

## BLINK CONSUMER TERMS

**PLEASE READ THESE TERMS CAREFULLY AS THEY MAY HAVE IMPORTANT CONSEQUENCES FOR YOU.**

### 1 ABOUT THESE CONSUMER TERMS

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

### 2 THE AGREEMENT

#### 2.1 The agreement

- (a) The *agreement* is made up of:
  - (i) your application,
  - (ii) these consumer terms,
  - (iii) the service description,
  - (iv) the standard pricing table, and

(v) the appendices (if applicable).

(b) The agreement is either a fixed-length agreement or month to month agreement.

## 2.2 When does the *agreement* apply?

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

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

(a) If anything in these *consumer terms* is inconsistent with a provision in another part of the *agreement*, then unless otherwise stated, the *consumer terms* prevail to the extent of the inconsistency.

(b) Clause 13, 'What *you* and *we* are liable for', below prevails over all other terms.

## 2.4 When does the *agreement* start?

The agreement starts when we accept your application.

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

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

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

(a) If the *agreement* is a *month to month agreement*, *we* will provide the *service to you* in accordance with the *agreement* until the *service is cancelled* in accordance with clause 11, 'Cancelling the *service*', below.

(b) If the *agreement* is a *fixed-length agreement*, *we* will provide the *service to you* in accordance with the *agreement*:

(i) for the *minimum term*, or

(ii) until the *service is cancelled* in accordance with clauses 11.1 or 11.3 below, or

(iii) if neither *you* nor *we* cancel the *service* at the end of the *minimum term* (see clause 2.7 below), until the *service is cancelled* in accordance with clauses 11.1 to 11.3 below.

## 2.7 What happens at the end of the *minimum term* if the *agreement* is a *fixed-length agreement*?

(a) If the *agreement* is a *fixed-length agreement* and neither *you* nor *we* cancel the *service* at the end of the *minimum term*, the *agreement* becomes a *month to month agreement* and *we* will continue to supply the *service to you* on a Month-to-Month basis in accordance with the *agreement*.

- (b) If *you* do not wish to continue to use the *service* on a Month-to-Month basis after the end of the *minimum term*, *you* must inform *us* (in accordance with clause 11, ‘*Cancelling the service*’, below) by giving *us* 30 days notice before the end of the *minimum term* that *you* wish to *cancel the service* at the end of the *minimum term*.
- (c) If *we* choose not to provide the *service* to *you* after the end of the *minimum term*, *we* will give *you* notice of this (in accordance with clause 11, ‘*Cancelling the service*’, below) by giving *you* 30 days notice before the end of the *minimum term*.
- (d) If *we* wish to change the terms of the *agreement*, including any fees or charges, at the end of the *minimum term*, *we* will give *you* notice of this (in accordance with clause 2A below) before the end of the *minimum term*.

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

*You* must ensure that any person *you* allow to use the *service* complies with the *agreement* as if they were *you*. *You* should make sure *you* have secured your account and any passwords to ensure that only people *you* have allowed to use the *service* can do so.

## **2A CHANGING THE *AGREEMENT*?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is in relation to a fee or charge for a service ancillary to the supply of the *service* (for example, a billing fee or credit card transaction fee). If the change *impacts you* we will offer *you*:
- (i) use of a reasonable alternative at no fee or charge, or
  - (ii) a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which *you* notify *us* *you* wish to *cancel the service*),
- (c) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is to increase the price of a content or premium service (where we are passing on an increase in the cost charged to *us* by the *supplier* who supplies that *content service* or premium service to *us*. If the change *impacts you* we will:
- (i) wherever possible, still try to give *you* at least 21 days *notice in writing* of the increase in price if *you* have used the *content* or premium service within the previous six (6) months, and
  - (ii) allow *you* to elect to not use the *content* or premium service without attracting any additional charges,

- (d) If the agreement is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is a result of another *carrier* or service provider varying their agreement with *us* so that *we* need to make changes to the *agreement*. If the change *impacts you* we will :
- (i) whenever possible, still try to give you at least 21 days *notice in writing* of the change , and
  - (ii) give you 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
    - (A) usage charges or *access fees* (incurred to the date on which *you* notify *us* *you* wish to *cancel the service*), and
    - (B) any outstanding amounts that cover installation costs or *equipment charges* (in relation to equipment that can be used in connection with services provided by any third party).

