



Highway 1

INTERNET SOLUTIONS

# **Standard Form of Agreement**

**General Terms and Conditions**

Revised 30-August-2011

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# 1 The Agreement

## 1.1 The Parties

1.1.1 Highway 1 (Aust) Pty Ltd ABN 068 383 737 Level 5, 10 William Street, Perth, Western Australia trading as Highway 1, Apiix, EON Technology, Nerdnet Internet, Global Dial, Global Web, Simtex Communications and Worldwide Internet (hereinafter referred to as "Highway 1", "us", "our") and the Customer (being an entity subscribing to Highway 1 for the provision of network, Internet or telephony services) agree that by accessing our services, you (hereinafter referred to as "The Customer", "you" and "your") accept, without limitation or qualification, the terms and conditions contained within the Standard Form of Agreement.

## 1.2 What is the Standard Form of Agreement?

1.2.1 The Standard Form of Agreement (or SFOA) sets out the standard terms and conditions of our services and products we offer. The SOFA is made up of:

- General Terms and Conditions
- Service Descriptions
- Pricing Schedule
- Your Application

## 1.3 Access to the SFOA Document

1.3.1 The Standard Form of Agreement is available via our website or from our office. If you require assistance in reading this document please contact our office.

## 1.4 Changes to the SFOA

1.4.1 Customer agrees to be bound by our SOFA as displayed at the Highway 1 Internet web site [www.highway1.com.au](http://www.highway1.com.au).

1.4.2 The Customer understands that SFOA can be amended from time to time and the Customer should visit the Highway 1 web site regularly to be aware of any changes.

## 1.5 Your Rights

1.5.1 Telecommunications Legislation requires Highway 1 to supply telecommunications services to you on the terms and conditions of a "Standard Form of Agreement".

1.5.2 Under Australian Telecommunications legislation you and we must comply with our Standard Form of Agreement unless you and we have agreed differently.

"**Agreement**" means this agreement for the provision of the Supplies by Highway 1 to you, which includes this Standard Form of Agreement, the Service Descriptions and your Application or Highway 1 Quotation.

"**Application**" means each application form completed by you (either hard copy or online on our Website) and sent to Highway 1 requesting the Services;

"**Charges**" means the charges payable by you to Highway 1 for the Goods and Services as specified on your application, the Highway 1 website, Quotes or other means.

"**Commencement Date**" means the date when the service is delivered to the customer for use. This is the first date used for billing purposes.

"**Early Termination Fee**" means the Charges that are specified as "Early Termination Fee";

"**Goods**" means any goods we supply to you, including goods supplied in connection with any Services;

"**GST**" means Goods and Services Tax (Act 1999)

"**Service Desk**" means the contact point for Faults, which you may contact by dialling the telephone number or submitting an email to a specified address in an applicable Service Description Schedule; the available standard support hours are from 0600HRS to 1800HRS Western Standard Time.

"**Systems Maintenance**" means maintenance carried out by Highway 1, where notice has been provided to you by email or posting a notice on the Highway 1 website prior to the scheduled event occurring.

"**Service Guarantee**" means guarantee that it will meet the Service Level for a particular Service;

"**Service Level**" means the actual number of hours during a calendar month that a Service is available to you.

"**Standard Form of Agreement**" means this document entitled "Standard Form of Agreement" and includes our Policies;

"**Summary Standard Form of Agreement**" means the written summary of the terms and conditions of this Standard Form of Agreement;

"**Suspension**" means that the goods or service delivery and we temporarily cease providing the benefit to you. For example; Broadband Service Suspension will result in the internet not working. Email Service Suspension will prevent email from being delivered.

"**Telecommunications Company**" means any licensed carrier or carriage service provider as defined by the Telecommunications Act 1997 other than Highway1;

"**Telephone Line**" means any telephone line used to provide the Services;

"**Term**" means, in respect of a Service, the contract period specified in the Application for that Service.

# 2 Definitions

"Website" means the Highway 1 website located at [www.highway1.com.au](http://www.highway1.com.au) or [www.simtex.com.au](http://www.simtex.com.au)

### 3 Our Services

#### 3.1 Applying for the Service

- 3.1.1 You may make an Application for supply of one or more goods and services by:
- Completing an online application form located at [www.highway1.com.au](http://www.highway1.com.au) or;
  - Faxing or delivering a completed application form.
- 3.1.2 Our SFOA is enforceable:
- if you apply online, the date you submit the application form;
  - if you sign an application form, the date you sign the application form;
  - if you apply by fax or some other form of delivery, the date on the application form.

