

Standard Form of Agreement

Ballarat Community Telco

Standard Form of Agreement

This document is the Standard Form of Agreement of Ballarat Community Enterprise Ltd (ABN 41 111 713 065) trading as Ballarat Community Telco.

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1. Introduction

1.1 Terms and Conditions

Ballarat Community Telco (BACT, *us* or *we*), supplies Services on the terms and conditions in this Standard Form of Agreement. If you obtain or seek to obtain Services from us, you do so in accordance with these terms and conditions and the other documents which comprise your Agreement with us.

1.2 Our Standard Form of Agreement

This Standard Form of Agreement is formulated for the purpose of section 479 of the Act and is filed with the Australian Communications and Media Authority.

1.3 Structure of your Agreement with us

Your Agreement with us comprises:

- (a) any terms stated in your Application Form (including, for example, compliance with our Acceptable Use Policy);
- (b) this Standard Form of Agreement;
- (c) the Rate Card;
- (d) the Schedule of Charges; and
- (e) our Service Book.

1.4 Order of precedence

Unless expressly stated otherwise, the order of precedence between the various parts of our Agreement will be resolved in favour of the document appearing earlier in the list stated in clause 1.3 above.

1.5 Customer assistance

If you require any assistance or further information, please contact our Customer Assistance line on 1300 660 703. Alternatively, contact the National Relay Service (NRS) on 133 677 from anywhere in Australia. For language assistance, contact the Translating & Interpreting Service (TIS) on 131 450 from anywhere in Australia.

Our Standard Form of Agreement

1. Franchise system

1.1 Franchise system

You acknowledge and agree that BACT is a member of a franchise system and that the Services are provided to BACT by certain Suppliers. We will provide you Services using, at our discretion, services and facilities of Suppliers or those of our own.

1.2 Rights of Suppliers

You acknowledge that any right in favour of BACT under this Agreement may, where the context permits, be exercised by a Supplier.

2. Provision of Services

2.1 Commencement

Our Agreement commences when we accept (at our sole discretion) your Application Form and continues until terminated in accordance with these terms.

2.2 Application Form

The terms of this Standard Form of Agreement do not apply to the extent that we have agreed on different conditions with you. In particular, the Application Form which you completed in order to receive the Service may require you to receive the Service from us for a minimum or fixed term which is greater than a month-to-month period (**Fixed Term**). In such cases, your Application Form will state the specific details of the term which applies.

2.3 The Customer Service Guarantee

- (a) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, our service must comply with the Customer Service Guarantee Standard (**CSG**). The CSG sets out minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with a Service. The CSG does not apply to mobile phone services, customer equipment or to customers that have more than five telephone services. We will connect Services not covered by the CSG within a reasonable time.
- (b) If we do not meet the CSG performance standards, you may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which we may be exempt from meeting those requirements, including where you unreasonably refuse us access to your premises or if you miss an appointment without giving us reasonable notice. For more information about

the CSG, go to the Australian Communications and Media Authority website at www.acma.gov.au.

2.4 Fault reporting

We will provide a fault reporting service for the Service, accessible during Business Hours (or otherwise as notified by us from time to time). If you would like to report a fault, please call 1300 660 703.

2.5 Changing our Agreement

- (a) During the term of our Agreement, we may need to change the terms of our Agreement due to circumstances beyond our control, including changes in law, urgent changes required for security reasons, changes by one of our Suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Service on the same terms and conditions that existed when we first commenced providing that Service to you.
- (b) In addition to changes which we are required to make due to circumstances beyond our control, we may elect to make changes for our own purposes during the term of our Agreement. Any changes we elect to make will take effect for that Service in accordance with clauses 2.6 and 2.7 below.
- (c) You acknowledge and agree that in accordance with paragraphs (a) and (b), from time to time the nature of the Services and the terms on which we supply those Services to you may change and that if we elect to change those terms we will give you notice in accordance with clauses 2.6 and 2.7 below.

2.6 Your rights if we change the Agreement

- (a) Subject to the exceptions permitted by clause 2.7, we will give you notice of any changes we propose to make to our Agreement, including the terms of this Standard Form of Agreement, at least 30 days prior to the date on which those changes are to take effect.
- (b) Subject to the exceptions permitted by clause 2.7, if the changes we propose to make will cause detriment to you, for example, the changes will result in a material increase in the Fees or unreasonably change the characteristics or functionality of the Service we initially supplied to you, then you may immediately cancel the affected Service without incurring any early termination fee or penalty. You may do so by giving us advice in writing to that effect within 42 days of receiving notice from us of the changes (referred to in paragraph (a) above).
- (c) You acknowledge and agree that if you do not give notice to us within the 42 day period referred to in paragraph (b), you are deemed to have accepted our changes from the date those changes are to take effect and that our Agreement, as amended by those changes, will govern the relationship between you and us from that date.

