

**2018**



# **Standard Form of Agreement – Digital Mobile Service (Consumer Terms)**



## Table of Contents

1. ABOUT THESE CONSUMER TERMS .....	1
2. THE AGREEMENT .....	2
2.1. The agreement .....	2
2.2. When does the agreement apply? .....	2
2.3. What happens if there is an inconsistency between the different parts of the <i>agreement</i> ? .....	2
2.4. When does the agreement start? .....	2
2.5. When will we start providing the <i>service</i> to you under the <i>agreement</i> ? .....	3
2.6. For how long will we provide the <i>service</i> to you in accordance with the <i>agreement</i> ? .....	3
2.7. For how long will we provide the <i>service</i> to you in accordance with the <i>agreement</i> ? .....	3
2.8. Responsibility for persons who you allow to use the <i>service</i> .....	4
2A. CHANGING THE AGREEMENT? .....	5
2A.1 When can we make changes to fixed length or non fixed length agreements? .....	5
2A.2 What must we do if we make changes to <i>fixed length agreements</i> ? .....	5
2A.3 When do we consider that a change will <i>impact</i> you? .....	5
2A.4 What do we mean by <i>notice in writing</i> ? .....	6
2A.5 What do we mean by <i>fair terms</i> ? .....	6
2A.6 Changes that we can make to <i>fixed length agreements</i> , even if the change <i>impacts</i> you .....	7
2A.7 Changes that are likely to benefit you or have a neutral or minor detrimental impact on you	9
2A.8 How can you change anything in the <i>agreement</i> ? .....	10
3. YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE.....	11
3.1. What is the <i>service</i> ? .....	11
3.2. When may we refuse your application? .....	11



4. How we deal with <i>your</i> personal information .....	12
4.1. Collection, use and disclosure .....	12
4.2. Opting-out .....	13
4.3. Gaining access to and correcting <i>your</i> personal information .....	13
4.4. Providing <i>your</i> personal information .....	13
4.5. Consent .....	13
5. USING THE <i>SERVICE</i> .....	14
5.1. Connecting the <i>service</i> .....	14
5.2. Quality of the <i>service</i> .....	14
5.2A. Blocking Calls .....	14
5.3. Permitted uses of the <i>service</i> .....	14
5.4. Unusually high use .....	15
5.5. Compliance with third party rules .....	16
6. EQUIPMENT .....	17
6.1. What are <i>your</i> responsibilities in relation to equipment? .....	17
6.2. Who owns the equipment? .....	17
6.3. Installation of the equipment .....	18
6.4. Maintenance and repair of any <i>RealSIM</i> owned <i>equipment</i> .....	18
6.5. Lost, stolen and damaged equipment .....	18
7. <i>NETWORK</i> MAINTENANCE, FAULT REPORTING AND RECTIFICATION .....	19
7.1. Maintenance on the <i>network</i> used to supply the <i>service</i> .....	19
7.2. Reporting faults .....	19
7.3. Assisting <i>us</i> in investigating and repairing a fault .....	19
7.4. <i>Our</i> responsibility for repairing faults .....	19



7.5. Loss of access .....	20
8. FEES AND CHARGES .....	21
8.1. What are the fees and charges for using the service? .....	21
8.2. Types of fees and charges (including administration and other charges) .....	21
8.3. How do we calculate fees and charges? .....	22
8.4. Specials .....	22
8.5. Variable charges .....	23
9. BILLING AND PAYMENTS .....	24
9.1. How often will we bill you? .....	24
9.2. Electronic billing (My Account & E-mail bill) .....	24
9.3. What will appear on your bill? .....	24
9.4. We may use a billing agent to bill you .....	25
9.5. What types of payment methods may you use? .....	25
9.6. When must you pay your bill? .....	25
9.7. What happens if you do not pay your bill by the due date? .....	26
9.8. What happens if you have overpaid as a result of a billing error? .....	26
9.9. Taxes (including GST) .....	27
10. COMPLAINTS AND DISPUTES .....	28
10.1. Making complaints .....	28
10.2. Suspension of payment obligations .....	28
10.2A Financial Hardship Policy .....	29
10.3. Complaints about loss of access to the service .....	29
11. CANCELLING THE SERVICE .....	30
11.1. Your right to cancel the service .....	30



11.2.	Our right to cancel the service - non fixed-length agreement .....	31
11.3.	Our right to cancel the service - non fixed-length agreement and fixed-length agreement .	31
11.4.	How can you cancel the service? .....	33
11.5.	When will the service be cancelled? .....	33
11.6.	What happens when the <i>service is cancelled</i> ? .....	33
12.	SUSPENDING THE <i>SERVICE</i> .....	36
12.1.	<i>Our</i> rights to suspend the <i>service</i> .....	36
12.2.	What happens when the <i>service</i> is suspended .....	37
13.	WHAT ARE <i>YOU</i> AND <i>WE</i> LIABLE FOR .....	39
13.1.	<i>Your</i> liability to <i>us</i> .....	39
13.2.	<i>Our</i> liability to <i>you</i> .....	39
14.	ASSIGNING THE <i>AGREEMENT</i> TO A THIRD PARTY .....	42
14.1.	How can <i>we</i> assign <i>our</i> responsibilities to a third party.....	42
14.2.	How can <i>you</i> assign <i>your</i> responsibilities to a third party .....	42
15.	GENERAL .....	43
15.1.	Which laws and courts govern the <i>agreement</i> ? .....	43
15.2.	Intellectual property protections .....	43
15.3.	What happens if <i>you</i> can't fulfil <i>your</i> obligations or <i>we</i> can't fulfil <i>our</i> obligations under the <i>agreement</i> because of an event outside <i>your</i> or <i>our</i> control? .....	43
15.4.	What happens if you become a carrier or carriage service provider? .....	44
15.5.	When do <i>we</i> waive a right <i>we</i> have under the <i>agreement</i> ? .....	44
15.6.	Payment of commission by <i>us</i> .....	45
15.7.	Information about <i>your</i> rights .....	45
16.	WHAT DO TERMS IN THE <i>AGREEMENT</i> MEAN? .....	46



16.1.	Definitions .....	46
16.2.	Interpretation .....	51



## 1. ABOUT THESE CONSUMER TERMS

- a) These are RealSIM's Consumer Terms. They set out our standard customer terms for *consumers*.
- b) The meaning of the words printed *like this* is set out at the end of the *consumer terms*.
- c) These *consumer terms*, together with *your application*, the *service description*, the *standard pricing table* and the *appendices*, forms the *agreement with us*. To understand *your rights and obligations you* need to read all of the documents that relate to *you* and the *service you* select.
- d) The *service description* is a detailed description of each of the services RealSIM offers, including the different features, options and availability of a service.
- e) The *standard pricing table* sets out the fees or charges *we* may charge *you* for *your* use of the *service*. It also contains other information such as eligibility criteria and specific details of any *pricing plans* and some *specials we* offer. Please check the *standard pricing table* carefully to see what fees and charges apply to *your* use of the *service*.
- f) The *appendices* contain further information that may apply to *your* use of the *service*, such as details of certain call charges, *our* usage policies and some *specials*. The *service description* or *standard pricing table* will refer *you* to an *appendix* if it is relevant to *your* use of the *service*.
- g) *You* may obtain a copy of the latest version of the *consumer terms*, *service description*, *standard pricing table* and *appendices* from *us* or on *our* website: [www.RealSIM.com.au](http://www.RealSIM.com.au).