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

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

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

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

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

- Withdrawing a minor feature of the *service*;

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

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

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

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

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

### 3.1 What is the *service*?

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

### 3.2 When may we refuse your application?

We may refuse your application if:

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

## 4 HOW WE DEAL WITH YOUR PERSONAL INFORMATION

### 4.1 Collection, use and disclosure

- (a) *We* may collect, use and disclose *personal information* about *you*, to decide whether to start, stop or limit supply to *you* of personal credit, the *service* or the products and services of any other *Flexigroup Limited subsidiaries*.
- (b) *We* may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call) for purposes related to the supply of the *service* (or for purposes which would be reasonably expected) including billing and account management, business planning and product development, and to provide *you* with information about promotions, as well as the products and services of any *Flexigroup Limited subsidiaries* and other organisations.
- (c) *We* may collect, use and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call) for the purposes in paragraphs (a) and (b) above to or from:

- (i) a credit reporting agency or credit provider,
  - (ii) another *Flexigroup Limited subsidiary*,
  - (iii) third parties who are not related to *us*, including *our* agents, dealers, contractors and franchisees,
  - (iv) *suppliers* who need access to *your personal information* to provide us with services to allow supply of the *service*, and
  - (v) joint venture partners of *Flexigroup Limited*.
- (d) *We* may be permitted or required by applicable laws to collect, use or disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call), including to:
- (i) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
  - (ii) emergency services organisations, and
  - (iii) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.
- (e) Some of the organisations to whom we may disclose your personal information (including your credit information or credit eligibility information) will be located overseas and may not have an Australian link. The countries in which overseas recipients are likely to be located currently include the Philippines (for an updated list of countries from time to time please see our Privacy Policy and Credit Reporting Policy available on our website). You acknowledge that by consenting to us disclosing your personal information to overseas recipients, Australian Privacy Principle (“APP”) 8.1 will not apply to the disclosure (which means that we will not be obliged under the Privacy Act to take reasonable steps to ensure that an overseas recipient does not breach the APPs and we may not be liable under the Privacy Act if the recipient does not act consistently with the APPs). By applying for this product you consent to disclosures to overseas recipients.

## 4.2 Opting-out

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

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

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

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



- (b) correct any *personal information* held by us.

#### 4.4 Providing *your personal information*

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

#### 4.5 Consent

By providing *your personal information* to us and obtaining the *service*, *you* acknowledge and consent to the collection, use and disclosure of *your personal information* as set out in this clause 4 and in accordance with *our* privacy policy. *You* may obtain a copy of *our* privacy policy from us or on *our* website: [www.blinkit.net.au](http://www.blinkit.net.au)

### 5 USING THE *SERVICE*

#### 5.1 Connecting the *service*

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

#### 5.2 Quality of the *service*

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

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

- (a) When *you* use the *service*, *you* must comply with:
  - (i) all laws,
  - (ii) all directions by a *regulator*,
  - (iii) all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)), and
  - (iv) reasonable directions by us.
- (b) *You* must not use, or attempt to use, the *service*:
  - (i) to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright),
  - (ii) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted,

- (iii) to expose *us* to liability, or
  - (iv) in any way which damages, interferes with or interrupts the *service*, the *Optus network* or a *supplier's network* used to supply the *service*.
- (c) *We* may ask *you* to stop doing something which *we* reasonably believe is contrary to paragraph (b) above. *You* must immediately comply with any such request. If *you* do not, then *we* may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- (d) *You* acknowledge that, where the *service* is a *carriage service*, *we*, or any *supplier* whose *network* is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor *your* usage of the *service* and communications sent over it.
- (e) If *you* do not comply with this clause 5.3, *we* may be entitled to cancel the *service* under clause 11.3(a) (v) or (vi) or suspend the service under 12.1(a)(vii) or (viii).

