premises and install any equipment. You promise to us that you have got that permission.

### **12. SECURITY**

12.1 At any time, we can require you to provide some form of security (e.g. a security deposit, a charge or bank guarantee) or pay some or all of the charges for your service in advance. We will only do so if we have reasonable concerns about our credit worthiness or have reasonable grounds for believing that we may not be paid for this service. In the case of new services, we can refuse to provide you the services until we receive the security. In the case of existing services, if you do not provide the security within 14 days of our request, we can restrict, suspend or cancel the service – this is in addition to any other rights that we may have.

12.2 If you cancel all your services, we will return the security deposit or advance payment to you less any outstanding charges within a reasonable time.

12.3 Our acceptance of any form of security or advance payment does not affect any other terms of Our Customer Terms.

### **13. PRIVACY**

13.1 We collect, use and disclose personal information as set in our "Protecting Your Privacy" Statement.

### **14. OTHER MATTERS**

14.1 If any term (or part of a term) in Our Customer Terms is void or unenforceable, that term (or part) is taken to be



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removed from Our Customer Terms and not to form part of them. The remaining terms continue to have full effect.

## 15. SPECIAL MEANINGS

### 15.1 In Our Customer Terms:

**Business customer** means any customer who we believe carries on a business, and includes:

- a. an individual whose White Pages entry incorporates a business reference; or
- b. a company registered under the Corporations Act having an CAN or an ARBN/ABN or any other body corporate; or
- c. an association or club (whether incorporated under Associations Incorporation Legislation or not) that is not a non-profit organisation or charitable organisation

**Charge** means a charge specified in our customer Terms.

**Charitable organisation** or charity means an organisation that is endorsed by the Commissioner of Taxation as a deductible gift recipient under Subdivision 30-BA by reason of being a public benevolent institution under item 4.1.1 of the table in section 30-45 of the Income Tax Assessment Act 1997.

**Credit card** means any credit or charge card accepted by us as a form of payment from time to time.

**Customer** means a person who contracts with us for a service (including for supply of that service to another person) or who otherwise acquires a service from us, or who seeks to do either of these.

**Equipment** means a "Facility" under the Telecommunications Act 1997 and includes any line, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a service

**Excessive or unusual use** of a service in these Small Business Standard Terms and conditions means where there is a high volume of usage outside of normal usage patterns or other usage which suggests irregular network access (for example, where a call remains connected for an unusually long period of time, where an unusual pattern of short calls is made in a short period of time, or where an unusually large volume of calls are made, particularly to premium-rate or international services).

**Government customer** includes all federal, state, territory and local government departments, authorities, agencies and businesses.

**GST** means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 and the related imposition Acts of the commonwealth.

**Insolvent** includes having a receiver, manager, administrator, provisional liquidator or liquidator appointed to you.

**Network** means our 'telecommunications network' as defined under the Telecommunications Act 1997.

**Nominated services** means a services of a Nominated Service Customer billed under a Single Bill

**Nominated Service Customer** means a customer other than the Single Bill Customer who has agreed to have their service included in a Single Bill.

**Non-profit organisation** means an organisation that does not operate for profit and includes:

- a. government and non-government schools, pre-schools, kindergartens and child-care centres; and
- b. sporting, social, cultural and community clubs and groups that are operated substantially by their members, players or their parents, but does not otherwise include Government departments, business or agencies.

A reference to a **person** includes the person's executors, successors and assigns.

**Premises** means any land, building, structure, vehicle or vessel, whether owned, leased or occupied by you, containing equipment or a service, or to which a service is supplied.

**Service** includes any goods or equipment provided in connection with a service.

**Service Agreements** means: any agreement for a service with us or one of our subsidiaries that may be included on a Single Bill.

**Tax** invoice has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**We** means Flash Fibres Pty Ltd, ABN 66 600 357 908, and includes its successors and assigns.

**You** means the customer.