#### 3.2 Assessing Your Application

- 3.2.1 When you request Highway 1 to supply the Service to you, we will decide whether to accept your Application and to supply the Service to you based on:
- the particular terms for that Service;
  - your eligibility for that Service;
  - its availability to your premises;
  - you meeting our credit requirements;
  - the accuracy of the information provided to Highway 1 by you and
  - your prior conduct or history in respect of any previous supply agreements;

3.2.2 We reserve the right to check your details with credit referencing bodies/associations.

3.2.3 We may refuse your Application for any reason, without being obliged to provide any reason to you.

#### 3.3 Provisioning Your Service

3.3.1 Subject to acceptance under clause 3.2.1, the commencement of the service is the date on which the service is made available for use.

3.3.2 Upon our acceptance of your Application, or, if applicable, execution of this Agreement by Highway 1 and you, a contract is formed and you become bound by this Agreement and the Term and charges associated with the Service. The contract between Highway 1 remains in force until it is terminated in accordance with this Agreement.

3.3.3 Under the Telecommunications Legislation, we are required to connect some Services within particular timeframes, unless you have waived your Customer Service Guarantee rights under clause 6.15. For other Services we will try to connect the Service within a reasonable industry timeframe.

3.3.4 We will retain control and decide the route and technical means that we use to provide the Service.

3.3.5 You must reasonably co-operate with Highway 1 to allow us to connect and supply the Service to you safely and efficiently.

3.3.6 The Customer agrees that, if the Customer uses the online application system and provides incorrect information which is actioned by a Carrier, that they, the Customer, will be liable for a resubmission payment to Highway 1.

3.3.7 To maintain the quality of services provided to our customers, we may also prioritise the delivery of network traffic that is latency, rate or jitter sensitive in preference to traffic that is not, as determined in our absolute discretion.

3.3.8 Any general statements, maps or other indicators of service availability are only a guide and you must not rely upon such statements, maps or other indicators as a commitment to provide the Services to a particular physical location.

3.3.9 The Goods and Services are provided on an 'as-is' basis.

3.3.10 A delay may occur between the Acceptance and Provisioning of the Service. We are not and will not be responsible for any delays associated with provision of a Service, nor any inability by Highway 1 to provide the Service to you.

3.3.11 Where delay occurs in Provisioning your service, this does not constitute a breach of our contract with you or your contract with us.

3.3.12 We may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if we reasonably determine that it is not technically or operatively feasible or commercially viable to supply the Service to you;

#### 3.4 Connection, Transmission and Reception Speeds

3.4.1 Any connection, reception and transmission speeds indicated refer to the maximum theoretical speeds achievable with the Supplies under ideal conditions, and you acknowledge that the actual achieved speeds may be substantially different from the theoretical speeds.

3.4.2 You acknowledge and agree that the maximum theoretical speed may be reduced by factors including but not limited to:

- a) your location and distance from the telephone exchange or network point of interconnect;
- b) the length, configuration and condition of your copper or fibre line;
- c) the number and type of other services being used by other customers inside and outside the Highway 1 network;
- d) electrical interference from outside sources;
- e) the configuration of the wiring within your premises;
- f) the software configurations and applications on your computer;
- g) your equipment and software

## 4 Service Usage

### 4.1 Your Responsibilities

- 4.1.1 You must provide true, current, accurate and complete information as prompted by the registration form. You further agree to keep Highway 1 current on any changes in that information.
- 4.1.2 You are responsible for all acts or omissions that occur under your account or password, including the content of transmissions through the Services and maintaining the confidentiality of your password.
- 4.1.3 You will not publish, distribute or disseminate defamatory or otherwise unlawful material through the use of the Service.
- 4.1.4 You will not use the Service to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy) of others.
- 4.1.5 You will not use the Service to infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy.
- 4.1.6 You will comply with Australian law regarding the transmission of technical data exported from Australia through Highway 1.
- 4.1.7 You must ensure that your use of the Service does not expose any minor to material that is unsuitable for minors and you will indemnify Highway 1 for any liability we incur as a result of your breach of this clause. You may obtain advice on available content filtering software which may be of assistance to you from the