#### 5.4 Unusually high use

We may contact you if we become aware of an unusually high use of the service by you (including to verify any costs or charges which you may have incurred) however we are under no obligation to do so. For example, if you suddenly make an unusually high volume of calls to international destinations using the service we may contact you to determine whether that use is likely to continue. If so, we may ask you to make a pre-payment usage charge under clause 8.2(b). Please note that we may also be entitled to suspend the service under clause 12.1(a)(iv) for an *unusually high use* of the service.

#### 5.5 Compliance with third party rules

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

## 6 EQUIPMENT

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

- (a) You must ensure that all equipment you use in connection with the service and the way you use that equipment complies with:
- (i) all laws,
  - (ii) all directions by a regulator,
  - (iii) all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)), and
  - (iv) reasonable directions by us.

- (b) If *you* breach paragraph (a) above, *we* may:
  - (i) disconnect the equipment from the *service*;
  - (ii) suspend the *service* in accordance with clause 11.3(a)(v) or 11.3(a)(vi);  
or
  - (iii) cancel the *service* in accordance with clause 12.1(a)(vii) or 12.1(a)(viii).
- (c) *We* will try to give *you* reasonable notice before *we* disconnect the equipment under paragraph (b)(i) above, but *we* may disconnect the equipment, suspend the *service* or cancel the *service* immediately if there is an emergency.

## 6.2 Who owns the equipment?

- (a) Blink owned equipment
  - (i) Any *Blink owned equipment* remains *our* property or the property of *our personnel*.
  - (ii) Subject to *our* obligations under *your statutory rights as a consumer* (see clause 13.2), *you* are responsible for any *Blink owned equipment* from the date *you* receive it.
  - (iii) *You* must not mortgage or grant a charge, lien or encumbrance over any *Blink owned equipment*.
- (b) Equipment purchased by *you* from *us* or any of *our personnel*
  - (i) *You* may purchase equipment from *us* or any of *our personnel* to use in connection with the *service*.
  - (ii) Subject to *our* obligations under *your statutory rights as a consumer* (see clause 13.2), *you* will own the equipment and be responsible for the equipment from when *you* receive it.

## 6.3 Installation of the equipment

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

## 6.4 Maintenance and repair of any *Blink owned equipment*

Unless *we* both agree otherwise, *you* must allow *our personnel* (and only *our personnel*) to service, modify, repair or replace any *Blink owned equipment*.

## 6.5 Lost, stolen and damaged equipment

- (a) *You* are responsible for any lost, stolen or damaged *Blink owned equipment*, except if it is caused by *us* or *our personnel*.

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

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

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

- (a) Maintenance may be conducted on the *Optus network* or another *supplier's network* used to supply the *service*.
- (b) Scheduled maintenance may or may not be outside normal business hours.

### **7.2 Reporting faults**

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

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

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

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

- (a) *Optus* will repair faults within *the Optus network*.
- (b) Unless the *service description* expressly provides otherwise, neither *we nor Optus* are responsible for repairing any fault in the *service* where the fault arises in or is caused by:
  - (i) a *supplier's network*,
  - (ii) equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, or
  - (iii) facilities outside the *Optus network*.
- (c) Where:
  - (i) the fault arises in or is caused by a *supplier's network*,
  - (ii) *we* become aware of the fault, and
  - (iii) *we* are not responsible for the repair of that fault,

*we* will notify the *supplier* of the fault and request that the fault be corrected promptly, but *we* will not bear any further liability or responsibility.