## 2. THE AGREEMENT

### 2.1. The agreement

- a) The *agreement* is made up of:
  - i. your application,
  - ii. these consumer terms,
  - iii. the service description,
  - iv. the standard pricing table, and
  - v. the appendices.
  
- b) The agreement is either a fixed-length agreement or non fixed-length agreement.

### 2.2. When does the agreement apply?

The *agreement* applies if you are a *consumer*.

### 2.3. What happens if there is an inconsistency between the different parts of the *agreement*?

- a) If anything in these *consumer terms* is inconsistent with a provision in another part of the *agreement*, then unless otherwise stated, the *consumer terms* prevail to the extent of the inconsistency.
- b) Clause 13, 'What *you* and *we* are liable for', below prevails over all other terms.

### 2.4. When does the agreement start?

The agreement starts when we accept your application.



## **2.5. When will we start providing the *service to you* under the *agreement*?**

We will provide the *service to you* under the *agreement* from the *service start date*.

## **2.6. For how long will we provide the *service to you* in accordance with the *agreement*?**

- a) If the *agreement* is a *non fixed-length agreement*, we will provide the *service to you* in accordance with the *agreement* until the *service is cancelled* in accordance with clause 11, '*Cancelling the service*', below.
- b) If the *agreement* is a *fixed-length agreement*, we will provide the *service to you* in accordance with the *agreement*:
  - i. for the *minimum term*, or
  - ii. until the *service is cancelled* in accordance with clauses 11.1 or 11.3 below, or
  - iii. if neither *you* nor *we* *cancel the service* at the end of the *minimum term* the *service is cancelled* in accordance with clauses 11.1 to 11.3 below.

## **2.7. For how long will we provide the *service to you* in accordance with the *agreement*?**

- a) If the *agreement* is a *fixed-length agreement* and neither *you* nor *we* *cancel the service* at the end of the *minimum term*, the *agreement* becomes a *non-fixed length agreement* and we will continue to supply the *service to you* on a month-to-month basis in accordance with the *agreement*.
- b) If *you* do not wish to continue to use the *service* on a month-to-month basis after the end of the *minimum term*, *you* must inform *us* (in accordance with clause 11, '*Cancelling the service*', below) by giving *us* 30 days' notice before the end of the *minimum term* that *you* wish to *cancel the service* at the end of the *minimum term*.



- c) (c) If we choose not to provide the *service* to you after the end of the *minimum term*, we will give you notice of this (in accordance with clause 11, '*Cancelling the service*', below) by giving you 30 days' notice before the end of the *minimum term*.
- d) (d) If we wish to change the terms of the *agreement*, including any fees or charges, at the end of the *minimum term*, we will give you notice of this (in accordance with clause 2A below) before the end of the *minimum term*.

## **2.8. Responsibility for persons who you allow to use the service**

You must ensure that any person you allow to use the *service* complies with the *agreement* as if they were you.

## 2A. CHANGING THE AGREEMENT?

### 2A.1 When can we make changes to fixed length or non fixed length agreements?

We can make any type of change to a fixed length agreement or a non-fixed length agreement if:

- a) the change will benefit or will not adversely affect *you*;
- b) *you* agree to the change; or
- c) *we*:
  - i. reasonably expect the change to adversely affect *you*; and
  - ii. give *you* reasonable notice of the change; and,
  - iii. if *your agreement is a fixed length agreement*, we also make sure that we comply with *our* obligations set out below.

### 2A.2 What must we do if we make changes to *fixed length agreements*?

(a) Generally, if *we* make a change to a *fixed length agreement* which *impacts you* and it is not of the type listed in clauses 2A.6 or 2A.7 below, we must give *you notice in writing* of the change on *fair terms* and the right to *cancel the service*.

(b) If *we* make a change to a *fixed length agreement* which is of the type listed in clauses 2A.6 or 2A.7 below, *we* must comply with *our* obligations set out in clauses 2A.6 or 2A.7.

### 2A.3 When do we consider that a change will *impact you*?

*We* consider that a change will *impact you* if *you* have used or been billed for the service affected by the change during the 6 months before *our* notice and *we* consider that the change will have more than a minor detrimental impact on *you*.

## 2A.4 What do we mean by *notice in writing*?

When we have to give you *notice in writing* under clause 2A.5 below of a change to the *agreement*, we can do so by giving it to you in person, sending it to you by mail or to your email address (if you have agreed to allow us to tell you about changes to the *agreement* by email), by bill message or bill insert, or in the case of pre-paid services, by making the information available on our website or at retail outlets and informing you (by recorded message, text message or in writing) of how to obtain information about the change.

## 2A.5 What do we mean by *fair terms*?

- a) When we have to give you notice of a change on *fair terms*, we will:
  - i. give you 21 days *notice in writing* of the change before the change occurs, and
  - ii. offer you the right to *cancel the service* within 42 days from the date of *our notice in writing*.
- b) If you choose to *cancel the service* under clause 2A.5(a)(ii) above,
  - i. we will cancel the *service* on the date on which you notify us that you wish to *cancel the service* (which must be within 42 days from the date of *our notice in writing*)
  - ii. you will only have to pay
    - A. your usage charges or *access fees* (incurred to the date on which you notify us you wish to *cancel the service*) and
    - B. any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with services provided by any third party).
- c) If you have overpaid for the *service* because
  - i. the *service* is cancelled during a billing cycle; or
  - ii. the change related to a price increase that became effective prior to the date your *service* was cancelled

then *your* account (if *you* continue to have any account with *us*) will be credited with the amount *you* have overpaid, or if *you* have stopped obtaining the *service*, *we* will use reasonable endeavours to notify *you* that *you* have overpaid and refund the overpayment.

## **2A.6 Changes that *we* can make to *fixed length agreements*, even if the change *impacts you***

- a) If the *agreement* is a *fixed-length agreement*, *we* can make changes to the *agreement* even if they *impact you*,
- i. if the change is in relation to the cost of international services or *roaming*. In this case, as *our* rates for international services or *roaming* are subject to variation, *we* can change the charges and do not need to tell *you* individually beforehand. Before *you* travel overseas *you* should contact *us* for indicative pricing. Go to <http://www.RealSIM.com.au/> or call Customer Service for further information;
  - ii. if the change is required by law or is in relation to a fee or charge to account for a *tax* imposed by law and it is fair and reasonable for *us* to do so. If *we* expect the change to adversely affect *you*, *we* will whenever possible, try to give *you* at least 21 days *notice in writing* of the change.

*We* would consider it fair and reasonable for *us* to make a change to the *agreement* to account for a *tax* imposed by law, if the *tax* imposed is directed at *you*, the end-user and relates to *your* use of, and charges *you* must pay *us* for use of, the *service*. An example of this would be where *we* pass on to *you* an increase in the rate of a transaction tax, such as GST or stamp duty.