following web page:  
<http://www.iaa.net.au/guideuser.html>

- 4.1.8 You acknowledge that it is your sole responsibility to comply with any rules imposed by any third party whose content or service you access using the Services.
- 4.1.9 You will not resell the Service for commercial purposes without the express written consent of Highway 1.
- 4.1.10 You acknowledge that we may take all reasonably necessary steps to ensure the efficient operation of the Services.
- 4.1.11 You are responsible for backup of all information or content associated with the Service.
- 4.1.12 Your failure to observe any of the foregoing limitations may result in civil or criminal liability, and the immediate termination of your Service.

### 4.2 Responsible Usage

- 4.2.1 You must comply with rules, regulations and acceptable usage policies that are in force for each system you access. If you act recklessly or irresponsibly or your actions endanger our network or systems, your access may be suspended or terminated at any time, without notice.

### 4.3 Secure Usage

- 4.3.1 We require that you to take responsibility for maintaining the security of your Service. Protection of the security aspects of your service, like accounts and passwords, are your responsibility. Subsequent usage of your service by a third party will result in you being responsible for the charges incurred.

### 4.4 Unlawful Usage

- 4.4.1 Our Services may only be used for lawful and authorised purposes. Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 4.4.2 You must not use, or allow any other person to use, the network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under the Telecommunications Act 1989 (Cth) or under other applicable state and/or Commonwealth Laws.
- 4.4.3 You may not use the Service to send, allow to be sent, or assist in the sending of Spam or otherwise or breach the Spam Act 2003.

### 4.5 Alleged Copyright Infringement Notices

4.5.1 Where Highway 1 is provided with reasonable evidence from copyright owners or their agents that alleges that you may be using the Service unlawfully we will:

- a) Send you an Alleged Copyright Infringement Notice (ACIN) by email. This email will contain the reference to specific alleged copyrighted content or unlawful activity.
- b) Request that you remove the alleged copyrighted content and or cease the alleged unlawful activity within 72 hours.

4.5.2 Where the provision of alleged copyrighted content or unlawful activity has not ceased after 72 hours from the receipt of the notice, Highway 1 will limit your Services in order to enforce the restriction of the dissemination of alleged copyrighted content or the activity.

4.5.3 If you provide reasonable evidence to suggest the unauthorised use of your Service or a breach and subsequent resolution of your own policies resulted in the issue of the notice from the copyright holder we may waive the ACIN.

4.5.4 Where we issue you with more than three ACIN's within a 30 day period you will be classified as a repeat offender and your Service will be terminated under clause 4.9.1.

#### 4.6 **Unauthorised Usage**

4.6.1 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of ours or any computer system or network that is accessed by our services, may result in the suspension or termination of your access. Unauthorised activities include, but are not limited to, guessing or using passwords other than your own, accessing information that does not have public permission, and accessing any system on which you are not welcome.

4.6.2 Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of your access. Disruptions include, but are not limited to, distribution of unsolicited advertising or spamming, monopolisation of services, propagation of, or transmission of information or software which contains, computer worms, trojan horses, viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via our network, sending harassing or threatening e-mail, and forgery or attempted forgery of e-mail messages and Usenet news postings.

4.6.3 You will be held liable for, and indemnify Highway 1 for, all costs and damages,

attributable to your unauthorised activities or disruptions.

#### 4.7 **Service Cancellation**

4.7.1 Customers are required to contact Highway 1 thirty days prior to the end of their contract period should they wish to cancel their service. If we do not receive notification from the customer prior to the end of their contract period the service will roll over for the next billing period in accordance with our Service Description.

4.7.2 Where your Service has not been provided for a minimum period you will be liable for an Early Termination Fee as per clause 1.1.1.

#### 4.8 **Service Suspension**

4.8.1 Without limiting the generality of any other Clause in this Agreement we may Suspend your service if:

- a) your nominated payment method is refused or dishonoured, or you fail to pay the amount specified on any due date specified in the bill.
- b) You usage breaches conditions under section 4.