2.7 Exceptions

You acknowledge and agree that our obligation to give you 30 days notice of our proposed changes and to afford you a right to terminate our Agreement in accordance with clause 2.6 will not apply in relation to:

- (a) urgent changes we are required to make by law, for security reasons or technical reasons necessary to protect the integrity of our network;
- (b) the introduction of a new fee or an increase in an existing Fee due to an additional tax or levy imposed by law;
- (c) the introduction of a new fee or an increase in existing Administrative Fees for ancillary services such as credit card transaction fees and direct debit charges (provided we have offered you a reasonable alternative at the same or lesser cost to the original Fee);
- (d) increases in Fees due to increases imposed on us by other Suppliers for the following types of Services and charges:
 - (i) international carriage services (including for voice, data and international roaming and SMS services) the current rates for which are available on our Website);
 - (ii) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party; and
 - (iii) line rental charges (however while we may give you a shorter notice period you still have the right to cancel within 42 days of the date of that notice without incurring an early termination fee or penalty if it is a material increase).

Where practicable to do so, we will give you reasonable notice of the changes referred to in this clause 2.7 in accordance with the notice provisions of clause 16.1.

3. Fees for the Services

3.1 Fees

You must pay the Fees for the provision of the Services. You are only liable to pay the Fees for the Services we provide to you.

3.2 Discounts, credits and rebates

Your Application Form will state any discount or special rate for which you may be eligible. If you are eligible for a rebate, such as a promotional rebate, BACT will inform you in writing of such an entitlement.

3.3 GST

Unless expressly stated otherwise, all amounts payable by you under or in connection with our Agreement are exclusive of GST. If GST is payable on a Taxable Supply made to you, the amount payable by you for that Taxable Supply will be the amount expressed in our Agreement or the relevant document connected with our Agreement, plus GST.

3.4 Invoicing:

- (a) We will usually invoice you monthly for the Services, plus any applicable GST. We may vary invoice frequency upon giving you reasonable notice.
- (b) We may issue an interim bill at any time.
- (c) Where applicable, we will invoice you in advance for connection, line rental and other periodic service fees, and we will invoice you in arrears for call charges and other usage fees. We will refund or credit any overpayment due to a variation in the Fees or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.

3.5 Time for Payment

All Fees must be paid by the Due Date.

3.6 Standing authorisation

We reserve the right to require that you provide us a standing authorisation to debit Fees from your nominated credit card account in the event that your Fees on account are, or are reasonably expected to be, above \$250 per month, or in the event that you are consistently late in making payment.

3.7 Method of Payment

You may pay invoices either by credit card standing authorisation, or on account, which may be paid by credit card, B-PAY, cheque or money order. Payments made by credit card standing authorisation with Visa, or Mastercard will not be subject to a surcharge to cover merchant fees. Payments made by credit card standing authorisation with AMEX or Diners Club will be subject to a surcharge of 1.5%. Ad hoc payments made by credit card (not standing authorisation) will be subject to a surcharge of 2.5%.

3.8 Interest

We reserve the right to charge interest on the unpaid amount of any invoice which is not paid to us by the Due Date in accordance with the interest rate set out in the Schedule of Charges.

3.9 Administrative fee

If any amount remains unpaid after the Due Date you may be liable to pay an Administrative Fee as set out in the Schedule of Charges which would be added to your next invoice.

3.10 Dishonoured cheques

If an invoice is paid by cheque and that cheque is dishonoured, a dishonoured cheque fee as set out in the Schedule of Charges will be added to your next invoice.

3.11 Direct Debit transactions

If an invoice is paid by Direct Debit and there are insufficient funds available in the account from which the Direct Debit is connected, an insufficient funds fee as set out in the Schedule of Charges will be added to your next invoice.

3.12 Early Termination fee

If your Application Form states that you have agreed to receive a Service from us for a Fixed Term then:

- (a) the total amount payable for the whole of the Fixed Term (comprising any equipment charges, monthly service fees or other periodic fees as stated) is a debt owing to us as at the time we accepted your Application Form for that Service; and
- (b) if you cancel the Service before the expiry of the Fixed Term, you will be liable to pay the balance of the stated fees which are payable for the unexpired portion of Fixed Term, in the form of an Early Termination fee (calculated in accordance with the Schedule of Charges for the relevant Service).

3.13 Removal of discount

If any Fees remain unpaid for 30 days or more, we reserve the right to vary or remove any discount previously provided to you and to charge you at our standard rates rather than any special rate which we have previously allowed you.

3.14 Suspension for non-payment

We reserve the right to suspend, limit or cancel provision of Services to you if:

- (a) Fees or any other amount payable by you remains unpaid 21 days after the Due Date as it appears on the original invoice, (unless we have received written notice from you of a bona fide dispute of those Fees or other amount prior to the Due Date); and
- (b) you fail to pay the outstanding amount in full within 7 days after we give you a notice demanding payment. Note that we have a Financial Hardship Policy that may be applicable in these circumstances (but will not necessarily stop suspension or cancellation).

3.15 Refunds and credits

- (a) In the event that your account for a Service is terminated and monies are owed to you by us (for example, for the unexpired portion of any Fee paid in advance by you), you agree that we may deduct any outstanding Fees on final settlement of your account and state on your final invoice (as applicable) the amount credited to you or the amount you must pay to us.

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- (b) You may elect to claim a refund for any amount credited on your final invoice or apply the credited amount to another Service we may supply to you by notifying us within 90 days of your receipt of the final invoice. If you fail to notify us within that period, you may be liable to pay an Administration Fee as set out in the Schedule of Charges for our cost of activating your account for processing of the refund or the crediting of that amount to another Service after that 90 day period has expired.

