



Pivotel Satellite Pty Limited

ABN 81 099 917 398

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**STANDARD AGREEMENT  
FOR THE SUPPLY OF  
INTEGRATED SATELLITE  
AND CELLULAR MOBILE SERVICE**

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Customer Enquiries call **1300 882 448** or visit the web site at

**[www.pivotel.com.au](http://www.pivotel.com.au)**

National Relay Number

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## DICTIONARY

### 1.1 Definitions

**2G/GSM Service** means a service provided using a public mobile telecommunications network using the Global System for Mobiles technology as standardised by the European Technical Standards Institute.

**3G Service** means a Service provided using a public mobile telecommunications network that utilises Universal Mobile Telecommunications Service as standardised by the European Technical Standards Institute.

**ACCCA** means the Australian Competition and Consumer Commission.

**ACMA** means the Australian Communications and Media Authority.

**Access Charge** means charges applied to access the Service. For the avoidance of doubt, they may be charged on a monthly or annual basis, may be charged either in advance or in arrears, and may be charged either on a prorated or not prorated basis for the period of access granted to the Service.

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

**Agreement** means this Standard Agreement, comprising this Dictionary, Part A – Service Description, Part B – Pivotal Satellite Call Plans, Part C – General Terms and Conditions, and Part D - Service Terms and Conditions, which forms the entire agreement between Pivotal Satellite and the Customer.

**AMSA** means the Australian Maritime Safety Authority.

**Call** includes without limitation Voice, Messaging or Data Call Types or a combination of those Call Types as the case may dictate.

**Call Plans** means call plans for the Service, as set out in Part B of this Agreement.

**Call Rates** means the call rates for a Call Plan.

**Call Type** means the type of usage used in conjunction with the Service. Applicable categories of call types used in conjunction with the Service include Voice, Messaging and Data call types.

**CCA** means the *Competition and Consumer Act 2010* (Cth).

**CDMA** means Code Division Multiple Access, a worldwide technology standard for mobile telephony.

**Cellular Charges** means the charges for use of the Cellular Service.

**Cellular Mode** means the use of the Service in GSM Mode.

**Cellular Service** means either the Classic Service or the Swift Service as the context dictates.

**Cellular Service Area** means the coverage area within which Service can be used in Cellular Mode.

**Claim** means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.

**Classic Service** means the 2G/GSM mobile service provided using the Telstra Wholesale Network as described in Part A.

**CLI** means calling line identification.

**Complaint** has the meaning set out in the TCP Code.

**Complaint Handling Policy** means the policy for handling Complaints developed by Pivotal Satellite in accordance with the requirements of the TCP Code.

**Confidential Information** means all confidential information about the Service, Pivotal Satellite, its Related Bodies Corporate, the Globalstar Network, or the Customer, which is or has been disclosed under or in connection with this Agreement or learnt or acquired in the performance of this Agreement, other than any such information which:

- (a) was in the public domain at the time of its provision, otherwise than through a disclosure in breach of this agreement; or
- (b) is or lawfully came into the possession of the other party otherwise than as a result of a disclosure in breach of this agreement.

**Connection** means the activation of the Service. **Connected** has a corresponding meaning.

**Consequential Loss** includes:

- (a) indirect loss and special damages;
- (b) loss of revenue;
- (c) loss of profits;
- (d) loss of business;
- (e) loss of anticipated savings;
- (f) loss of goodwill;

- (g) loss of data;
- (h) claims of third parties; and
- (i) loss or costs associated with any of the above.

**Contract Term** in respect of a Call Plan means the applicable contract term specified in Part B of this Agreement.

**Credit Limit** means the maximum credit, where applicable, provided by Pivotel Satellite to the Customer for the Service.

**Customer** means the person who uses the Service.

**Customer Authorisation Form** means a form authorising a phone number to be ported.

**Data** in the context of a Call Type, means a service designed to transfer data over IP between end users or applications. Data services are normally charged both for data received on the Service Network (downloads), and data sent on the Service Network (uploads). Data charges may apply in addition to the charges for use of any other Call Types which rely on data services for their operation.

**Disconnection** means the disconnection of a Connection. **Disconnected** has a corresponding meaning.

**Dual Mode Handset** means a handset capable of operating on:

- (a) the Globalstar Network and the Vodafone Wholesale Network in respect of the Globalstar/GSM Service; or
- (b) the Thuraya Network and the Vodafone Wholesale Network in respect of the Thuraya/GSM Service.

**Dual Mode Simplex Device** means a device capable of operating on the Globalstar Simplex Network and in GSM Mode.

**Dual Mode Short Burst Data Device** means a device capable of operating on the Iridium Short Burst Data Network and in GSM Mode.