#### 4.9 **Service Termination**

4.9.1 Without limiting the generality of any other Clause in this Agreement, we may terminate your Agreement after providing notice in writing of seven days if:

- a) you have provided Highway 1 with false or misleading information or you have not provided Highway 1 with any information that we have reasonably requested for the purposes of this Agreement;
- b) your service or Account has been Suspended for seven days and you have failed pay the amount specified on any due date specified in the bill
- c) we discover or reasonably believe that you are a minor or do not believe you have the authority to enter into this agreement;
- d) we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency administration;
- e) if you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
- f) you unlawfully use the Service.
- g) you are classified as an alleged repeat copyright offender as per clause 4.5.4.

4.9.2 We may terminate this Agreement (otherwise than under Clause 4.9.1) for any reason on thirty

(30) days notice in writing to you (unless the applicable Service Schedule specifies a longer notice period, in which case that longer notice period must be provided), in which case Clauses 5.4.1 will apply.

#### 4.10 **Early Termination Fee**

4.10.1 You will be liable for an Early Termination Fee where you elect to Cancel your service or your Service is Terminated by Highway 1 prior to the minimum contract period specified in the Service Description.

4.10.2 Where an Early Termination Fee is specified as “prorated on the remaining contract value” then fee can be calculated as per the following formula:

Early Termination Fee = (Contract Term – Remaining Contract Months) x Monthly Value

4.10.3 You acknowledge that the Termination Fee represents a genuine pre-estimate of the loss Highway 1 will suffer and is not a penalty.

#### 4.11 **Systems Maintenance**

4.11.1 Our goal is to provide a fault free Service although we cannot guarantee this. We will endeavour to conduct all scheduled maintenance, however we may be required to suspend supply of our Services during normal working hours in order to carry out emergency repairs on our systems.

#### 4.12 **Fault Reporting & Resolution**

4.12.1 Customers may report service faults by:

- a) Telephone contact to the Highway 1 Service Desk on 1300 139 550
- b) Email to [support@highway1.com.au](mailto:support@highway1.com.au)

4.12.2 Each fault will be assigned a unique ticket number. Please use this ticket number when referring to your query.

4.12.3 Issuing of this ticket number is an acknowledged acceptance of the fault report.

4.12.4 The Service Desk team will use best efforts to identify and resolve the fault.

4.12.5 Where the issue cannot be resolved by the Service Desk they will follow a procedure to escalate the ticket to a technical expert for further investigation.

4.12.6 When a ticket has been resolved or closed the customer will receive an email notifying them of the status change of the ticket.

4.12.7 If you ask us to come to your premises to repair a fault and it turns out to be caused by your equipment you may be charged a callout fee.

4.12.8 It is your responsibility to maintain and repair any equipment which you own. You are also responsible for any of our equipment on your premises and you must pay us for any loss or damage to our equipment.

#### 4.13 **Our Equipment**

4.13.1 Title in the Highway 1 Equipment is not transferred to the Customer and at all times is retained by Highway 1. The Customer holds the Highway 1 Equipment as bailee for Highway 1.

4.13.2 Risk in the Highway 1 Equipment shall pass to the Customer on delivery of the Highway 1 Equipment to the Customer.

4.13.3 The Customer is responsible for any damage to, or destruction or theft of the Highway 1 Equipment, except to the extent it is caused by Highway 1. The Customer must keep the Highway 1 Equipment in good repair and condition, excluding fair wear and tear and shall not sell, assign or permit any charge, lien, mortgage or encumbrance to be created in relation to it.

4.13.4 Unless otherwise agreed, the Customer must:

- c) allow Highway 1 or it’s representative to service, modify, maintain, repair or replace the Highway 1 Equipment; and
- d) do all things reasonably required by Highway 1 to make clear the identity of the owner of the Highway 1 Equipment.

#### 4.14 **Service Changes**

4.14.1 We may withdraw any plans or account types packages at any time, such changes will take effect from the end of current contract period.

4.14.2 Customers may transfer/migrate from any plan to another plan. Fees and a new contract period will commence once provision for the service has been completed.

#### 4.15 **Service Level Agreement**

4.15.1 We will set minimum performance targets and provide rebates if specific Services fail to meet specified targets.

4.15.2 The rebates available for specific Services are detailed in the Service Description Schedules.

4.15.3 Where the Service is unavailable due to scheduled Systems Maintenance then this period is exempt from Service Level Rebates.