3.16 Prepayment:

- (a) If, at the time of application, we have reasonable grounds to believe you may be a credit risk, we may request that you pay in advance the estimated cost of using your Service for an invoice period.
- (b) We may cancel, suspend or disconnect a Service if you do not provide the prepayment in advance when requested to do so in accordance with paragraph (a) above.
- (c) If we cancel or disconnect all of the Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Fees.

3.17 Disputed invoices

If you dispute an invoice or claim a refund for overpayment of any Fees under our Agreement you must do so within 6 months of the Due Date of the invoice to which the disputed amount or alleged overpayment relates.

3.18 Cancellation, suspension or disconnection

If we cancel, suspend or disconnect any Service for non-payment, you remain liable for all Fees and other liabilities incurred prior to the date of cancellation, suspension or disconnection of the relevant Service, in addition to:

- (a) ongoing charges such as minimum monthly access fees and ongoing equipment charges (where applicable) if temporarily suspended or disconnected; or
- (b) if you have acquired a Service from us for a Fixed Term and the Service is cancelled, any early termination fees.

3.19 Disconnection or reconnection

We may charge you a fee for the disconnection or reconnection of any Service as set out in the Schedule of Charges, except where the disconnection was caused by our failure to perform our obligations under this Agreement.

3.20 Set-off

Unless we agree in writing, you must pay the Fees without any set-off, counterclaim or deduction.

4. Transfer of your services to us

4.1 Changing your current arrangements

If in providing the Services, we need to change your arrangements with your current Supplier, then we will do so in accordance with this clause 4.

4.2 Transfer to us:

- (a) You authorise us to sign on your behalf and in your name forms of authority to your current Supplier to transfer your telecommunications services into our name;
- (b) You agree to give written instructions to your current Supplier to transfer your telecommunications services from them to us if we so request; and
- (c) You will immediately pay to your current Supplier all amounts owing to it up to the time of transfer of your telecommunications services to us.

4.3 Existing credits

If your previous Supplier credits us with any amount concerning services provided to you before the date of transfer, we will credit that amount to your account.

4.4 Existing debts

If your previous Supplier raises with us a proper charge relating to a service it provided to you before the commencement of Services we will advise you accordingly and you must pay your previous Supplier that amount.

4.5 Indemnity

We will not accept any liability for any amounts owing by you to your previous Supplier for services which your previous Supplier provided to you prior to the commencement of the Services. You must indemnify us against any Claim made by your previous Supplier against us in relation to any such amounts.

5. Transfer of your Services from us to another Supplier

5.1 Transfer

If you ask us to transfer any of the Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Supplier. You will immediately pay us that amount on receipt of our invoice.

5.2 Termination of Services on Transfer

The provision of Services ceases on the date on which we transfer your services to another Supplier.

5.3 Invoicing

We will endeavour to invoice you for Fees incurred in relation to Services which you transfer to another Supplier within the next normal billing period. If, after that time, we

become aware of other Fees or amounts (including fees payable to any other Supplier) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified and payable by you, then you will pay us all such amounts within 7 days of your receipt of our invoice for them.

5.4 Indemnity

We will not accept liability for any amounts owing by you to a Supplier or other person. You must indemnify us against any Claim made by a Supplier or other person against us in relation to any such amounts.

6. Personal Information

6.1 Consent to collection and use

You consent to us obtaining, using and disclosing your personal information for any of the purposes specified in this clause 6.

6.2 Use of personal information

- (a) You authorise us to collect, use and disclose personal information (including details of your account and information relating to calls and call fees) which you provide to us in connection with the supply to you of the Services (including for direct marketing purposes in accordance with clause 6.2(e) below), to other Suppliers, our agents, credit reporting agencies and our contractors and use that information for the purpose of managing your account or as otherwise necessary to fulfil our obligations under our Agreement.
- (b) In particular, you acknowledge and agree that we will use your personal information:
 - (i) to identify you and to assess your Application Form;
 - (ii) to supply the Services and Equipment to you (including for investigation or resolution of disputes relating to any Services and Equipment provided to you);
 - (iii) to issue you with invoices and to collect Fees and any other debts you owe to us in connection with our Agreement;
 - (iv) for the purposes of preventing fraud or any other illegal activity; and
 - (v) for all other purposes reasonably required to provide the Services to you.
- (c) You agree that we may disclose your personal information:
 - (i) to other Suppliers for the purpose of enabling us to provide the Services and Equipment to you (including for the purpose of provisioning Services or Equipment and providing particulars of calls and call charges to those Suppliers for interconnection and invoicing purposes);