- (d) Where the fault arises in or is caused by equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, *we* are not responsible for the repair of that fault. If *you* ask *us* to investigate and repair such a fault:
  - (i) *we* will give *you* an estimate of the probable cost of investigating the fault and, if *you* agree to pay those costs, *we* will undertake an investigation and *we* will then charge *you* for the cost of investigation,
  - (ii) if *we* have investigated the fault, *we* will use reasonable endeavours to inform *you* of the fault's probable cause, and
  - (iii) if *you* request *us* to repair the fault and *we* agree to repair the fault, *we* will give *you* an estimate of the probable cost of repairing the fault and *we* will then charge *you* for the cost of repairing the fault.
- (e) If *we* investigate a fault and determine that the fault is attributable to an *excluded event*, then *we* may charge *you* for any costs *we* incur in investigating and repairing the fault.

## **7.5 Loss of access**

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

## **8 FEES AND CHARGES**

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

- (a) *You* must pay:
  - (i) the fees and charges for the *service*, which are set out in the *standard pricing table* or in any applicable *special*, and
  - (ii) any additional fees and charges noted in the *agreement* (including in *your application*) or notified by *us* in accordance with the *agreement* from time to time.
- (b) *You* must pay all fees and charges which are incurred for the *service* even if *you* did not authorise its use. *You* should make sure *you* have secured your account and any passwords to ensure that *your service* is secure and will not be subject to unauthorised use.
- (c) *You* must pay the fees and charges for the *service* even if the *service* is unavailable or *you* are unable to access the *service*. *You* will be entitled to a refund or a rebate under clause 10.3 below if:

- (i) *you* suffer a significant loss of access to, or use of, the *service*, and
- (ii) the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

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

- (a) In addition to the fees and charges *you* incur in the normal use of the *service* (including an *access fee*, where applicable), *we* may charge *you* for an administration fee and other similar charges. These costs may include suspension fees or *cancellation fees*, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the *standard pricing table* for your *service*.
- (b) *We* may also ask *you* to make a pre-payment usage charge or request that *you* make an interim good-faith payment (including, for example, if there has been an *unusually high use* of the *service* or if *you* want to activate *roaming*).

## 8.3 How do we calculate fees and charges?

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

## 8.4 Specials

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

## 8.5 Variable charges

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

## 9 PAYMENTS

### 9.1 How often will we bill you?

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

### 9.2 What will appear on your bill?

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

### 9.3 Electronic billing (My account online bill)

- (a) If *you* provide *us* with your email address, *we* will email you a monthly PDF statement at no cost.
- (b) If *we* have advised *you* that email bills are available to *you*, and *you* choose to continue to receive a paper bill posted to *you*, *we* will, unless specifically stated otherwise in *your pricing table*, charge *you* a paper invoice fee of \$2.20 per bill.

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

*We* may bill *you* using a billing agent (which may be another *Flexigroup Limited subsidiary*).

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

- (a) *You* may pay by one of the payment methods as set out in the payment notification, on the back of the bill or on *our* websites.

- (b) *We will charge a payment processing fee if you choose to use a credit, charge or debit card to pay your bill. We will not charge a payment processing fee if you pay via direct debit.*
- (c) *If your payment is not honoured (for example, in the case of insufficient funds for direct debit or credit card payment, or a dishonoured cheque), we may charge you a fee.*

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

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

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

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

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

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

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

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



## 9.9 Taxes (including GST)

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

## 10 COMPLAINTS AND DISPUTES

### 10.1 Making complaints

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

#### **Telecommunications Ombudsman Service Contact Details:**

Phone: 1800 062 058

Write: TIO, PO Box 267, Collins Street, West Vic 8007

### 10.2 Suspension of payment obligations

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

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

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

## 10.2A Financial Hardship Policy

The Blink Financial Hardship Policy contains information about how *we* can assist customers who are experiencing financial hardship. *You* can see and print a copy at <http://www.blinkit.net.au/TermsConditions> or have a copy sent to *you* by calling *us* on 1800 254 654.