4.15.4 Where the Service is unavailable due to events beyond our control then this disruption period is exempt from Service level Rebates. These include the following events:

- a) Interruption of the Service due to any Telecommunications Company circuits or failure of any Telecommunications Company services;
- b) Interruption of the Service due to your applications, your equipment, or your facilities;
- c) Where you cause and interruption of the Service due to your acts or omissions, or any use of the Service authorised by you;
- d) Where the Service is interrupted due to force majeure;
- e) Where we are requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts rectification of a fault or service difficulty; and
- f) Where we are prevented from connecting a specified service, or rectifying a fault or service difficulty, because we are unable to obtain lawful access to land or a facility.
- g) Damage to our network, equipment or facilities not caused by Highway 1.
- h) Planned or Unplanned speed degradation (Not Service Loss), unless otherwise specified in a Service Description.

4.15.5 A Service rebate is not redeemable for cash and in any month is capped at the relevant specified percentage of the Charges for the Individual Service for that month. You must claim any Service rebate in writing within 10 working days of the event resolution by submitting a Service Rebate Application which is available on the Highway 1 website.

4.15.6 Once a claim is made in accordance with paragraph 4.15.5, we will calculate the Service Rebate (if applicable) for the Service at the conclusion of the calendar month and credit to your account the amount equal to the Service rebate.

4.15.7 You will only be entitled to receive a rebate under either this Service Description or the Related Service Description, whichever has the greater entitlement.

4.15.8 You acknowledge that we do not warrant the availability or other characteristics of the Service or that any target provisioning, installation, response or rectification times will be met.

4.15.9 Subject to paragraphs 4.15.10 and 4.15.11, we will be liable to pay damages to you under section 118A of the Consumer Protection Act only if the End User has made a claim against you for breach of the Customer Service

Guarantee and you, acting reasonably, have paid that claim. The amount of damages payable by we will reflect the proportionate contribution of Highway 1 to your failure to comply with the Customer Service Guarantee.

4.15.10 In relation to contributory payments under Section 118A of the Consumer Protection Act, you acknowledge, to the extent this information is relevant under section 118A of the Consumer Protection Act, that the following are elements to be considered when determining liability:

- a) the extent to which you fail to take advantage of any available exemptions from compliance with the Customer Service Guarantee (or where entitled to do so under the Customer Service Guarantee, fails to extend guaranteed maximum rectification periods);
- b) requirements of good engineering practices;
- c) requirements for reasonable use of the Service; and
- d) the diagnostic information provided by you to us at the time the fault giving rise to the claim was notified by you to us.

4.15.11 To the extent that we are liable to make contribution payments to you under section 118A of the Consumer Protection Act, the amount of Highway 1's contribution to each payment made by you to End Users for breach of the Customer Service Guarantee will be reduced by the total amount of credits or rebates payable under this Schedule in relation to the matter that gave rise to Highway 1's liability to make contributions to you under Section 118A of the Consumer Protection Act.

#### 4.16 **Support Services**

4.16.1 Our Services include a Service Desk support during commissioning of the Services. Once you have successfully connected to the Internet through Highway 1 and/or gained any additional Services you have purchased from us, we have fulfilled our support obligations to you.

4.16.2 Additional support may be provided, although it may be at an additional cost to you in the event that the reported problem is due to faults in your software or hardware.

4.16.3 We cannot provide free support for:

- a) faults that are outside our system (or)
- b) customers that do not have existing Agreement with us.

4.16.4 Where we provide you with a reference to a third party (i.e. IT consultant, other carrier) for support

services we make no undertakings or guarantees in regards to their ability to undertake the specified work. You will be responsible for the direct commercial relationship with this third party.

## 5 Billing and Payments

### 5.1 Billing

5.1.1 We may bill you for:

- a) recurring or fixed charges, in advance;
- b) variable charges, in arrears, including but not limited to excess traffic usage charges;
- c) installation or set-up charges, before installation occurs;
- d) any equipment you purchase from us, on or after delivery;

5.1.2 We will bill you in accordance with the billing period described in the Service Description.

5.1.3 We will provide you with reasonable information on your use of our services via the Highway 1 website.

5.1.4 Bills will be calculated by reference to data recorded, logged or received by our systems and our Suppliers and you acknowledge that in calculating charges we need only look at that data as logged or received by Highway 1 or our Suppliers.