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- (ii) to any other person who provides services to us in connection with the Services and Equipment we supply to you (including to our resellers, outsourced installation and repair service companies, outsourced billing companies and debt-recovery agencies);
 - (iii) to credit reporting agencies for the purposes referred to in clauses 6.3 and 6.4;
 - (iv) if you elect to participate in a loyalty program with us, to other persons with whom we have established or will establish the loyalty program to enable you to participate in it;
 - (v) to anyone to whom we are permitted to assign or transfer this Agreement in accordance with clause 15.2;
 - (vi) to government agencies, law enforcement authorities and other persons as required by law, including disclosures to the manager of the Integrated Public Number Database (as noted in clause 6.2(d)); and
 - (vii) to any other person, where you have consented for us to do so.
- (d) We are required by law to provide your name, address, telephone service number and other public number customer details to the manager of the Integrated Public Number Database (*IPND*) for the Approved Purposes. Unless you specify otherwise in your Application Form:
- (i) your telephone service number for a fixed or landline Service will be recorded as a "listed number"; and
 - (ii) your telephone service number for a mobile service will be recorded as an "unlisted number".
- Unlisted service information is marked and controlled by the manager of the IPND to ensure that it is only used for the relevant Approved Purposes (unlisted numbers or suppressed address listings recorded in the IPND are not available to the general public via public number directories or directory assistance services). You must notify us of any change to your IPND data and you may request changes to the listing status of your Service by contacting us on 1300 660 703.
- (e) Unless you ask us not to use your personal information for direct marketing purposes, we will use, and disclose your personal information to our related bodies corporate, agents, affiliates, franchisees, resellers, equipment suppliers and any other suppliers of products or services with whom we have engaged in a joint initiative, for the purposes of informing you of other products and services offered by us and by any of these other entities. If we are permitted to use your personal information for direct marketing purposes, you consent to us sending direct marketing information to you:
- (i) by post to (your address as listed in our records);
 - (ii) by email to your email address (as listed in our records);
 - (iii) on or with the invoices we issue to you for Services; and

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- (iv) by calling you (including by leaving a recorded message) on the telephone number applicable to your Service or other contact number which you have specified on your Application Form.

6.3 Consent to credit check:

- (a) Your personal information in our possession, whether collected by us from you or obtained from a third party, may be disclosed by us to a credit reporting agency for the purposes of providing the Services to you.
- (b) For the purposes of clause 6.3(a), personal information which may be disclosed by us to a credit reporting agency consists of:
 - (i) identity particulars such as your name, sex, address (and previous two addresses), date of birth, name of employer, and drivers licence number;
 - (ii) your application for commercial credit (including the amount requested);
 - (iii) the fact that we are a current credit provider to you;
 - (iv) loan repayments which are overdue by more than 60 days and for which debt collection action has commenced;
 - (v) advice that your loan repayments are no longer overdue in respect of any default that has been listed;
 - (vi) information that, in our opinion, you have committed a serious credit infringement; and
 - (vii) dishonoured cheques.
- (c) The information specified in paragraph (b) may be given before, during or after the provision of credit to you.

6.4 Use of credit report:

- (a) You agree that a credit report which contains personal information concerning you may be given to us by any credit reporting agency for the purpose of either assisting us to assess your creditworthiness or in collecting payments that are overdue.
- (b) You agree that we may disclose a credit report or other report relating to you and any personal information derived from that report, to any other credit provider for any of the following purposes, namely:
 - (i) the assessment by us or the other credit provider of your creditworthiness;
 - (ii) the collection by us or the other credit provider of payments that are overdue; or
 - (iii) the exchange of information between us and the other credit provider for the purposes referred to in subparagraphs (i) and (ii).

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- (c) The information which may be exchanged pursuant to paragraph (b) can include anything about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act*.
 - (d) You agree that a trade insurer may obtain a credit report about you for the purpose of assessing whether to provide trade insurance to us in relation to your application for commercial credit.

6.5 Access to information

Where we hold any personal information about you, you may request access to that information. We will provide you with access to most personal information that we have about you but in some cases that will not be possible, in which case we will tell you why.

6.6 Compliance

To the extent that you provide us with personal information which you have collected or accessed for the purposes of receiving the Services you must:

- (a) comply with the *Privacy Act*;
- (b) comply with any reasonable direction which we may give regarding how to comply with any such legislation;
- (c) obtain the informed consent of any individual whose personal information you intend to provide to us so as to allow us to collect, use, disclose and store that information for the purposes of providing you with the Services or as otherwise contemplated by our Agreement;
- (d) notify us of any changes to that personal information of which you become aware; notify us of any complaint made by an individual in respect of their personal information;
- (e) cooperate with us in the resolution of any complaint alleging a breach of the *Privacy Act*, a privacy policy or an approved privacy code.

6.7 Records

You must keep sufficient records in respect of personal information that you collect, store, use and disclose pursuant to our Agreement to enable us to determine whether you are complying with your privacy obligations under our Agreement, and must provide us with access to such records at our request.

6.8 Indemnity

You warrant that any such personal information that you provide to us is complete and accurate and agree to indemnify us against any Claim that may be incurred by us relating to any personal information which you provide to us not being treated in accordance with your obligations under clauses 6.6 and 6.7.

7. Your compliance

7.1 Compliance

You will ensure that you comply at all times with all laws and obligations applicable to the Services and their use.

7.2 Information

You warrant that the information supplied by you in relation to our Agreement is true and correct.

7.3 Assistance

For the duration of our Agreement, you will provide us free of charge with all assistance, information, access, facilities and services reasonably required by us to enable us to perform our obligations under our Agreement, including use of Customer Equipment (including PABX and key system equipment) and any other telecommunications facilities which you own or control, if required.

7.4 Insurance

You are responsible for insuring and maintaining equipment or facilities which we provide to you.