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

Where *your* complaint is about a significant loss of access to, or use of, the *service* for a continuous period of 7 days, or 15 days if there is an *intervening event* and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*, *you*

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

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

## 11 CANCELLING THE SERVICE

### 11.1 Your right to cancel the service

- (a) You may cancel the service at any time by:
  - (i) subject to clause 11.6, giving *us* 30 days notice (please note that *you* are required to give *us* this notice if *you* do not wish to continue to use the *service* after the end of the *minimum term* of a *fixed-length agreement*, otherwise *we* will continue to supply the *service* to *you* – see clause 2.7(b) above), or
  - (ii) giving *us* notice, if:
    - (A) *we* breach a material term of the *agreement* and *we* cannot remedy that breach, including where there are prolonged or repeated interruptions to *your* access to or use of, the *service* and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*; or
    - (B) *we* breach a material term of the *agreement* and *we* can remedy that breach, but *we* do not remedy that breach within 30 days after *you* give *us* notice requiring *us* to do so; or

- (C) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days.
- (b) If the agreement is an unsolicited consumer agreement regulated by the unsolicited consumer agreement provisions of the Australian Consumer Law, you may also cancel the service:
  - (i) before the end of the cooling-off period which is:
    - (aa) if the agreement was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after you signed your application; or
    - (ab) if the agreement was negotiated by telephone – the period of 10 business days from and including the first business day after you received written confirmation from us of your application;
  - (ii) in accordance with any additional termination rights you may have relating to unsolicited consumer agreements under the Australian Consumer Law. Details about these additional rights to cancel the agreement are set out in the information provided to you with your application.
- (c) If the *agreement* is a *fixed-length agreement*, you may also *cancel the service* in accordance with clause 2A above. Clause 2A sets out the circumstances which give you the right to *cancel the service* if we change the *agreement*.

## 11.2 Our right to cancel the service – month by month agreement

If the *agreement* is a *month to month agreement*, we may *cancel the service* at any time by giving you at least 30 days notice.

## 11.3 Our right to cancel the service - month by month agreement and fixed-length agreement

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

- (v) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* or any value added service set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Blink Fair Go Policy for Mobile Phones or Blink Internet Acceptable Use Policy) or breach clause 6.1 above) and *you* cannot remedy that breach,
  - (vi) *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Blink Fair Go Policy for Mobile Phones or Blink Internet Acceptable Use Policy) or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 5 business days after *we* give *you* notice requiring *you* to do so,
  - (vii) *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)),
  - (viii) *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (ix) *you* die or if *you* are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (x) the *service* is suspended for more than 8 days, unless otherwise set out in the *agreement*,
  - (xi) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 8 days,
  - (xii) our *supplier* ceases to provide the *service* or relevant parts of the *service* to us,
  - (xiii) *you* have not used the *service* for 3 months,
  - (xiv) *you* resell or resupply the *service* or any part of the *service*, or
  - (xv) *we* are otherwise entitled to do so under the *agreement*.
- (b) In most circumstances, *we* will give *you* as much notice as *we* reasonably can before *we cancel the service*. However, in some circumstances, for example in an emergency or if *we* consider *your* use of the *service* is unreasonable and in breach of *our* Fair Go Policy for Mobile Phones or *our* Internet Acceptable Use Policy, *we* may *cancel the service* without notice to *you*.

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

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

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

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

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

- (a) The agreement terminates when the service is cancelled.
- (b) If the service is cancelled:
  - (i) you are liable for any charges incurred (including the *cancellation fee*, and outstanding *equipment charges* if any) up to, and including, the *cancellation date* (you should check the *service description* and *standard pricing table* for your *service* for details of any applicable *cancellation fee*). You will not be liable for any such charges under this subsection if you cancel the service in accordance with section 11.1(b)(i) above.
  - (ii) because an *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days (under clause 11.1(a)(ii)(C) or 11.3(a)(xi) above), you are liable for any charges incurred (including outstanding *equipment charges* if any) up to the *cancellation date*. However, unless it is fair and reasonable for us to do so, we will not charge you any *cancellation fee* in these circumstances
  - (iii) you authorise us to apply any over payment on your account and/or money that you have paid in advance for the *service* which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any),
  - (iv) subject to paragraph (iii) above and unless otherwise set out in the *service description* (for example we may not refund or redeem for cash any unused prepaid credits on a pre-paid service), we will refund any over payment on your account and any money that you have paid in advance for the *service* which is being cancelled on a pro-rata basis to you, and
  - (v) if you are required under the *service description* to pay for the *service* by direct debit payment (either from your credit card or from your

nominated bank account), *you* authorise *us* to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from *your* credit card or bank account.