5.1.5 Bills may include charges from previous billing periods where these have not been remitted.

5.1.6 We may reissue any invoice if any error is discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from Highway 1 we will refund the overpayment within 30 days.

5.1.7 Subject to clause 5.2.1, you must pay each amount billed by the due date specified in the bill and in the manner specified in the Service Description or your Application.

5.1.8 Bills and receipts will be available in an electronic document format and distributed to you via email.

### 5.2 Billing Disputes

5.2.1 Where you dispute the bill sent to you by Highway 1 please provide a written notice to us within 14 days of the issue date. You will need to specify:

- a) The specific line items in dispute.
- b) Reasons for disputing each of the charges

5.2.2 We will assess the validity of these claims and provide a written response within 10 business days.

5.2.3 Where a billing dispute is found to be in our favour you will be required to pay the outstanding amounts by the due date. Where this due date has passed, you will be obliged to pay all outstanding monies within 2 business days.

### 5.3 Payments

5.3.1 You are responsible for and must pay for all use of the Service, even unauthorised use.

5.3.2 We reserve the right to charge the customer all fees specified in this agreement, unless otherwise agreed in writing by the customer and Highway 1.

5.3.3 The Customer may elect to have their bills paid by way of:

- a) a direct debit from an account held by the Customer at an approved financial institution
- b) An accepted credit card (Visa, MasterCard)
- c) BPAY
- d) Cheque
- e) Direct Deposit

5.3.4 Accepted payment types vary for each good and service. Please see the Service Description for accepted payment types for each good and service.

5.3.5 The Customer is responsible for ensuring there are sufficient funds available in their nominated credit card or direct debit account at any time we bill the account.

5.3.6 Dishonour fees and any other charges, expenses or losses resulting from Highway 1 attempting to debit the credit card or direct debit account will be borne solely by the Customer.

5.3.7 The Customer hereby authorises Highway 1 to charge any excess usage of their account where this feature forms a part of their service.

5.3.8 Where the Customer provides a credit card for payment of reoccurring goods and services, the customer authorises Highway 1 to debit this card for the fees and on a frequency as set out in your Application.

5.3.9 We will notify you by email, then by phone if your credit card is due to expire in the next billing period.

- 5.3.10 In addition to fees and charges you incur in the normal use of your service, we may charge you an administration fee which may include cancellation fees, relocation fees and/or payment dishonour fees. These charges are outlined in our Pricing Schedule.
- 5.3.11 All administration, registration and set-up fees are non-refundable.
- 5.3.12 Customers may exchange or receive a refund for equipment which has not been opened or used and has been returned to us within 30 days of purchase.
- 5.3.13 To request a copy of a tax invoice please contact customer service on 1300 139 550.
- 5.3.14 We reserve the right to suspend or terminate your Service without notice upon rejection of any card, cheque or direct debit charges or if your card issuer (or its agent or affiliate) seeks return of payments previously made to Highway 1 when we believe you are liable for the charge. Such rights are in addition to and not in lieu of any other legal rights or remedies available to Highway 1.
- 5.3.15 If you do not pay our bills on time for two months in a row, we may require you to provide us with an authority to directly debit your credit card or bank account with the amount of all future bills. You must not cancel such a direct debit authority unless you pay us extra charges as determined reasonably by us.

## 5.4 Refund Policy

- 5.4.1 If we terminate this Agreement under Clause 4.9.1, you will not be entitled to a refund in respect of the Goods or Services;
- 5.4.2 If we terminate this Agreement under Clause 4.9.2, we will provide you with a refund in respect of the Supplies for which you have paid in advance but which have not been supplied by Highway 1, calculated at the applicable monthly rate;
- 5.4.3 If you validly terminate this Agreement as a result of our breach, your only remedy will be:
  - a) In respect of Services or Other Services, subject to clause 5.4.5 a refund for the services for which you have paid in advance but which have not been supplied by us, calculated at the applicable monthly rate; and/or
  - b) In respect of Goods, a refund of the amount you have paid for the Goods;
- 5.4.4 If you request a change in an applicable Service Schedule for the Services (for example, if you select a different Service plan) such that the new Charges for the Services payable each Due