7.5 Changes to personal information

You will promptly inform us of any changes to your billing or address details.

7.6 Indemnity

You will not use a Service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us against any Claim we suffer as a result of your use of the Service in breach of this clause.

8. Use of Services

8.1 Installation and programming of equipment

You will assist us in ensuring that any equipment necessary for you to receive the Services is installed and programmed so that calls to destinations nominated by us from time to time are, so far as possible, carried by facilities preferred by us.

8.2 Interference

If inadequate capacity in your equipment or your use of the Service interferes, or in our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, you must follow our directions or the directions of the relevant network operator on how to end or avoid that interference.

8.3 Power supply

You must ensure a suitable power supply is available for the use of the Services.

8.4 Use of Services

You must:

- (a) ensure the Services are used solely for their intended purpose;
- (b) notify us immediately of any security breach (suspected or otherwise) regarding the Service or of your confidential password or customer login;
- (c) not permit any other person to resell or purport to resell this Service.

8.5 Unauthorised use of Services

You are solely responsible for maintaining the confidentiality of your password and customer login. You agree to pay all charges incurred on your account whether or not you authorised such use of the Service, until such time as you notify us of any security breach regarding the Service or of your confidential password or customer login.

8.6 Technical regulation

You must not connect or maintain a connection to a facility used in connection with the supply of Services to you or other parties which does not comply with technical codes, standards or regulations made under the Act, with any declaration or other requirement of the Australian Communications and Media Authority or with any code, standard or guideline published by the Australian Communications Industry Forum.

8.7 Illegal use

You must not use or allow another person to use a Service to commit an offence.

9. Equipment we supply to you

9.1 Title

If we provide a facility or any item of equipment (**Service Equipment**) to you either for use in the provision of the Services to you or otherwise, and we do not sell that Service Equipment to you, then:

- (a) that Service Equipment always remains our property;
- (b) you will allow us to and, where applicable, will ensure that the landlord allows us to, remove the Service Equipment from the premises where it is installed upon expiry or termination of the supply of the Services;
- (c) you will not part with possession of the Service Equipment except to us;
- (d) if we are unable to recover the Service Equipment, we may recover the value of it as a debt due by you, including offsetting the value of the Service Equipment against any monies owed to you by us;

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- (e) you indemnify us against any loss or damage to the Service Equipment, unless that loss or damage arises from fair wear and tear; and
 - (f) you must not remove or obscure any identification marks on the Service Equipment, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Service Equipment.

9.2 Changes to Service Equipment

We may at any time and from time to time replace any of our Service Equipment as we think fit. If we have agreed to provide a Service to you for a Fixed Term, replacement of Service Equipment will be subject to our obligations under clauses 2.5, 2.6 and 2.7.

9.3 Access:

- (a) You will allow us access to the Service Equipment during your normal business hours (or at such other times as we arrange with you), and this right of access will not end until all Service Equipment is returned to us, even if the Services have been cancelled.
- (b) We (or a Supplier) may need access to your premises from time to time in connection with the provision and maintenance of the Service Equipment or a Service. If you do not provide such access as we, or a relevant Supplier, reasonably require, we may limit, suspend, cancel or disconnect your Services.
- (c) If you want us to provide a Service and that Service requires the installation of any facility, equipment or cabling on your premises whether by us or a Supplier, you must allow us or any relevant Supplier to:
 - (i) have access to your premises to install the facility, equipment or cabling; and
 - (ii) install the facility, equipment or cabling on your premises.
- (d) If you do not own the premises referred to in paragraph (c) you must have the owner's permission and you warrant to us that you do have that permission.
- (e) If we need access to your premises you must provide us with safe access and indemnify us against any Claim by the owner or occupier of the premises in relation to our entry onto the premises.

9.4 Maintenance of Service Equipment

We may suspend Services for a reasonable period of time to perform maintenance on the Service Equipment, provided that in each case, we will use our reasonable endeavours to:

- (a) give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Services; and
- (b) minimise any interruption to the Services.

9.5 Maintenance of your equipment

If we use any of your facilities or equipment to provide the Services to you, you are responsible for the maintenance of your facilities and equipment unless we otherwise agree in writing.

9.6 Interference

You will ensure that the Service Equipment, and any other equipment, facilities or connections used in providing Services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by us.

9.7 Electricity

You will make available and be responsible for payment of, an adequate power supply for the operation of any equipment used in the provision of Services. If provision of the Service is dependent on the supply of electricity we do not guarantee the supply of the Service where the supply of electricity is either disrupted or discontinued.

9.8 Insurance

If we request you to, you must insure any Service Equipment for an amount and on terms reasonably required by us.

9.9 Return

On the termination of supply of the Services for any reason you will immediately return all Service Equipment to us, or make it available for collection by us. If you do not return the Service Equipment, you must pay to us on demand the full retail price of the Service Equipment (including the cost of acquiring or renewing any necessary software licences).