- (c) If the *service is cancelled* as a result of circumstances reasonably attributable to *you*:
  - (i) before the *service start date*, *you* must pay *us* all infrastructure and installation costs incurred by *us* in connection with preparations for supplying the *service* to *you*, and
  - (ii) during the *minimum term*, subject to clause 2A, *you* must pay *us* the *cancellation fee*.
- (d) If *you* wish to reinstate the *service* *you* should contact *us*. If the *service is cancelled* as a result of circumstances reasonably attributable to *you* and *we* reinstate the *service*, then *you* may have to pay *us* a reconnection or reactivation fee.
- (e) If *you* are able to use the *service* after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 11.6.

## 12 SUSPENDING THE *SERVICE*

### 12.1 *Our rights to suspend the service*

- (a) *We* may suspend the *service* at any time, if:
  - (i) there is an emergency,
  - (ii) doing so is necessary to allow *us* or a *supplier* to repair, maintain or service any part of the *Optus network* or a *supplier's network* used to supply the *service*,
  - (iii) *we* reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - (iv) *we* reasonably believe there has been an *unusually high use* of the *service*,
  - (v) any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,
  - (vi) *we* reasonably consider *you* an unreasonably high credit risk because *you* have not paid amounts owing to *us* or any *FlexiGroup Limited Subsidiary* (which is not the subject of a valid dispute under clause 10.2 above) in

respect of any service is not paid by its due date and *you* are given notice requiring payment of that amount by that *FlexiGroup Limited Subsidiary* and *you* fail to pay that amount in full within the required period,

- (vii) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Blink Fair Go Policy for Mobile Phones or Blink Internet Acceptable Use Policy) or breach clause 6.1 above) and *you* cannot remedy that breach,
  - (viii) *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Blink Fair Go Policy for Mobile Phones or Blink Internet Acceptable Use Policy) or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,
  - (ix) *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968 (Cth)*),
  - (x) problems are experienced interconnecting *the Optus network* with any *supplier's network*,
  - (xi) *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
  - (xii) *you* die or if *you* are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due, or
  - (xiii) *we* are otherwise entitled to do so under the *agreement*.
- (b) In most circumstances, *we* will give *you* as much notice as *we* reasonably can before *we* suspend the *service*. However, in some circumstances, for example in an emergency or if *we* consider *your* use of the *service* is unreasonable and in breach of *our* Fair Go Policy for Mobile Phones or *our* Internet Acceptable Use Policy, *we* may suspend the *service* without notice to *you*.
- (c) If *we* suspend the *service*, *we* may later *cancel the service* for the same or a different reason.

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

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

## 13 WHAT ARE *YOU* AND *WE* LIABLE FOR

### 13.1 *Your liability to us*

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

### 13.2 *Our liability to you*

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

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

Your statutory rights as a consumer

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

Consumer guarantees apply regardless of any express warranties to which you may be entitled under this agreement.



We guarantee that:

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

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

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

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

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

### 14.1 How can *we* assign or novate *our* responsibilities to a third party without *your* consent

- (a) *We* may assign some or all of *our* rights under the *agreement* (where those rights are assignable) to any person. We may novate the *agreement* to our *supplier* on terms no less favourable to *you* than under this *agreement*.