Date ("New Charges") differ from the previous Charges payable each Anniversary Date ("Previous Charges"), then:

- 5.4.5 Each Service is billed monthly blocks from the relevant Service Anniversary Date. If we terminate that Service pursuant to clause 4.9.2, you terminate that Service pursuant to clause 4.7.1, we will refund you for any unused portion of that Service that you have paid for in advance in full monthly blocks. However, if you have used any part of any full monthly block for that Service we will not provide a refund in respect of that month.

## 6 Personal Information

### 6.1 Collection, Use and Disclosure

- 6.1.1 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 or the products and services of Highway 1.
- 6.1.2 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 products and services of Highway 1 and other organisations.
- 6.1.3 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:
- 6.1.4 A credit reporting agency or credit provider, third parties who are not related to Highway 1, including our agents, dealers, contractors and franchisees, suppliers who need access to your personal information to provide Highway 1 with services to allow supply of the service, and joint venture partners of Highway 1.
- 6.1.5 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:

- a) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
- b) emergency services organisations, and
- c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

## 6.2 Opting-out

6.2.1 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 Service Desk to make a request to opt-out. We will not charge you for processing a request to opt-out.

## 6.3 Gaining Access Your Personal Information

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

- a) gain access to your personal information held by Highway 1, unless we are permitted or required by any applicable law to refuse such access, and
- b) correct any personal information held by Highway 1.

## 6.4 Providing Your Personal Information

6.4.1 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.

## 6.5 Notices

6.5.1 All notices and changes shall be in writing and shall be hand delivered, or sent by post, or facsimile, or email to the parties hereto at their respective addresses.

## 6.6 Assignment

6.6.1 The Customer agrees not to assign, transfer, or re-sell any of the services provisioned by Highway 1 under this Agreement or any rights given by the use of this service, unless prior written permission from an authorised officer from Highway 1.

6.6.2 For the avoidance of doubt, Highway 1 has the right to assign our benefits and obligations of this Agreement to any third party.

6.6.3 You undertake to do all things necessary to ensure the transfer of your obligations to Highway 1's assignee, including executing new direct debit forms if necessary. Other Terms

## 6.7 Our Rights

6.7.1 We reserve the right to remove any information or materials, in whole or in part, that we, in our sole discretion, deem to be offensive, obscene, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.

6.7.2 We are under no obligation to monitor transmissions or published content on the Services.

6.7.3 However, we or our agents have the right to monitor such transmissions or published content from time to time.

6.7.4 For broadband services in which we use 'Shaping' as a method of quota enforcement, we may apply additional access constraints to services in which customers download more than the allowance specified in the service description.

## 6.8 Liability

6.8.1 Our liability is limited to refunding, resupplying, repairing or replacing the relevant goods or unused portion of services where the goods or services are not of a kind ordinarily required for personal, domestic or household use or consumption and where it is fair and reasonable to do so.

6.8.2 We shall not be held liable in any way or by any means for any direct or indirect, special or consequential damages, resulting from the use or the inability to use the Services or from any goods or service purchased or obtained or message received or transaction entered into through Highway 1 or from unauthorised access to or alteration of your transmission or data to your e-mail address, even if we have been advised of the possibility of such damages.

6.8.3 We are not liable for any delay or failure to perform resulting directly or indirectly from any causes beyond our reasonable control..

6.8.4 Nothing in this Agreement removes or limits our liability for death, personal injury caused by our negligence, our fraud or anything that we cannot limit or exclude by law. Your statutory rights are not affected.

## 6.9 Costs

6.9.1 Highway 1 has the right to recover reasonable costs reasonably incurred from the Customer for any costs incurred for damages and/or repairs and/or maintenance and/or loss of business caused by, or resulting from, any of the activities listed in clauses 4.1.1 through to 4.6.3 inclusive.