*We* would not consider it fair and reasonable to pass on a *tax* imposed by law if the *tax* imposed is directed at *us*, the supplier, and affects the cost to *us* of supplying the *service* to *you*.

- b) If the agreement is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is in relation to a fee or charge for a service ancillary to the supply of the *service* (for example, a billing fee or credit card transaction fee). If the change *impacts you* we will offer *you*:
- i. use of a reasonable alternative at no fee or charge, or
  - ii. a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which *you* notify *us* *you* wish to *cancel the service*),
- c) If the agreement is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is to increase the price of a content or premium service (where *we* are passing on an increase in the cost charged to *us* by the *supplier* who supplies that *content service* or premium service to *us*. If the change *impacts you* we will:
- i. wherever possible, still try to give you at least 21 days *notice in writing* of the increase in price if *you* have used the *content* or premium service within the previous six (6) months, and
  - ii. allow *you* to elect to not use the *content* or premium service without attracting any additional charges,
- d) If the agreement is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is a result of another *carrier* or service provider varying their agreement with *us* so that *we* need to make changes to the *agreement*. If the change *impacts you* we will :
- i. whenever possible, still try to give you at least 21 days *notice in writing* of the change , and
  - ii. give you 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
    - A. usage charges or *access fees* (incurred to the date on which *you* notify *us* *you* wish to *cancel the service*), and
    - B. any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with services provided by any third party).

## **2A.7 Changes that are likely to benefit *you* or have a neutral or minor detrimental impact on *you***

- a) *We* can make changes to a *fixed length agreement* relating to the characteristics of the *service* (including price) if the change is likely to benefit *you* or have a neutral or minor detrimental impact on *you*.
- b) *If you* can demonstrate that such a change has had **more than a minor detrimental impact on *you* and the change is not of a type described in paragraph 2A.6** *we*:
- i. will offer *you* the right to *cancel the service* without incurring fees or charges other than:
    - A. usage charges or *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which *you* notify *us* *you* wish to *cancel the service*), and
    - B. any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with services provided by any third party); and
  - ii. may offer *you* an alternative remedy to address the impact the change has had on *you*.

Some examples of a change that would benefit *you*:

- if *we* decrease a call charge or access fee; or
- if *we* offer a new feature of the *service*.

Some examples of a change that *we* consider would have a minor detrimental impact on *you*:

- Withdrawing a minor feature of the *service*;
- Changing the *content* available with *your* service;
- a small increase in a content charge.

An example of a change that would have a neutral impact on *you* would be changing the URL or website address for accessing information using the *service*.



## **2A.8 How can you change anything in the *agreement*?**

Unless expressly allowed in the *agreement*, you cannot make any changes to the *agreement* without first obtaining *our* consent.





### **3. YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE**

#### **3.1. What is the service?**

The *service* you have selected is detailed in the *service description*.

#### **3.2. When may we refuse your application?**

We may refuse your application if:

- a) *you* do not provide satisfactory proof of identification,
- b) *you* do not meet the eligibility criteria for the *service*,
- c) the *service* is not available at the location where *you* wish to acquire the *service*, or
- d) *you* do not have an appropriate *credit rating*.

## 4. How we deal with *your* personal information

### 4.1. Collection, use and disclosure

- a) We may collect, use and disclose *personal information* about *you*, to decide whether to start, stop or limit supply to *you* of personal credit, the *service*.
- b) We may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call) for purposes related to the supply of the *service* (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide *you* with information about promotions, as well as the other products and services of *RealSIM*.
- c) We may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call) for the purposes in paragraphs (a) and (b) above to or from:
  - i. a credit reporting agency or credit provider,
  - ii. third parties who are not related to *us*, including *our* agents, dealers, contractors and franchisees,
  - iii. *suppliers* who need access to *your personal information* to provide us with services to allow supply of the *service*, and
- d) We may be permitted or required by applicable laws to collect, use or disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call), including to:
  - i. the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
  - ii. emergency services organisations, and
  - iii. to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.



## 4.2. Opting-out

If *you* wish to only receive communications that are account-related or legally required, *you* may request not to receive other communications (that is, *you* may 'opt out'). *You* will need to contact Customer Service to make a request to opt-out. *We* will not charge *you* for processing a request to opt-out.

## 4.3. Gaining access to and correcting *your* personal information

If *you* are an individual, *you* are entitled to:

- a) gain access to *your personal information* held by *us*, unless *we* are permitted or required by any applicable law to refuse such access, and
- b) correct any *personal information* held by *us*.

## 4.4. Providing *your* personal information

If *you* do not provide part or all of the *personal information* *we* request, then *we* may refuse to supply, or limit the supply to *you* of, personal credit or the *service*.

## 4.5. Consent

By providing *your personal information* to *us* and obtaining the *service*, *you* acknowledge and consent to the collection, use and disclosure of *your personal information* as set out in this clause 0 and in accordance with *our* privacy policy. *You* may obtain a copy of *our* privacy policy from *us* or on *our* website: [http://RealSIM.com.au/legal/privacy\\_policy.php](http://RealSIM.com.au/legal/privacy_policy.php)



## 5. USING THE *SERVICE*

### 5.1. Connecting the *service*

*You* must reasonably co-operate with *us* to allow *us*, or a *supplier*, to establish and supply the *service* to *you* safely and efficiently. If *you* do not do so, *we* may be entitled to cancel the *service* under clause 11.3(a)(v) or 11.3(a)(vi) or suspend the *service* under clause 12.1(a)(vii) or 12.1(a)(viii).

### 5.2. Quality of the *service*

*We* will provide the *service* to *you* with due care and skill. In the event of unexpected faults *we* will use reasonable endeavours to ensure the *service* is restored as soon as possible.

#### 5.2A. Blocking Calls

Effective 12 August 2009, *we* may block access to a number (other than an emergency service number) if *we* reasonably require this to be done for technical, operational or commercial reasons.

### 5.3. Permitted uses of the *service*

- a) When *you* use the *service*, *you* must comply with:
  - i. all laws,
  - ii. all directions by a *regulator*,
  - iii. all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968 (Cth)*), and
  - iv. reasonable directions by *us*.
- b) *You* must not use, or attempt to use, the *service*:



- i. to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright),
  - ii. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted,
  - iii. to expose *us* to liability, or
  - iv. in any way which damages, interferes with or interrupts the *service*, the *RealSIM network* or a *supplier's network* used to supply the *service*.
- c) *We* may ask *you* to stop doing something which *we* reasonably believe is contrary to paragraph (b) above. *You* must immediately comply with any such request. If *you* do not, then *we* may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- d) *You* acknowledge that, where the *service* is a *carriage service*, *we*, or any *supplier* whose *network* is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor *your* usage of the *service* and communications sent over it.
- e) If *you* do not comply with this clause 5.3, *we* may be entitled to cancel the *service* under clause 11.3(a) (v) or (vi) or suspend the service under 12.1(a)(vii) or (viii).