10. Equipment you acquire from us

10.1 Title

If we sell to you a facility or any item of equipment (***Purchased Equipment***) either for use in the provision of the Services to you or otherwise, then:

- (a) that Purchased Equipment remains our property until we receive full payment from you;
- (b) until we receive full payment from you, you will not part with possession of the Purchased Equipment except to us;
- (c) if you do part with the Purchased Equipment before making full payment to us, we may recover the value of it as a debt due, including offsetting the value of the Purchased Equipment against any monies owed to you by us;
- (d) until full payment of the Purchased Equipment is received, you indemnify us against any loss or damage to it, unless that loss or damage arises from fair wear and tear; and

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- (e) until we receive full payment for the Purchased Equipment, you must not remove or obscure any identification marks on it, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Purchased Equipment.

10.2 Risk

Risk of loss or damage to the Purchased Equipment will pass to you upon delivery.

10.3 Installation

Subject to agreement between us as to which Services and/or Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you. We may charge you our current rates (including travel and accommodation expenses) for installing the Purchased Equipment and/or a Service. We will use reasonable endeavours to install the Purchased Equipment and/or a Service on or around the installation date requested by you but will not be liable for any loss or damage for failure to do so.

10.4 Purchase price

You agree to acquire, and we agree to supply, the Purchased Equipment in consideration for the price set out in the Application Form or as otherwise notified by us to you.

10.5 Installation site

You will prepare the installation site in accordance with the site preparation requirements reasonably required by us. We may refuse to install Purchased Equipment and/or a Service if the installation site has not been prepared in accordance with our reasonable requirements. We may agree from time to time to change the installation site, in which case we will be entitled to impose an additional charge for our costs.

11. Suspension and cancellation of Services

11.1 Your rights to cancel or terminate

- (a) You may cancel a Service by giving us 30 days notice in writing provided that you may be liable to pay an early termination fee in accordance with clause 3.12 if you do so during a Fixed Term.
- (b) You may otherwise cancel a Service at any time by giving us notice in writing if:
- (i) you are entitled to do so in accordance with clause 2.6;
 - (ii) we are in material breach of our Agreement, which is capable of being remedied, but which we have failed to remedy within 14 days after you telling us of that breach; or
 - (iii) we are in material breach of our Agreement and it is something which cannot be remedied.

If you cancel a Service for any of the reasons set out in this paragraph (b), you will not be liable to pay an early termination fee and you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance for the Service in accordance with clause 3.15.

11.2 Preparation costs

If you request a Service from us and cancel that request before we provide the Service, you may be liable to pay us the Service Cancellation Fee as set out in the Schedule of Charges for our costs incurred in preparing to provide the Service.

11.3 Our suspension and cancellation rights

We may suspend, limit or cancel a Service if:

- (a) you notify us in accordance with clause 11.1;
- (b) we are required to do so by law;
- (c) there is an emergency;
- (d) there are reasonable grounds for believing a threat or risk exists to the security or integrity of our network or that provision of the Service may cause death, personal injury or damage to property;
- (e) we reasonably determine that such action is necessary to repair, maintain or restore any part of our network;
- (f) the provision of the Services by us is or may be unlawful or we have reasonable grounds to believe that it may become so; or
- (g) an event occurs outside of our reasonable control preventing us from providing the Service, including explosions, natural disasters, war or an act of God.

If we cancel or suspend the Service for any of these reasons, we will not charge you any disconnection or reconnection fee. If your account is terminated as a result of any of these events, you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with clause 3.15.

11.4 Other suspension or cancellation events

We may suspend, limit or cancel a Service if:

- (a) you vacate the premises to which we have been supplying a Service to you;
- (b) we are unable to enter the premises to inspect, repair or maintain any equipment or cabling connected with a Service provided to you;
- (c) we have the right to do so in accordance with clause 3.14 for your failure to pay Fees or other amounts;
- (d) you do not provide prepayment as required by us in accordance with clause 3.16;
- (e) we have reasonable grounds to suspect fraud or other illegal conduct by you or any person using your Service;

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- (f) you fail to comply with our Acceptable Use Policy (if applicable to your Service);
 - (g) you fail to rectify any defect or inadequacy in any equipment or cabling not owned or maintained by us within 30 days of being requested to do so by us;
 - (h) your use of the Services interferes with the efficiency of our network or a Supplier's network we will manage your service in accordance with our Acceptable Use Policy.
 - (i) you become a carrier or carriage service provider within the meaning of the Act;
 - (j) you become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over you or any of your assets;
 - (k) we have reasonable grounds for believing you are a credit risk, including the following grounds:
 - (i) your usage of the Service is unusually high when compared to previous account activity and you fail to respond to notices from us about that usage (but you acknowledge that we are not obliged to monitor usage of a Service, or to suspend, limit or cancel a Service if there is unusual usage, and you remain liable to us for usage of that Service);
 - (ii) you fail to pay an invoice by the Due Date and have a payment history indicating late payments, dishonoured payments or failures to pay; or
 - (iii) we become aware of public notices of your pending bankruptcy, winding-up or other insolvency events,and we have taken reasonable steps to notify you of the suspension, limitation or cancellation of the Service; or
 - (l) you are in material breach of any of the terms or conditions of our Agreement, including the terms of this Standard Form of Agreement.

If we cancel or suspend the Service for any of these reasons, you will be liable to pay a disconnection fee and (if we agree to reconnect the Service) a reconnection fee, as set out in the Schedule of Charges, in addition to your liability to pay all other Fees incurred up to the time of cancellation of the Service in addition to any other rights we may have under this Standard Form of Agreement or at law.