## 6.10 Precedence

6.10.1 Where any conflict or inconsistency exists in the documents and/or schedules the following precedence is in effect:

- a) Your Application
- b) Service Descriptions
- c) Core Terms and Conditions
- d) Pricing Schedule

#### 6.11 Warranties

6.11.1 We expressly disclaim all warranties of any kind whether express or implied. We make no warranties that Services will meet your requirements, or that Services will be uninterrupted, secure, or error free, or the results that may be obtained from the use of Services, or to the accuracy or reliability of any communication or transmission of data, or the accuracy of any information obtained through Services or that defects in the software will be corrected.

6.11.2 We make no warranty regarding any goods or service purchased or obtained through Service or any transaction entered into through Services. We take no responsibility for the deletion or failure to store E-mail or SMS messages. No advice or information, whether oral or written, obtained by you from Highway 1 or through Services shall create any warranty by Highway 1.

6.11.3 Some jurisdictions do not allow the exclusion of certain warranties, so some of the above disclaimer of warranties may not apply.

#### 6.12 Indemnification

6.12.1 You agree to indemnify Highway 1, its parents, subsidiaries, representatives and employees from any claim or demand, including solicitors' fees, arising out of your use of the Service, including any violation of this Agreement by you or any other person using your account, or any claim of libel, defamation, violation of rights of privacy or publicity, loss of service by other customers and infringement of intellectual property or other rights.

#### 6.13 Complaints Procedure

6.13.1 We are committed to resolving customer complaints quickly and in a satisfactory manner. If you have a complaint, we request that you:

- a) Contact [support@highway1.com.au](mailto:support@highway1.com.au) or call 1300 139 550. A ticket number will be created and assigned to your complaint.
- b) If you are not satisfied with our review and response to your complaint you may either contact the Office of Fair Trading in your state or territory, or as a last resort, the Telecommunications Industry Ombudsman.

#### 6.14 Customer Service Guarantee

6.14.1 The Customer Service Guarantee as part of the Telecommunications Act 1999 prescribes mandatory performance standards for certain telecommunications services. We will comply with such standards to the extent that they apply to the Services offered.

#### 6.15 Waiving Your CSG Rights

6.15.1 Under Part 5 of the Telecommunications Standard 2000 (No 2) (Available at <http://www.acma.gov.au>) Highway 1 is allowed to propose that you waive your rights under the Customer Service Guarantee. This means that Highway 1 is not required to meet performance standards as set out by the Customer Service Guarantee.

6.15.2 Highway 1 may provide incentives on some Services in return for you agreeing to waive your protections and rights under the Customer Service guarantee.

6.15.3 In accepting the incentive provided with the Service you will be specifically agreeing to waive the following CSG protections:

- a) The provision of written information;
  - i. Provide you with written information, at least every two years about:
  - ii. The performance standards that apply under these standards
  - iii. The obligations of the provider under these standards
  - iv. The customers entitlements to damages under the Act for contravention of the performance standards
  - v. On request, provide information to you about a performance standard.
- b) Guaranteed maximum connection periods;
  - i. The CSG prescribes maximum timeframes within which service connection should occur.
- c) Guaranteed maximum rectification periods;
  - i. The CSG prescribes maximum timeframes within which service faults should be rectified.
- d) Making and changing appointments; The CSG requires carriage service providers to:
  - i. Make appointments with customers at times that are convenient for the customer
  - ii. Make appointments with customers that are either for a particular time of the day or nominate a five hour period during which the appointment will occur.
  - iii. Change appointments by giving at least 24 hours notice or by obtaining the agreement of the customer to change.

6.15.4 If you agree to waive your rights under the Customer Service Guarantee you will not be able to claim compensation from Highway 1 for its failure to meet these performance standards.

6.15.5 Your rights in clause 6.15.3 shall be waived from the acceptance of your application as specified in clause 3.3.2.

6.15.6 If you choose to no longer waive your rights

## 6.16 **Governing Law**

6.16.1 This Agreement shall be deemed to have been made in Perth, Australia, and it shall be governed and interpreted according to the laws, including conflict of laws, applicable in the State of Western Australia. Each of the parties submits to the jurisdiction of the Courts of Western Australia.

## 6.17 **Legal Capacity**

6.17.1 You confirm that you are at least 18 years old and that you have the legal capacity to enter into this agreement.

## 6.18 **Goods and Services Supplied**

6.18.1 The goods and services supplied by Highway 1 are detailed in Service Description Schedule.