#### **5.4. Unusually high use**

We may contact you if we become aware of an unusually high use of the service by you (including to verify any costs or charges which *you* may have incurred) however *we* are under no obligation to do so. For example, if *you* suddenly make an unusually high volume of calls to international destinations using the *service* *we* may contact *you* to determine whether that use is likely to continue. If so, *we* may ask *you* to make a pre-payment usage charge. Please note that *we* may also be entitled to suspend the *service* under clause iv for an *unusually high use* of the *service*.



## 5.5. Compliance with third party rules

When *you* use the *service* it is *your* responsibility to comply with any rules imposed by any third party whose *content* or *services* *you* access using the *service* or whose *network* *your* data traverses.

## 6. EQUIPMENT

### 6.1. What are *your* responsibilities in relation to equipment?

a) *You* must ensure that all equipment *you* use in connection with the *service* and the way *you* use that equipment complies with:

- i. all laws,
- ii. all directions by a *regulator*,
- iii. all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)), and
- iv. reasonable directions by *us*.

b) If *you* breach paragraph (a) above, *we* may:

- i. disconnect the equipment from the *service*;
- ii. suspend the *service* in accordance with clause 11.3(a)(v) or 11.3(a)(vi); or
- iii. cancel the *service* in accordance with clause 12.1(a)(vii) or 12.1(a)(viii).

c) *We* will try to give *you* reasonable notice before *we* disconnect the equipment under paragraph (b)(i) above, but *we* may disconnect the equipment, suspend the *service* or cancel the *service* immediately if there is an emergency.

### 6.2. Who owns the equipment?

a) RealSIM owned equipment

- i. Any *RealSIM* owned equipment remains *our* property or the property of *our* *personnel*.
- ii. Subject to *your* *statutory rights as a consumer*, you are responsible for any *RealSIM* owned equipment from when *you* receive it.
- iii. *You* must not mortgage or grant a charge, lien or encumbrance over any *RealSIM* owned equipment.



- b) Equipment purchased by *you* from *us* or any of *our personnel*
  - i. *You* may purchase equipment from *us* or any of *our personnel* to use in connection with the *service*.
  - ii. Subject to *your statutory rights as a consumer*, *you* will own the equipment and be responsible for the equipment from when *you* receive it.

### **6.3. Installation of the equipment**

*You* must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the *service* and located on the *premises*.

### **6.4. Maintenance and repair of any RealSIM owned equipment**

Unless *we* both agree otherwise, *you* must allow *our personnel* to service, modify, repair or replace any *RealSIM owned equipment*.

### **6.5. Lost, stolen and damaged equipment**

- a) *You* are responsible for any lost, stolen or damaged *RealSIM owned equipment*, except if it is caused by *us* or *our personnel*.
- b) *You* will be responsible for any outstanding payments for equipment that *you* have purchased from *us* or *our personnel*, even when that equipment is lost, stolen or damaged, except if it is caused by *us* or *our personnel*.



## **7. NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION**

### **7.1. Maintenance on the *network* used to supply the *service***

- a) Maintenance may be conducted on a *supplier's network* used to supply the *service*.
- b) *Our Supplier* will try to conduct scheduled maintenance on the *network* outside normal business hours, but *they* may not always be able to do so.

### **7.2. Reporting faults**

- a) *We* will provide a 24 hour fault reporting service for *you* to report faults.
- b) Before *you* report a fault to *us*, *you* must take all reasonable steps to ensure that the fault is not caused by any equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

### **7.3. Assisting *us* in investigating and repairing a fault**

*You* must provide all reasonable assistance to enable *us* or *our personnel*, or where necessary a *supplier*, to investigate and repair a fault.

### **7.4. *Our* responsibility for repairing faults**

- a) Unless the *service description* expressly provides otherwise, *we* are not responsible for repairing any fault in the *service* where the fault arises in or is caused by:
  - i. a *supplier's network*,
  - ii. equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*,  
or



- iii. facilities outside our supplier's network.
- b) Where:
- i. the fault arises in or is caused by a *supplier's network*,
  - ii. we become aware of the fault, and
  - iii. we are not responsible for the repair of that fault,
  - iv. we will notify the *supplier* of the fault and request that the fault be corrected promptly, but we will not bear any further liability or responsibility.
- c) Where the fault arises in or is caused by equipment that we are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, we are not responsible for the repair of that fault. If *you* ask *us* to investigate and repair such a fault:
- i. we will give *you* an estimate of the probable cost of investigating the fault and, if *you* agree to pay those costs, we will undertake an investigation and we will then charge *you* for the cost of investigation,
  - ii. if we have investigated the fault, we will use reasonable endeavours to inform *you* of the fault's probable cause, and
  - iii. if *you* request *us* to repair the fault and we agree to repair the fault, we will give *you* an estimate of the probable cost of repairing the fault and we will then charge *you* for the cost of repairing the fault.
- d) If we investigate a fault and determine that the fault is attributable to an *excluded event*, then we may charge *you* for any costs we incur in investigating and repairing the fault.

## 7.5. Loss of access

If the fault results in a significant loss of access to, or use of the *service*, *you* should check if *you* are entitled to a refund or rebate under clause 10.3 below. *You* may also be entitled to *cancel* the *service* under clause 11.1(a)(ii) below.

## **8. FEES AND CHARGES**

### **8.1. What are the fees and charges for using the service?**

- a) You must pay:
  - i. the fees and charges for the service, which are set out in the standard pricing table or in any applicable special, and
  - ii. any additional fees and charges noted in the agreement (including in your application) or notified by us in accordance with the agreement from time to time.
- b) You must pay all fees and charges which are incurred for the service even if you did not authorise its use.
- c) You must pay the fees and charges for the service even if the service is unavailable or you are unable to access the service. You will be entitled to a refund or a rebate under clause 10.3 below if:
  - i. You suffer a significant loss of access to, or use of, the service, and the loss was not as a result of circumstances reasonably attributable to you or equipment that we are not responsible for, such as equipment that is owned by you or is not provided by us for you to use in connection with the service.

### **8.2. Types of fees and charges (including administration and other charges)**

- a) In addition to the fees and charges you incur in the normal use of the service (including an access fee, where applicable), we may charge you for an administration fee and other similar charges. These costs may include suspension fees or cancellation fees, paper bill fees, non-direct debit fees, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the standard pricing table for your service.

- b) We may also ask you to make a pre-payment usage charge or request that you make an interim good-faith payment (including, for example, if there has been an unusually high use of the service or if you want to activate roaming).

### **8.3. How do we calculate fees and charges?**

- a) To calculate fees and charges we look at billing information generated or received by us.
- b) If you use the services of a third party, you will be billed at the third party's applicable rates and charges. We may bill you for your use of the services of a third party, acting in our capacity as that third party's billing agent only.

### **8.4. Specials**

- a) We may offer you a special from time to time (including a special in relation to a particular pricing plan).
- b) We will notify you of any specials offered to you either through general advertising or by specifically advising you. The terms of each special will either be set out in the standard pricing table for the relevant service, in an appendix, in advertising material or you will be advised separately in writing.
- c) A special may be an offer to vary the price or the terms of supply (including the minimum term), and it may be subject to certain conditions.
- d) If you validly accept a special, the terms of the special will prevail to the extent that the terms of the special are inconsistent with the terms of the agreement. Otherwise, the terms and conditions of the agreement continue to apply.
- e) After the special expires, we may end the special and the full terms and conditions of the agreement will apply.



