

## Mobile 3G Wireless Broadband Customer Agreement

**PLEASE READ THESE TERMS CAREFULLY PRIOR TO COMPLETING  
BLUEMAXX CUSTOMER APPLICATION FORM.**

### **ABOUT THIS CUSTOMER AGREEMENT**

- (a) These are BlueMaxx Communications Pty Ltd (BlueMaxx) 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) This customer agreement, together with *your application*, the *service description*, 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*.

The *service description* is a detailed description of each of the services BlueMaxx offers, including the different features, options and availability of a service.

- (a) 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 on application form* carefully to see what fees and charges apply to *your use of the service*.
- (b) The *appendices* contain further information that may apply to *your use of the service*, such as details of certain call charges, *our usage policies* and some *specials*. The *service description* or *standard pricing table* will refer *you to an appendix* if it is relevant to *your use of the service*.
- (c) *You may obtain a copy of the latest version of the customer agreement, service description, standard pricing table and appendices from us or on our website: [www.bluemaxx.net.au](http://www.bluemaxx.net.au)*.

### **1 THE AGREEMENT**

#### **1.1 The agreement**

- (a) The *agreement* is made up of:
  - (i) your application,
  - (ii) this customer agreement,
  - (iii) the service description,
  - (iv) the standard pricing table, and
  - (v) the appendices.
- (b) The agreement is a fixed-length agreement.

#### **1.2 When does the agreement apply?**

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

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

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

#### **1.4 When does the agreement start?**

The agreement starts when we accept your application.

#### **1.5 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 (provision date)*.

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

- (a) 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 11.2 below, or
  - (iii) if neither *you nor we cancel the service* at the end of the *minimum term* (see clause 1.7 below), until the *service is cancelled* in accordance with clauses 11.1 to 11.2 below.

#### **1.7 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 *non-fixed length agreement* and we will continue to supply the *service to you* on a month-to-month basis in accordance with the *agreement*.
- (b) If *you* do not wish to continue to use the *service* on a month-to-month basis after the end of the *minimum term*, *you must inform us* (in accordance with clause 11, 'Cancelling the service', below) by giving *us* 30 days notice before the end of the *minimum term* that *you wish to cancel the service* at the end of the *minimum term*.
- (c) 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*.

#### **1.8 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*.

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### 2A CHANGING THE AGREEMENT?

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

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

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

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

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

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

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

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

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

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

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

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

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

We would consider it fair and reasonable for us to make a change to the agreement to account for a tax imposed by law, if the tax imposed is directed at you, the end-user and relates to your use of, and charges you must pay us for use of, the service. An example of this would be where we pass on to you an increase in the rate of a transaction tax, such as GST or stamp duty. We would not consider it fair and reasonable to pass on a tax imposed by law if the tax imposed is directed at us, the supplier, and affects the cost to us of supplying the service to you.

- (b) 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:

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- (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) 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) 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 *your 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 other *BlueMaxx group companies*.
- (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

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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 *BlueMaxx group companies* 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 BlueMaxx group company,
  - (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 *BlueMaxx Communications Pty Ltd*.
- (d) *We* may be permitted or required by applicable laws to collect, use or disclose *personal information* about *you* (which may include, for example, numbers called, time of call, location of call), including to:
- (i) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
  - (ii) emergency services organisations, and
  - (iii) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

### 4.2 Opting-out

If *you* wish to only receive communications that are account-related or legally required, *you* may request not to receive other communications (that is, *you* may 'opt out'). *You* will need to contact Customer Queries 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.bluemaxx.net.au](http://www.bluemaxx.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 *BlueMaxx 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.

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- (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 usage of data 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) BlueMaxx owns the equipment, until you have paid in full for the purchase of such equipment.
  - (i) Any *BlueMaxx owned equipment* remains our property or the property of our *personnel*.
  - (ii) Subject to our obligations under the *statutory warranties* (see clause 13.2), you are responsible for any *BlueMaxx owned equipment* from when you receive it.
  - (iii) You must not mortgage or grant a charge, lien or encumbrance over any *BlueMaxx 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 the *statutory warranties* (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 BlueMaxx owned equipment

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

### 6.5 Lost, stolen and damaged equipment

- (a) You are responsible for any lost, stolen or damaged *BlueMaxx 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) We may conduct maintenance on the *BlueMaxx network* and maintenance may be conducted on a *supplier's network* used to supply the *service*.
- (b) We will try to conduct scheduled maintenance on the *BlueMaxx network* and our *supplier* will try to schedule maintenance outside normal business hours, but we may not always be able to do so.

### 7.2 Reporting faults

- (a) We will provide a 24 hour fault reporting service for you to report faults.

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- (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) *We* will repair faults within *the BlueMaxx network*.
- (b) Unless the *service description* expressly provides otherwise, *we* are not responsible for repairing any fault in the *service* where the fault arises in or is caused by:
- a *supplier's network*,
  - 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
  - facilities outside the *BlueMaxx* or *our supplier* network.
- (c) Where:
- the fault arises in or is caused by a *supplier's network*,
  - we* become aware of the fault, and
  - 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:
- 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,
  - if *we* have investigated the fault, *we* will use reasonable endeavours to inform *you* of the fault's probable cause, and
  - 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:
- the fees and charges for the *service*, which are set out in the *standard pricing table* or in any applicable *special*, and
  - any additional fees and charges noted in the *agreement* (including in *your application*) or notified by *us* in accordance with the *agreement* from time to time.
- (b) *You* must pay all fees and charges which are incurred for the *service* even if *you* did not authorise its use.
- (c) *You* must pay the fees and charges for the *service* even if the *service* is unavailable or *you* are unable to access the *service*. *You* will be entitled to a refund or a rebate under clause 10.3 below if:
- you* suffer a significant loss of access to, or use of, the *service*, and
  - the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

### 8.2 Types of fees and charges (including administration 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.

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### 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 (either in advance or in arrears), 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, afterwards it may not be possible to obtain individual bills for your *services*.

