

# Important Customer Information: Your Rights and Obligations

## What is this document?

This is a summary of the Standard Form of Agreement ("SFOA"). The SFOA sets out the standard terms and conditions of our services and goods we offer.

We have designed this summary document to encompass the important terms and conditions contained within the full SFOA. This summary does not override or alter anything in our SFOA and is for information purposes only.

## Who are the parties?

This Standard Form of Agreement is between Highway 1 (Aust) Pty Ltd ABN 068 383 737 trading as Highway 1, Apiix, Simtex Communications, EON Technology, Global Dial, Global Web, Nerdnet Internet, Worldwide Internet (hereinafter referred to as "Highway 1", "us", "our") and the you. (being an entity subscribing to Highway 1 for the provision of network, Internet and telephony services).

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

## Access to the SFOA

We are required by law to give a copy of this summary to all new customers and have up-to-date copies available for all customers.

The up-to-date version of the SFOA Summary and complete 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.

## Changes to the SFOA

You understand 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. We will also send customers a copy of this summary every 24 months.

## Our Services

Highway 1 provides Internet Services as defined in the Service Schedules. These services include (but are not limited to) broadband internet, fibre optics, media streaming dialup, website hosting and co-location.

The detailed specifics for each of our services is detailed in Service Descriptions available with the SFOA.

Service pricing information is available on the Highway 1 website or from a valid quote prepared by a Highway 1 representative.

## Customer Service Guarantee

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.

## Waiving Your CSG Rights

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

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. The specific rights you will waive are detailed in clause 6.12 of the SFOA.

## Applying for the Service

You may make an Application for supply of one or more goods and services by:

- a) Completing an online application form located at [www.highway1.com.au](http://www.highway1.com.au) or;
- b) Faxing or delivering a completed application form.

Our SFOA is enforceable:

- c) if you apply online, the date you submit the application form;
- d) if you sign an application form, the date you sign the application form;
- e) if you apply by fax or some other form of delivery, the date on the application form.

Acceptance of an application is at our discretion.

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.

## Provisioning Your Service

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

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

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.

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.

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.

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

### **Connection Speeds**

Any transmission speeds indicated by Highway 1 refer to the maximum theoretical speeds achievable with under ideal conditions, and you acknowledge that the actual achieved speeds may be substantially different from the theoretical speeds. 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
- 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

### **Your Responsibilities**

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

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.

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.

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.

### **Service Cancellation By You**

Customers are required to contact Highway 1 30 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.

Where your Service has not been provided for a minimum period you will be liable for an Early Termination Fee as per clause 4.8.1 of the SFOA.

### **Service Suspension**

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) Your usage contravenes that stated under Your Responsibilities.

### **Service Termination By Us**

We may terminate your Agreement after providing seven days' notice in writing 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;

### **Early Termination Fees**

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.

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 Contract Value

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

### **Service Changes**

We may withdraw any plans or account types packages at any time, such changes will take effect from the end of current contract period as per clause 3.5.

### **Service Levels Rebates**

We will set minimum performance targets and provide rebates if the Service fails to meet these targets.

The rebates definitions are detailed in the SFOA and Service Description Schedules.

### **Systems Maintenance**

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.

### **Fault Reporting & Resolution**

Customers may report service faults 24 hours a day, 7 days a week 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).

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

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

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

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.

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

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.

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.

### **Support**

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.

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.

We cannot provide free support for:

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

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.

### **Billing**

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

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

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;.

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.

### **Billing Disputes**

We aim to resolve billing disputes quickly. We have detailed a billing dispute process in section 4.2 of the SFOA.

### **Payments**

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

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

You may elect to pay by way of direct debit, cheque, direct deposit or credit card.

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.

### **Refund Policy**

We have defined a refund policy and process in clause 4.4 of the SFOA.

### **Personal Information**

In Section 5 of the SFOA we have provided policies on Collection, Use and Disclosure of your personal

information, Opting out of communications, gaining access to your personal information.

## **Your Rights**

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

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

## **Our Rights**

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.

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

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

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.

## **Liability**

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.

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.

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

Our liability to you or any third party is limited to the pro-rata refund of your unused subscription value. Some Jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, therefore some of the above limitations may not apply.

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.

## **Warranties**

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.

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.

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

## **Indemnification**

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.

## **Complaints Procedure**

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

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.

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.