## 8.5. Variable charges

- a) Some fees and charges for the service are subject to variation, such as charges relating to:
  - i. international services or roaming; and
  - ii. content or premium services.
- b) You should contact us before travelling overseas



## **9. BILLING AND PAYMENTS**

### **9.1. How often will we bill you?**

We will bill you on a regular basis (either in advance or in arrears), unless otherwise set out in the *service description*.

### **9.2. Electronic billing (My Account & E-mail bill)**

- a) RealSIM will email your bill every month, should you have provided us with a valid email address. You can also access your bills on our website by logging into your account with your account number and your password at <https://billing.utilibill.com.au/tiab/CustomerPortal>
- b) If we send your bill via e-mail, we will not charge you the *paper invoice fee*. However, if you notify us that you would prefer to receive a paper bill posted to you, we will provide you with a paper bill instead of an emailed bill and charge you the *paper invoice fee*.

### **9.3. What will appear on your bill?**

- a) We will try to include on your bill all charges for the relevant billing period. However, this is not always possible and we may include these unbilled charges in a later bill(s).
- b) We may place your service on a single bill with one or more other services that you have with us. At point of sale, you may choose to have all services billed individually. If you receive a single bill, afterwards it may not be possible to obtain individual bills for your services.
- c) If you receive an email bill and you notify us that you prefer to receive a paper bill posted to you in accordance with clauses 9.2(b) above:



- i. by default, the paper bill that *we* provide *you* with may only display a summary of charges for *your* account and *your services*; and
- ii. *you* will be able to view fully itemised and detailed charges in a My Account online bill.

However, if *you* notify *us* that *you* prefer *your* paper bill to display detailed, fully itemised charges for *your services*, *we* will provide *you* with a fully itemised, detailed paper bill. (For the avoidance of doubt, if *we* charge *you* the *paper invoice fee*, the amount of the *paper invoice fee* will be the same amount whether *your* paper bill displays a summary of charges or is a fully itemised, detailed bill.)

#### **9.4. We may use a billing agent to bill you**

*We* may bill *you* using a billing agent.

#### **9.5. What types of payment methods may you use?**

- a) *You* may pay by one of the payment methods as set out in the “How to Pay” section of *your* bill or on *our* website.
- b) *We* will charge a payment processing fee if *you* choose to use a credit, charge or debit card to pay *your* bill
- c) If *your* payment is not honoured (for example, in the case of insufficient funds for direct debit or credit card payment, or a dishonoured cheque), *we* may charge *you* a fee.

#### **9.6. When must you pay your bill?**

Subject to clause 10.2, *you* must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by *us*.

## 9.7. What happens if *you* do not pay *your* bill by the due date?

If *you* do not pay *your* bill by the date the payment is due, we may:

- a) Charge *you* a late fee. *You* should see the relevant *standard pricing table* for the *service* concerned to check the late fee that applies;
- b) Suspend or *cancel the service*, in accordance with clause 11 or 12 as relevant or the relevant *service description*. If we suspend or *cancel the service*, we may charge *you* a suspension fee or *cancellation fee*. If the *service* is *cancelled* and the *service* disconnected or deactivated, *you* may have to pay a reconnection or reactivation fee for the reconnection or reactivation of the *service*. *You* should see the relevant *standard pricing table* for the *service* concerned to check what fees apply, and if fees do apply, what that fee is;
- c) Engage a mercantile agent to recover the money *you owe us*. If we engage a mercantile agent, we may charge *you* a recovery fee;
- d) Institute legal proceedings against *you* to recover the money *you owe us*. If we institute legal proceedings, we may seek to recover our reasonable legal costs reasonable incurred; and
- e) On-sell any unpaid amounts to a third party. If we do this, any outstanding amounts will be payable to that third party.

## 9.8. What happens if *you* have overpaid as a result of a billing error?

If *you* have overpaid as a result of a billing error:

- a) *your* account will be credited with the amount *you* have overpaid, or
- b) if *you* have stopped obtaining the *service*, we will use reasonable endeavours to notify *you* that *you* have overpaid and refund the over payment.





## 9.9. Taxes (including GST)

- a) Unless otherwise indicated, the fees and charges set out in the *agreement* include any amount on account of *tax*.
- b) Where the fees and charges do not include an amount on account of *tax*, if any *tax* is payable by *us* in relation to, or on any supply under or in connection with the *agreement*, *we* will increase the *tax* exclusive fees and charges by an additional amount on account of the *tax*. *You* must pay the additional amount at the same time *you* pay the fees and charges. This applies where the *tax*, such as GST, is directed at, and imposed on, *you*, the end-user.

## 10. COMPLAINTS AND DISPUTES

### 10.1. Making complaints

- a) If *you* have any complaints in connection with the *service*, *you* may complain in writing (including by completing *our* complaints form on *our* website: [www.RealSIM.com.au](http://www.RealSIM.com.au)) or by calling *us*.
- b) *We* will handle *your* complaint in accordance with *our* complaints procedure. *You* may obtain a copy of this procedure from *us* or on *our* website: [www.RealSIM.com.au](http://www.RealSIM.com.au)
- c) *We* will use *our* best endeavours to resolve *your* complaint, however if *we* are not able to resolve *your* complaint to *your* satisfaction, *you* can take *your* complaint through other avenues, such as the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

### 10.2. Suspension of payment obligations

Where *your* complaint is about a fee or charge for the use of the *service*, provided *we* reasonably believe *your* complaint is bona fide, *we* will

- a) in most cases suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved, or
- b) if *you* pay by direct debit, protect *your* account and reverse any incorrect fees or charges that have been applied to *your* account, once the complaint has been investigated and resolved.

All other fees and charges that are not in dispute are due and payable.



## 10.2A Financial Hardship Policy

The RealSIM Financial Hardship Policy contains information about how we can assist customers who are experiencing financial hardship. *You* can see and print a copy at [http://RealSIM.com.au/legal/financial\\_hardship\\_policy.php](http://RealSIM.com.au/legal/financial_hardship_policy.php) or have a copy sent to *you* by calling *us* on 1300 144 039.

### 10.3. Complaints about loss of access to the *service*

Where *your* complaint is about a significant loss of access to, or use of, the *service* and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, *you*

- a) will be entitled to a refund or a rebate of any *access fees* for the period in which *your* access or use was interrupted (including when an *intervening event* occurs). The *service description* may set out the way in which any rebate or refund is calculated; and
- b) may be entitled to *cancel* the *service* under clause 11.1(a)(ii) below.

*You* should contact customer service to lodge *your* complaint.