- (b) *We may transfer some or all of our obligations under the agreement to any Flexigroup Limited Subsidiary that is able to perform those obligations.*
- (c) *We may perform any of our obligations under the agreement by arranging for them to be performed by another person, including a supplier or another Flexigroup Limited Subsidiary. We will still be responsible for the performance of the obligations.*

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

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

### **15 GENERAL**

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

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

#### **15.2 Intellectual property protections**

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

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

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

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

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

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

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

**15.6 Payment of commission by us**

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

**15.7 Information about your rights**

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

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

### 16.1 Definitions

***access fee*** means the fixed payment for access to the *service* payable on a regular basis (often monthly). The *access fee* is payable regardless of the actual usage of the *service*. A minimum monthly charge and minimum monthly service charge are also *access fees*.

***agreement*** means the terms and conditions on which *we* supply the *service* to *you*.

***appendices*** means the appendices containing information relevant to the *service*.

***application*** means the part of the *agreement* which is the written or verbal application *you* complete to request that *we* supply the *service* to *you*.

***Australian Consumer Law*** means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act*.

***cancel the service*** means that the *service* is cancelled and the *agreement* is terminated.

***cancel the service for convenience*** means to *cancel the service* in circumstances where *you* have not breached the *agreement* and there is no other event which triggers the right to *cancel the service*.

***cancellation date*** means:

- (a) the date 30 days after *you* notify *us* that *you* wish to *cancel the service*, unless *we* agree otherwise,
- (b) the date at least 30 days after *we* notify *you* that *we* will be *cancelling the service*, or
- (c) as otherwise set out in the *agreement*.

***cancellation fee*** means the cancellation fee or termination charge which may be payable on *cancellation of the service*. Unless otherwise indicated in the *service description*, any *cancellation fee* payable is set out in the *standard pricing table*.

***charging zone*** refers to the geographic zone within which a particular service number can be used, which in turn determines the applicable charging zone, as prescribed by ACMA's Telecommunication Numbering Plan 1997.

***churn*** means to change from having a service supplied by one *carrier* or *carriage service provider* to having the service supplied by another *carrier* or *carriage service provider*.

***Competition and Consumer Act*** means the *Competition and Consumer Act* 2010 (Cth) as amended or replaced from time to time.

***consequential loss*** means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator* and any *loss* that is an indirect *loss*.

**consumer** means a person who acquires and uses the *service* for personal, domestic or household use only.

**consumer terms** means this document.

**content** means:

- (a) all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined, and
- (b) any content service,

sent and received across a *network*. For the avoidance of doubt, *content* includes, but is not limited to, SMS and MMS.

**credit rating** means information about *your* credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the *Privacy Act 1998 (Cth)*.

**equipment charges** means any payment for equipment obtained from *us* including, for example, phones or modems and includes the cost of any software or licences supplied to operate in conjunction with that equipment.

**excluded event** means:

- (a) a breach of the *agreement* by *you*,
- (b) a negligent or fraudulent act or omission by *you* or any of *your personnel*, or
- (c) a failure of any of *your* equipment.

**fixed-length agreement** means an *agreement* that has a *minimum term*, during which time neither *you* nor *we* are free to change the terms of the *agreement* or to *cancel the service*, other than as specifically provided for in the *agreement*. A *fixed-length agreement* does not include a Month-to-Month agreement.

**insolvency event** means:

- (a) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt,
- (b) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors,
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business,
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business,
- (e) *you* suspend payment of *your* debts generally, or
- (f) *you* are, or become, unable to pay *your* debts when they are due or *you* are, or are presumed to be, insolvent for the purposes of any provision of the *Corporations Act 2001 (Cth)*.

**intellectual property rights** means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

**intervening event** is an event outside *your* or *our* reasonable control which interferes with the operation of the *network* we use to supply the *service* and results in ongoing disruption to the *service*. An *intervening event* includes the following events where those events are outside your or our reasonable control: failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the *Telecommunications Legislation*) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any *regulator*, any *supplier* or any of their *personnel*).

**minimum term** means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start date* and runs for the period of time stated on the *application*, unless otherwise set out in the *agreement*. For a month to month *agreement*, there is no *minimum term*.