11.5 Expiration of a Fixed Term or other period

If we have agreed to provide a Service to you for a Fixed Term or any other agreed period, and that Fixed Term or other period expires and neither you nor BACT cancel the Service, we will continue to supply the Service to you on a month-to-month basis.

11.6 Connection fees

We may charge you a fee for the disconnection or reconnection of any Service as set out in the Schedule of Charges, except where the disconnection was caused by our error or our failure to perform our obligations under this Agreement or was the result of any of the events specified in clause 11.3.

11.7 Ongoing liability

You remain liable for all Fees payable in respect of Services provided to you up to the time of cancellation, suspension or termination.

12. Liability

12.1 Performance

To the extent permitted by law, we do not warrant that Services will be free of interruption, delays or faults of any kind.

12.2 Terms implied by law

We agree to provide Services to you subject only to the terms, conditions and warranties contained in this Standard Form of Agreement and those which are implied by law and cannot be excluded. For example, if the Service we supply to you is of a kind ordinarily acquired for personal, domestic or household use then it may be implied by law that:

- (a) the Service must be provided with due care and skill; and
- (b) any goods supplied in connection with the Service will be reasonably fit for the purpose for which they are supplied.

In the event that we breach a term, condition or warranty that is implied by law and cannot be excluded then, subject to our right to limit our liability for that breach in clause 12.3, we will be liable for that breach in accordance with the law applied in the courts having jurisdiction over this Agreement.

12.3 Limitation of liability

Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a term, condition or warranty, but are permitted to limit our liability for such a breach, our liability to you is limited:

- (a) if the breach relates to the supply of Equipment, the repair or replacement of the Equipment, the supply of equivalent equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent equipment; or
- (b) if the breach relates to the supply of a Service, resupplying the Service or payment of the cost of having the Service resupplied.

All conditions, terms and warranties which would otherwise be implied into our Agreement are expressly excluded except to the extent such exclusion is prohibited by law.

12.4 Exclusion of liability

To the extent permitted by law, we have no liability to you or to any other person for:

- (a) any Claim by you or any other person for loss of profits, economic loss, loss of data or any indirect or consequential loss or damage arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;

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- (b) faults or defects in any facility or Equipment we provide to you or the Services which are caused by or contributed to by your conduct or misuse;
 - (c) any failure on our behalf to perform our obligations under this Agreement where that failure is due to an event occurring outside our reasonable control, including explosions, natural disasters, war or an act of God; and
 - (d) acts, omissions or defaults of any Supplier or any person who provides goods or services directly to you for use in connection with a Service.

However, we will use reasonable endeavours to ensure that any Supplier cooperates in order to deliver the Service in a timely manner, provides and maintains the Service in a responsible fashion and rectifies any faults in relation to the Service in a timely manner.

12.5 Cancellation of a Service

Cancellation of a Service does not affect the provisions of this Agreement concerning limitation of liability and indemnity.

13. Confidentiality

13.1 Confidential Information

We retain all rights (including intellectual property) in any information we provide to you relating to the Equipment, the Services or to the provision of the Services which, by its nature, or the circumstances of its disclosure to a recipient, is or could reasonably be expected to be regarded as confidential (**Confidential Information**).

13.2 Protecting confidentiality

You will keep the Confidential Information confidential and will not allow any written or electronically recorded Confidential Information to be copied or disclosed to a third party without our consent, unless you are required to do so by law or the information has entered the public domain other than through a breach of confidence. You may also disclose Confidential Information to your professional advisers on condition that they also agree to keep the information confidential.

13.3 Obligations on termination

On the termination of the Services for any reason, you will return the Confidential Information and all copies of it to us or as we otherwise reasonably direct. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand following termination of the Services.

13.4 Restrictions on use

You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

14. Force majeure

We are not liable for:

- (a) any delay in installing a Service;
- (b) any delay in correcting any fault in a Service;
- (c) failure to provide or incorrect operation of any Service;
- (d) Service outages; or
- (e) any default by us in compliance with this Agreement,

if it is caused directly or indirectly by any event beyond our reasonable control.

15. Assignment

15.1 Your right to assign

You may not assign or transfer or otherwise deal with any of your rights under our Agreement without our prior written consent.

15.2 Our right to assign

We may assign or otherwise transfer any of our rights under our Agreement to:

- (a) a related body corporate (being a company in our corporate group);
- (b) another member of the franchise system to which BACT is a member;
- (c) a Supplier for the purposes of outsourcing or resupplying a Service to you; or
- (d) a purchaser of our business,

on condition that the assignee agrees to provide the Service to you on materially the same terms and conditions of our Agreement. Otherwise, we may assign, transfer or deal with our rights under our Agreement on terms to which you consent.

16. General

16.1 Giving notice to you

We may satisfy any obligation to give you notice by:

- (a) delivering the information to you in person;
- (b) sending the information by pre-paid post to the address listed in our records for you;
- (c) transmitting the information to your email address if you:
 - (i) have an email address; and
 - (ii) have given us your consent to send information to that address;

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- (d) including the information on, in or with an invoice, including by an invoice made available to you online via our website, provided you have consented to receiving the invoice in that format;
 - (e) in the case of pre-paid telecommunications Services, any of the above means or by making the information available to you by means such as through our Website, or at a retail outlet, and informing you how you can obtain the information by means of a recorded message or text message or in writing; or
 - (f) to the extent permitted by the terms of this Standard Form of Agreement and any other applicable law or regulatory code, by publishing a notice in a daily newspaper circulating generally in the region or capital city of the State or Territory in which you ordinarily reside or carry on business.