## 11. CANCELLING THE SERVICE

### 11.1. Your right to cancel the service

a) You may cancel the service at any time by:

giving *us* 30 days' notice (please note that *you* are required to give *us* this notice if *you* do not wish to continue to use the *service* after the end of the *minimum term* of a *fixed-length agreement*, otherwise *we* will continue to supply the *service* to *you*, or Giving *us* notice, if:

- i. *we* breach a material term of the *agreement* and *we* cannot remedy that breach, including where there are prolonged or repeated interruptions to *your* access to or use of, the *service* and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*; or
- ii. *we* breach a material term of the *agreement* and *we* can remedy that breach, but *we* do not remedy that breach within 30 days after *you* give *us* notice requiring *us* to do so; or
- iii. any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days.

b) If the *agreement* is an unsolicited consumer agreement regulated by the unsolicited consumer agreement provisions of the *Australian Consumer Law*, *you* may also *cancel the service*

- i. before the end of the cooling-off period which is:
  - A. if the *agreement* was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after *you* signed *your* application; or
  - B. if the *agreement* was negotiated by telephone – the period of 10 business days from and including the first business day after *you* received written confirmation from *us* of *your* application;

- ii. in accordance with any additional termination rights *you* may have relating to unsolicited consumer agreements under the *Australian Consumer Law*. Details about these additional rights to cancel the agreement are set out in the information provided to *you* with *your application*.
- c) If the *agreement* is a *fixed-length agreement*, *you* may also *cancel the service* in accordance with clause 2A above. Clause 2A sets out the circumstances which give *you* the right to *cancel the service* if we change the *agreement*.

## 11.2. Our right to cancel the service - non fixed-length agreement

If the *agreement* is a *non fixed-length agreement*, we may *cancel the service* at any time by giving *you* at least 30 days' notice.

## 11.3. Our right to cancel the service - non fixed-length agreement and fixed-length agreement

- a) We may *cancel the service* at any time if:
  - i. there is an emergency,
  - ii. we reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - iii. any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and we give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after we give *you* that notice, unless otherwise set out in the *agreement*,
  - iv. we reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* (which is not the subject of a valid dispute under clause 10.2 above) in respect of any service by its due date and *you* are given notice requiring payment of that amount by us and *you* fail to pay that amount in full within the required period,



- v. *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the RealSIM Fair Use Policy or breach clause 6.1 above) and *you* cannot remedy that breach,
- vi. *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the RealSIM Fair Use Policy or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,
- vii. *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)),
- viii. *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
- ix. *you* die or if *you* are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
- x. the *service* is suspended for more than 14 days, unless otherwise set out in the *agreement*,
- xi. any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days, or
- xii. *we* are otherwise entitled to do so under the *agreement*.

- b) In most circumstances, we will give *you* as much notice as we reasonably can before we *cancel the service*. However, in some circumstances, for example in an emergency or if we consider *your* use of the *service* is unreasonable and in breach of our Fair Use Policy, we may *cancel the service* without notice to *you*.

#### **11.4. How can you cancel the service?**

- a) *You* can ask us to *cancel the service* by calling us. Your call will be notice to *cancel the service*.
- b) *You* may also be able to *cancel the service* by electing to have an equivalent service to the *service* supplied by another *carrier* or *carriage service provider* (including, by *churning*). That *carrier* or *carriage service provider* will inform us that *you* have elected to have the relevant service supplied by them or have *churned* to them and we will *cancel the service* immediately.

#### **11.5. When will the service be cancelled?**

The service will be cancelled on the cancellation date. You will not be able to use the service after the cancellation date.

#### **11.6. What happens when the *service is cancelled*?**

- a) The agreement terminates when the service is cancelled.
- b) If the service is cancelled:
- i. *you* are liable for any charges incurred (including the *cancellation fee*, and outstanding *equipment charges* if any) up to, and including, the *cancellation date* (*you* should check the *service description* and *standard pricing table* for *your service* for details of any applicable *cancellation fee*). *You* will not be liable for



any such charges under this subsection if *you* cancel the service in accordance with section b) above.

- ii. because an *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days (under clause 11.1(a)(ii)(C) or 11.3(a)(xi) above), *you* are liable for any charges incurred (including outstanding *equipment charges* if any) up to the *cancellation date*. However, unless it is fair and reasonable for *us* to do so, *we* will not charge *you* any *cancellation fee* in these circumstances
  - iii. *you* authorise *us* to apply any over payment on *your* account and/or money that *you* have paid in advance for the *service* which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any),
  - iv. subject to paragraph (iii) above and unless otherwise set out in the *service description*, *we* will refund any over payment on *your* account and any money that *you* have paid in advance for the *service* which is being cancelled on a pro-rata basis to *you*, and
  - v. if *you* are required under the *service description* to pay for the *service* by direct debit payment (either from *your* credit card or from *your* nominated bank account), *you* authorise *us* to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from *your* credit card or bank account.
- c) If the *service is cancelled* as a result of circumstances reasonably attributable to *you*:
- i. before the *service start date*, *you* must pay *us* all infrastructure and installation costs incurred by *us* in connection with preparations for supplying the *service* to *you*, and
  - ii. during the *minimum term*, subject to clause 2A, *you* must pay *us* the *cancellation fee*.
- d) If *you* wish to reinstate the *service* *you* should contact *us*. If the *service is cancelled* as a result of circumstances reasonably attributable to *you* and *we* reinstate the *service*, then *you* may have to pay *us* a reconnection or reactivation fee.





- e) If *you* are able to use the *service* after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 11.6.



## 12. SUSPENDING THE SERVICE

### 12.1. Our rights to suspend the service

- a) We may suspend the service at any time, if:
- i. there is an emergency,
  - ii. doing so is necessary to allow *us* or a *supplier* to repair, maintain or service any part of *the Optus network* or a *supplier's network* used to supply the *service*,
  - iii. *we* reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - iv. *we* reasonably believe there has been an *unusually high use* of the *service*,
  - v. any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,
  - vi. *we* reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* (which is not the subject of a valid dispute under clause 10.2 above) in respect of any service is not paid by its due date and *you* are given notice requiring payment of that amount by that *Optus group company* and *you* fail to pay that amount in full within the required period,
  - vii. *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the RealSIM Fair Use Policy or breach clause 6.1 above) and *you* cannot remedy that breach,
  - viii. *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations



relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the RealSIM Fair Use Policy or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,

- ix. *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)),
  - x. problems are experienced interconnecting *the Optus network* with any *supplier's network*,
  - xi. *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - xii. *you* die or if *you* are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due, or
  - xiii. *we* are otherwise entitled to do so under the *agreement*.
- b) In most circumstances, *we* will give *you* as much notice as *we* reasonably can before *we* suspend the *service*. However, in some circumstances, for example in an emergency or if *we* consider *your* use of the *service* is unreasonable and in breach of *our* Fair Use Policy, *we* may suspend the *service* without notice to *you*.
- c) If *we* suspend the *service*, *we* may later *cancel the service* for the same or a different reason.

## **12.2. What happens when the *service* is suspended**

- a) If the *service* is suspended, *you* will have to pay *access fees* for the *service* while it is suspended.



- b) If the *service* is suspended and the suspension was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, *you* will be entitled to a refund or a rebate of any *access fees* for the period of suspension. *You* should contact customer service for *your* refund or rebate.
- c) If the *service* is suspended as a result of circumstances reasonably attributable to *you*, *you* may have to pay *us* a suspension fee. *You* should check the relevant *standard pricing table* for the *service* concerned to see if a suspension fee applies.
- d) If *you* wish to lift the suspension *you* should contact *us*.