**loss** means any loss, cost, liability or damage, including reasonable legal costs.

**Month-to- Month agreement** means an agreement where the minimum term has expired, terminable on 30 days' notice.

**network** means any interconnected telecommunications equipment, facilities, or cabling.

**Optus network** means the *Optus network* used to supply the *service*, as set out in the *service description*.

**Blink owned equipment** means any equipment or cabling *we*, or *our personnel*, may provide or lease to *you* to use in connection with the *service*.

**paper invoice fee** means the fee charged in accordance with clause 9.3(b) and set out in the *standard pricing table* for *your service*.

**personal information** means information about *you* from which *your* identity is apparent or can reasonably be ascertained. *Personal information* includes *your* name, address and other details, and *your* personal or commercial *credit rating*.

**personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of any *Flexigroup Limited Subsidiary*.

**premises** means locations:

- (a) at which *we* supply the *service*, and/or
- (b) to which *we* need to have access to supply the *service*.

**pricing plan** contains information about the terms and conditions and prices of the plan *you* have selected in *your* application. *You* may also hear a *pricing plan* referred to as a 'rate plan'.

**regulator** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Communications Compliance, the Telecommunications Industry Ombudsman or any other relevant government or statutory body or authority.

**related corporation** of a company means another company that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

**roaming** means the ability to use the *network* of overseas mobile *carriers* when travelling overseas.

**service** means the service, with the features requested in the *application* as described in the *service description*, and any related goods (including equipment) and ancillary services which *we* supply to *you* in connection with that service.

**service description** means the part of the *agreement* entitled '*service description*', which is *our* standard service description for *consumers* describing the *service*.

**service start date** for the *service* means the date on which *we* start supplying that *service* to *you*, unless otherwise specified in the *service description*.

**special** means a special promotion or offer made by *us* in connection with the *service*.

**standard pricing table** means the part of the *agreement* entitled '*standard pricing table*', which is *our* standard rate plan, pricing and charges list for *consumers* for the *service*.

**supplier** means any supplier of goods or services (including interconnection services) which are used directly or indirectly by *us* to supply the *service* to *you*. Where a *supplier* supplies goods or services to *you* directly, that *supplier* is not acting in its capacity as *supplier*, but rather is a third party providing services directly to *you*.

**tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any taxes on income or capital gains.

**Telecommunications Legislation** means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provisions of the Competition and Consumer Act, including the Australian Consumer Law.

**tethered modem** refers to the use of a mobile phone as a modem when connected to a computer or laptop, enabling connection to the internet over a mobile network. The connection to the computer or laptop may be either with cables or wireless. Use of a

mobile phone as a *tethered modem* requires both an active mobile service together with a tethered modem data plan.

**you** means the person who fills out the *application* (and **your** and **yours** is to be construed accordingly). Only one person may fill out the *application*.

**your statutory rights as a consumer** means *your* rights and remedies as a consumer under the *Australian Consumer Law* (see the explanatory box at clause 13.2 of these *consumer terms*).

**we** means Blink specified in the *service description* as supplying the *service* (and **us** and **ours** is to be construed accordingly).

**unusually high use** means high out of pattern usage of the *service* on a short term basis or a sustained high usage which exceeds the general average usage of customers on a similar *pricing plan* or who have accepted a similar *special*.

## 16.2 Interpretation

- (a) The following words have the same means in the *agreement* as they have in the *Telecommunications Legislation*:
  - (i) *carriage service*,
  - (ii) *carriage service provider*,
  - (iii) *carrier*,
  - (iv) *content service*, and
  - (v) *facility*.
- (b) A term which is defined in any part of the *agreement* has the same meaning in every other part of the *agreement*.
- (c) The singular includes the plural and vice versa.
- (d) Different grammatical forms of the same word(s) have the same meaning.
- (e) Examples or words of inclusion are illustrative only and do not limit what else might be included.
- (f) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them. A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.