16.2 Disputes

If a dispute arises under our Agreement, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme. For further information go to www.tio.com.au or call the TIO on 1800 062 058 or (TTY) 1800 675 692.

16.3 Current terms

A current version of our Standard Form of Agreement, our Rate Card, the Schedule of Charges and the Service Book may be found at our Website.

16.4 Intellectual property

You do not own or have any legal interest in any of our intellectual property or in any telephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you.

16.5 Authority

If you use the services wholly or predominantly for business purposes you agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon authority of any of your employees, who tells us that they are authorised to provide that consent on your behalf.

16.6 Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties in connection with it.

16.7 Governing law

This Standard Form of Agreement is governed by the laws of the State or Territory in which you reside (as stated on your Application Form).

16.8 Subcontractors

We may subcontract any of our obligations under this Agreement.

16.9 No waiver

No failure to exercise, nor any delay in exercising, any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

16.10 Survival

Any provision of this Agreement which by its nature is intended to survive termination or expiry of this Agreement (including without limitation any exclusion or limitation of liability or indemnity in this Agreement) will survive termination or expiry of this Agreement for any reason.

16.11 Severability of provisions

Any provision of this Standard Form of Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Standard Form of Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17. Definitions and interpretation

17.1 Definitions:

The following definitions apply unless the context requires otherwise.

Acceptable Use Policy means our policy which applies to:

- (a) your use of the data service (identified in your Application Form) by which we provide you with access to the Internet, including our Broadband and Dial up products;
- (b) your use of the mobile service (identified in your Application Form) by which we provide you with access to our mobile network;
- (c) your use of the fixed phone service (identified in your Application Form) by which we enable you to make and receive local calls, long distance calls and/or calls to mobiles over a fixed telephone line or over the Internet using VoIP.

Act means the *Telecommunications Act 1997* (Cth).

Agreement or "**our Agreement**" means the agreement between you and us for the Services, comprising the terms stated in your Application Form, this Standard Form of Agreement, the Rate Card, the Schedule of Charges and the Service Book.

Application Form means an application, in a form approved by us, made by you for the provision of Services by us.

Approved Purposes means:

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- (a) providing directory assistance services;
 - (b) providing operator services or operator assistance services;
 - (c) publishing public number directories;
 - (d) providing location dependent carriage services;
 - (e) the operation of emergency call services or assisting emergency services under Part 12 of the Act;
 - (f) assisting enforcement agencies or safeguarding national security under Part 14 of the Act;
 - (g) any other activities specified by written notice of the Australian Communications and Media Authority.

Business Hours means 8.30am to 5.30pm Monday to Friday, excluding days which are public holidays in Victoria.

Claim includes an action, loss, damage, cost or expense.

commercial credit has the meaning given in section 6 of the *Privacy Act*.

credit reporting agency has the meaning given in section 6 of the *Privacy Act*.

Customer Equipment means any equipment or facility in the possession, ownership or control of you other than Service Equipment.

Due Date means the date on which full payment is due as specified on the original invoice.

Equipment means Service Equipment or Purchased Equipment.

Facilities has the meaning given in the *Telecommunications Act 1997* (Cth).

Fee means a fee payable for a Service calculated in accordance with the Rate Card and any other amount payable by you in accordance with the terms of our Agreement.

Financial Hardship Policy means a policy that may enable certain customers to enter a financial arrangement to avoid further credit management action and provide options with respect to repayment processes. Our policy is available on request.

Fixed Term has the meaning given in clause 2.2.

GST has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Personal information means any information or document referred to in section 276(1) of the Act and any personal information within the meaning given in section 6 of the *Privacy Act*.

Privacy Act means the *Privacy Act 1988* (Cth).

Purchased Equipment has the meaning given in clause 10.

Rate Card means BACT's price list for telecommunications Services as displayed from time to time on our Website.

Schedule of Charges means BACT's price list for administrative charges payable in accordance with this Agreement, as displayed from time to time on our Website.

Service means a product or service which we have agreed to supply to you as stated in your Application Form.

Service Book means the document titled: "Telecommunications Service Book", the current version of which appears on our Website. The Service Book sets out in respect of particular products and services:

- (a) the products and service descriptions;
- (b) conditions imposed by suppliers; and
- (c) specific operational requirements or other terms and conditions relating to the products and services.

Service Equipment has the meaning given in clause 9.

Supplier means a supplier to us of carriage services within the meaning of the Act.

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Website means: ["ballarat.communitytelco.com.au"].

17.2 Interpretation:

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause or attachment is a reference to a clause of or attachment to, this Standard Form of Agreement unless stated otherwise.
- (f) A reference to an agreement or document (including a reference to this Standard Form of Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Standard Form of Agreement or that other agreement or document.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to *dollars* and \$ is to Australian currency.
- (i) The meaning of general words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions.