## 13. WHAT ARE YOU AND WE LIABLE FOR

### 13.1. Your liability to us

- a) You are liable to us for any breach of the *agreement* by you that causes foreseeable substantial *loss* to us.
- b) You are not liable to us for any *consequential losses* we suffer or for any costs, expenses, *loss* or charges that we incur which are not direct results of something you have done.

### 13.2. Our liability to you

- a) We have responsibilities and obligations under the law, including under:
  - i. the Telecommunications Legislation,
  - ii. the Competition and Consumer Act, including the *Australian Consumer Law*,
  - iii. applicable laws, regulations and codes.

Nothing in the *agreement* removes or limits any rights that you have under existing laws or regulations.

### Your statutory rights as a consumer

Under the Australian Consumer Law, if you enter into an agreement to purchase goods or services from us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by you, certain consumer guarantees apply to those goods and services in relation to acts or omissions that occur on or after 1 January 2011 (consumer guarantees).

Consumer guarantees apply regardless of any express warranties to which you may be entitled

under this agreement.

We guarantee that:

- goods are of acceptable quality (unless we specifically drew to your attention the reasons why the goods are not of acceptable quality);
- any express warranties will be honored;
- you are buying goods that have clear title, that do not have undisclosed securities and with a right to undisturbed possession;
- you are buying goods that are fit for any disclosed purpose;
- you are buying goods that match the description, sample or demonstration model; and
- the services we supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the services) and are provided within a reasonable time, if no time is fixed for supply of the services.

If the goods or services we supply fail to meet a consumer guarantee, you may have rights against us. This may include the right to a repair, replacement or refund. In certain circumstances we may choose how we remedy our failure. In other circumstances, you may choose how the failure should be remedied.

You may not be entitled to a refund or replacement under the Australian Consumer Law if the good is not rejected within a reasonable period; you have lost, destroyed or disposed of the good; or the good has been damaged after delivery. You may be entitled to recover reasonably foreseeable loss or damage suffered for our failure to meet a consumer guarantee.

You may also have rights against us in relation to acts or omissions occurring before 1 January 2011 that amount to a breach of an implied condition and/or warranty under the Trade Practices Act, in respect of goods or services purchased from us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by you.



- b) We are liable to you for:*
- i. any damage to your property which has been caused by the fault, negligence or fraud by us or our personnel during installation, repair or maintenance,*
  - ii. interruptions in your use of the service as a result of a fault or negligence of us or our personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred, and*
  - iii. death or personal injury caused by us or our personnel.*
- c) If you have contributed to any loss or damage you are claiming against us, our liability is reduced to the extent of your contribution.*
- d) Subject to your statutory rights as a consumer, we are not liable to you for any consequential losses you suffer or for any costs, expenses, loss or charges that you incur.*



## **14. ASSIGNING THE AGREEMENT TO A THIRD PARTY**

### **14.1. How can *we* assign *our* responsibilities to a third party**

- a) *We* may assign some or all of *our* rights under the *agreement* (where those rights are assignable) to any person.
- b) *We* may perform any of *our* obligations under the *agreement* by arranging for them to be performed by another person, including a *supplier*.
- c) *We* will still be responsible for the performance of the obligations.

### **14.2. How can *you* assign *your* responsibilities to a third party**

- a) *You* may assign *your* rights under the *agreement* (where those rights are assignable) so long as *you* have *our* prior written consent.
- b) *You* may transfer *your* obligations under the *agreement* if:
  - i. the person to whom *you* are transferring the obligations:
    - A. provides satisfactory proof of identification,
    - B. meets the eligibility criteria for the *service*,
    - C. has an appropriate *credit rating*, and
  - ii. the *service* is available at the location where they wish to acquire the *service*.





## 15. GENERAL

### 15.1. Which laws and courts govern the *agreement*?

- a) The *agreement* is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which *you* normally reside.
- b) *You* and *we* submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

### 15.2. Intellectual property protections

- a) *We* own all material (including *intellectual property rights*) developed by *us* or *our personnel*, or at *our* or their direction.
- b) *We* may permit *you* to use this material, or other material licensed by *us*, as part of the *service*. This permission is subject to any conditions which *we* may impose from time to time and will cease when the *service* is *cancelled*.
- c) *You* must not infringe any person's *intellectual property rights* (such as by using, copying or distributing data or software without the permission of the owner) in using the *service*. If *you* breach this paragraph, *we* may suspend the *service* under clause 12.1(a)(vii) or (viii) or *cancel the service* under clause 11.3(a)(v) or (vi).

### 15.3. What happens if *you* can't fulfil *your* obligations or *we* can't fulfil *our* obligations under the *agreement* because of an event outside *your* or *our* control?

- a) If an *intervening event* occurs which affects *you* from performing any of *your* obligations under the *agreement* (other than an obligation to pay money), then *you* will not be liable for failing to perform that obligation. *You* must notify *us* of the *intervening event* and use *your* best efforts to resume performance in accordance with the *agreement* as

soon as reasonably possible. *Our* obligations continue during the *intervening event*, except if *we* are not able to perform *our* obligations because *you* are unable to perform *your* obligations due to the *intervening event*.

- b) If an *intervening event* occurs which affects *us* (or any of *our personnel*) from performing any of *our* obligations under the *agreement* (other than an obligation to pay money), then *we* will not be liable for failing to perform that obligation. *We* must notify *you* of the *intervening event* and use *our* best efforts to resume performance in accordance with the *agreement* as soon as reasonably possible. *Your* obligations continue during the *intervening event*, except if *you* are not able to perform *your* obligations because *we* are unable to perform *our* obligations due to the *intervening event*.

#### **15.4. What happens if you become a carrier or carriage service provider?**

- a) You represent that you are not a carrier or carriage service provider.
- b) If *you* are or become a *carrier* or *carriage service provider*, *we* may immediately *cancel the service* by giving *you* notice.
- c) If *we cancel the service* under this clause, *we* will negotiate in good faith with *you* to enter into an alternative agreement governing supply of the *service*, on terms to be agreed.

#### **15.5. When do we waive a right we have under the agreement?**

If *you* breach the *agreement* and *we* do not exercise a right that *we* have because of *your breach*, *we* do not necessarily waive *our* entitlement to exercise that right because of *your breach* at any later time.



### **15.6. Payment of commission by us**

We may pay a commission to any of *our personnel* in connection with the *agreement*.

### **15.7. Information about *your* rights**

Information and advice about *your* rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.