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

We may bill you using a billing agent (which may also be another *BlueMaxx group company*).

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

- (a) You may pay by one of the payment methods – Direct Debit Authorisation and Credit Card payment as provided with the application form.
- (b) We will charge a payment processing fee if you choose to use a credit, charge or debit card to pay your bill
- (c) If your payment is not honoured (for example, in the case of insufficient funds for direct debit or credit card payment, or a dishonoured cheque), we may charge you a fee.

### 9.5 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.

### 9.6 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.

### 9.7 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.

### 9.8 Taxes (including GST)

- (a) Unless otherwise indicated, the fees and charges set out in the *agreement* include any amount on account of *tax*.

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- (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 to [complaints@bluemaxx.net.au](mailto:complaints@bluemaxx.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*.
- (c) We will use *our* best endeavours to resolve *your* complaint, however if *we* are not able to resolve *your* complaint to *your* satisfaction, *you* can take *your* complaint through other avenues, such as the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

#### 10.2 Suspension of payment obligations

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

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

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

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

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

- (a) will be entitled to a refund or a rebate of any *access fees* for the period in which *your* access or use was interrupted (including when an *intervening event* occurs). The *service description* may set out the way in which any rebate or refund is calculated; and
- (b) may be entitled to *cancel* the *service* under clause 11.1(a)(ii)(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) giving *us* 30 days notice (please note that *you* are required to give *us* this notice in writing 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 1.7(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 is a significant loss of access to or use of, the *service* and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*; 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) *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 - 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 *BlueMaxx group company* (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 *BlueMaxx group company* and *you* fail to pay that amount in full within the required period,
- (v) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for

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- example in breach of the BlueMaxx Fair Use Policy, BlueMaxx 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 BlueMaxx Mobile Fair Use Policy, BlueMaxx 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,
  - (vii) we are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency services organisation, any other competent authority or by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)),
  - (viii) you suffer an *insolvency event* and we reasonably believe we are unlikely to receive payment for amounts due,
  - (ix) you die or if you are a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due,
  - (x) the *service* is suspended for more than 14 days, unless otherwise set out in the *agreement*,
  - (xi) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days, or
  - (xii) we are otherwise entitled to do so under the *agreement*.
- (b) In most circumstances, we will give you as much notice as we reasonably can before we *cancel the service*. However, in some circumstances, for example in an emergency or if we consider your use of the *service* is unreasonable and in breach of our Mobile Fair Use Policy (see Appendix W), our Internet Acceptable Use Policy (see Appendix H), we may *cancel the service* without notice to you.

### 11.3 How can you cancel the service?

- (a) You can ask us to *cancel the service* by writing to us. Your writing instruction is required, 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. This is subject to your contract being paid out in full.

### 11.4 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.

### 11.5 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*),
  - (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*.
  - (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:

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- (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 BlueMaxx network* or a *supplier's network* used to supply the *service*,
  - (iii) *we* reasonably suspect fraud by *you* or any other person in connection with the *service*,
  - (iv) *we* reasonably believe there has been an *unusually high use* of the *service*,
  - (v) any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,
  - (vi) *we* reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* or any *BlueMaxx group company* (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 *BlueMaxx group company* and *you* fail to pay that amount in full within the required period,
  - (vii) *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the BlueMaxx Mobile Fair Use Policy, BlueMaxx 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 BlueMaxx Mobile Fair Use Policy, or BlueMaxx 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 BlueMaxx* 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* Mobile Fair Use Policy (see Appendix W) or *our* Internet Acceptable Use Policy (see Appendix H), *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 Trade Practices Act,
  - (iii) applicable laws, regulations and codes.

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

- (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,

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- (ii) each party's aggregate liability to the other for claims relating to this Agreement, whether for breach or in tort, shall be limited to the amount you would be liable to pay to us for 12 months access to the Service.
  - (iii) Neither party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however it arises, whether for breach or in tort, even if that party has been previously advised of the possibility of such damage.
  - (iv) Liability for damaged shall be limited and excluded, even if any exclusive remedy provided for in this agreement fails of its essential purposes.
  - (v) 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 the *statutory warranties* (see clause 13.2(a) above), *we* are not liable to *you* for any *consequential losses* *you* suffer or for any costs, expenses, *loss* or charges that *you* incur.

### 14 ASSIGNING THE AGREEMENT TO A THIRD PARTY

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

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

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### 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.

**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 Important Information about your mobile broadband service in the application form.

**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.

**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.

**Customer Agreement** 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.

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**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*.

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

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

**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 *BlueMaxx* group company.

**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'.

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

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

**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* or *your service is provisioned for service*, 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 provision of the Trade Practices Act.

**Trade Practices Act** means the Trade Practices Act 1974 (Cth).

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

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

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

### 16.2 Interpretation

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