## 16. WHAT DO TERMS IN THE AGREEMENT MEAN?

### 16.1. Definitions

- **access fee** means the fixed payment for access to the *service* payable on a regular basis (often monthly). The *access fee* is payable regardless of the actual usage of the *service*. A minimum monthly charge and minimum monthly service charge are also *access fees*.
- **agreement** means the terms and conditions on which *we* supply the *service* to *you*.
- **appendices** means the appendices containing information relevant to the *service*.
- **application** means the part of the *agreement* which is the written or verbal application *you* complete to request that *we* supply the *service* to *you*.
- **Australian Consumer Law** means The Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.
- **cancel the service** means that the *service* is cancelled and the *agreement* is terminated.
- **cancel the service for convenience** means to *cancel the service* in circumstances where *you* have not breached the *agreement* and there is no other event which triggers the right to *cancel the service*.
- **cancellation date** means:
  - a) the date 30 days after *you* notify *us* that *you* wish to *cancel the service*, unless *we* agree otherwise,
  - b) the date at least 30 days after *we* notify *you* that *we* will be *cancelling the service*, or
  - c) as otherwise set out in the *agreement*.
- **cancellation fee** means the cancellation fee or termination charge which may be payable on *cancellation of the service*. Unless otherwise indicated in the *service description*, any *cancellation fee* payable is set out in the *standard pricing table*.
- **charging zone** refers to the geographic zone within which a particular service number can be used, which in turn determines the applicable charging zone, as prescribed by ACMA's Telecommunication Numbering Plan 1997.



- **churn** means to change from having a service supplied by one *carrier* or *carriage service provider* to having the service supplied by another *carrier* or *carriage service provider*.
- **Competition and Consumer Act** means the *Competition and Consumer Act 2010 (Cth)*, (named the *Trade Practices Act* before 1 January 2011) as amended or replaced from time to time.
- **consequential loss** means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator* and any *loss* that is an indirect *loss*.
- **consumer** means a person who acquires and uses the *service* for personal, domestic or household use only.
- **consumer terms** means this document.
- **content** means:
  - a) (a)all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined, and
  - b) (b)any content service,  
  
sent and received across a *network*. For the avoidance of doubt, *content* includes, but is not limited to, SMS and MMS.
- **credit rating** means information about *your* credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the *Privacy Act 1998 (Cth)*.
- **equipment charges** means any payment for equipment obtained from *us* including, for example, phones or modems and includes the cost of any software or licences supplied to operate in conjunction with that equipment.
- **excluded event** means:
  - a) a breach of the *agreement* by *you*,
  - b) a negligent or fraudulent act or omission by *you* or any of *your personnel*, or
  - c) a failure of any of *your* equipment.
- **fixed-length agreement** means an *agreement* that has a *minimum term*, during which time neither *you* nor *we* are free to change the terms of the *agreement* or to *cancel the*

*service*, other than as specifically provided for in the *agreement*. A *fixed-length agreement* does not include a month-to-month agreement.

- ***insolvency event*** means:
  - a) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt,
  - b) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors,
  - c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business,
  - d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business,
  - e) *you* suspend payment of *your* debts generally, or
  - f) *you* are, or become, unable to pay *your* debts when they are due or *you* are, or are presumed to be, insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).
- ***intellectual property rights*** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).
- ***intervening event*** is an event outside *your* or *our* reasonable control which interferes with the operation of the *network* we use to supply the *service* and results in ongoing disruption to the *service*. An *intervening event* includes the following events where those events are outside *your* or *our* reasonable control: failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the *Telecommunications Legislation*) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any *regulator*, any *supplier* or any of their *personnel*).
- ***minimum term*** means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start*



*date* and runs for the period of time stated on the *application*, unless otherwise set out in the *agreement*. For a non fixed-length *agreement*, there is no *minimum term*.

- **loss** means any loss, cost, liability or damage, including reasonable legal costs.
- **network** means any interconnected telecommunications equipment, *facilities*, or cabling.
- **non fixed-length agreement** means an agreement that does not have a minimum term, or a fixed-length agreement where the minimum term has expired. A non fixed-length agreement includes a month-to-month agreement.
- **Optus network** means the *Optus network* used to supply the *service*, as set out in the *service description*.
- **RealSIM owned equipment** means any equipment or cabling *we*, or *our personnel*, may provide or lease to *you* to use in connection with the *service*.
- **paper invoice fee** means the fee charged in accordance with clauses 9.2(c) and 9.2(e) and set out in the *standard pricing table for your service*.
- **personal information** means information about *you* from which *your* identity is apparent or can reasonably be ascertained. *Personal information* includes *your* name, address and other details, and *your* personal or commercial *credit rating*.
- **personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of RealSIM.
- **premises** means locations:
  - a) at which *we* supply the *service*, and/or
  - b) to which *we* need to have access to supply the *service*.
- **pricing plan** contains information about the terms and conditions and prices of the plan *you* have selected in *your* application. *You* may also hear a *pricing plan* referred to as a 'rate plan'.
- **regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry



Forum Limited, the Telecommunications Industry Ombudsman or any other relevant government or statutory body or authority.

- **related corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).
- **roaming** means the ability to use the *network* of overseas mobile carriers when travelling overseas.
- **service** means the service, with the features requested in the *application* as described in the *service description*, and any related goods (including equipment) and ancillary services which we supply to you in connection with that service.
- **service description** means the part of the *agreement* entitled '*service description*', which is our standard service description for consumers describing the *service*.
- **service start date** for the *service* means the date on which we start supplying that *service* to you, unless otherwise specified in the *service description*.
- **special** means a special promotion or offer made by us in connection with the *service*.
- **standard pricing table** means the part of the *agreement* entitled '*standard pricing table*', which is our standard rate plan, pricing and charges list for consumers for the *service*.
- **supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by us to supply the *service* to you. Where a *supplier* supplies goods or services to you directly, that *supplier* is not acting in its capacity as *supplier*, but rather is a third party providing services directly to you.
- **tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.
- **Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provisions of the Competition and Consumer Act, including the Australian Consumer Law.





- **tethered modem** refers to the use of a mobile phone as a modem when connected to a computer or laptop, enabling connection to the internet over a mobile network. The connection to the computer or laptop may be either with cables or wireless. Use of a mobile phone as a *tethered modem* requires both an active mobile service together with a tethered modem data plan.
- **Trade Practices Act** means the Trade Practices Act 1974 (Cth).
- **you** means the person who fills out the *application* (and **your** and **yours** is to be construed accordingly). Only one person may fill out the *application*.
- **your statutory rights as a consumer** means *your* rights and remedies as a consumer under the *Australian Consumer Law* (see the explanatory box at clause 13.2 of these *consumer terms*).
- **we** means *RealSIM* specified in the *service description* as supplying the *service* (and **us** and **ours** is to be construed accordingly).
- **unusually high use** means high out of pattern usage of the *service* on a short term basis or a sustained high usage which exceeds the general average usage of customers on a similar *pricing plan* or who have accepted a similar *special*.

## 16.2. Interpretation

- a) The following words have the same means in the *agreement* as they have in the *Telecommunications Legislation*:
  - i. *carriage service*,
  - ii. *carriage service provider*,
  - iii. *carrier*,
  - iv. *content service*, and
  - v. *facility*.
- b) A term which is defined in any part of the *agreement* has the same meaning in every other part of the *agreement*.
- c) The singular includes the plural and vice versa.



- d) Different grammatical forms of the same word(s) have the same meaning.
- e) Examples or words of inclusion are illustrative only and do not limit what else might be included.
- f) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- g) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.