**Emergency Message** means an emergency message triggered from a Personal Satellite Communications Device using the Personal Satellite Communications Service, or the Personal Satellite Communications Service in conjunction with the TracerTrak Service.

**Emergency Monitoring Organisation** means an emergency monitoring organisation such as GEOS IERCC (GEOS International Emergency Response Call Centre) who provides an Emergency Monitoring Service to monitor and respond to Emergency Messages by alerting an Emergency Response Organisation.

**Emergency Monitoring Service** means the service provided by an Emergency Monitoring Organisation in conjunction with the Personal Satellite Communications Service or the TracerTrak Service as described in Part A.

**Emergency Response Organisation** means an emergency response organisation such as AMSA who has the national responsibility for coordinating emergency response in Australia.

**Fair Use Policy** means the policy for fair use of the Cellular Service set out in Part D.

**Financial Institutions** has the meaning set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**Free and Local Rate Numbers** means numbers which when dialled from a PSTN network in Australia are free (1800 dialled prefix), or a supplied at the rate for a local call (13/1300 dialled prefix). For the avoidance of doubt, unless expressly stated by Pivotal Satellite calls to these numbers using the Cellular Service will be charged at the rates set out in the Call Plan.

**Gateway** means a ground station communicating with a satellite, and being part of a Satellite Service Network that switches and receives or transmits calls, messages or usage for the Service.

**Globalstar/CDMA Service** means the single mode mobile satellite telecommunications service provided using the Globalstar Network as described in Part A.

**Globalstar Charges** means the charges for the use of the Globalstar Service.

**Globalstar/GSM Service** means the dual mode mobile satellite telecommunications service provided using the Globalstar Network and the Vodafone Wholesale Network as described in Part A.

**Globalstar Network** means the constellation of satellites owned and operated by Globalstar Inc. and associated ground based infrastructure used by Pivotal Satellite and its Related Bodies Corporate to provide the Service to the extent that they have a satellite footprint in Australia.

**Globalstar Service** means the mobile satellite telecommunications service provided using the Globalstar Network as described in Part A.

**Globalstar Simplex Charges** means the charges for the use of the Globalstar Simplex Service.

**Globalstar Simplex Device** means either a Dual Mode Simplex Device or a Single Mode Simplex Device.

**Globalstar Simplex Network** means the constellation of satellites owned and operated by Globalstar Inc. and associated ground based infrastructure used by Pivotal Satellite and its Related Bodies Corporate to provide the Service.

**Globalstar Simplex Service** means the satellite messaging service provided using the Globalstar Simplex Network as described in Part A.

**GSM** means Global System for Mobiles, a worldwide technology standard for mobile telephony.

**GSM Compatible Handset** means a handset capable of operating in GSM Mode.

**GSM Mode** means the operation of a Dual Mode Handset such that it directly connects to and communications with the Vodafone Wholesale Network or the Telstra Wholesale Network, or the use of a SIM in a separate GSM Compatible Handset.

**GST** means any tax on goods or services and other things in force in Australia from time to time under the GST Legislation.

**GST Legislation** means *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* (Cth) as varied or replaced from time to time.

**GST Rate** means the prevailing rate of GST payable in accordance with the GST Legislation.

**Included Call Value** means the value of Call Charges included within the Minimum Monthly Fee for a Call Plan as the case dictates. For the avoidance of doubt, the Included Call Value may include various categories of usage including Voice Calls, Messaging Calls or Data Calls. In some Call Plans, the Included Call Value may be broken out into different categories based on the Call Type.

**Included Usage** has the same meaning as Included Call Value.

**Insolvency Event** means the happening of any of the following events in relation to a party:

- (a) if a natural person, it becomes bankrupt or insolvent;
- (b) if a company:
  - (i) a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, or receiver and manager or similar officer is appointed in respect of it;
  - (ii) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganisation, moratorium or other administration, involving its creditors or a class of its creditors;

- (iii) it enters into a deed of company arrangement;
- (iv) it resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to so resolve, except by way of bona fide solvent reconstruction or amalgamation on terms approved by the other party;
- (v) it suspends payments of its debts generally; or
- (vii) it is or becomes unable to pay its debts when they are due or becomes unable to pay its debts within the meaning of the *Corporations Law*, or is presumed to be insolvent under the *Corporations Law*.

**International Roaming** means use of the Service on another network outside of Australia to make or receive Calls or to otherwise access the Service.

**IP** means Internet Protocol.

**Iridium Charges** means the charges for the use of the Iridium Service.

**Iridium Network** means the constellation of satellites owned and operated by Iridium Communications Inc. and associated ground based infrastructure used by Pivotal Satellite and its Related Bodies Corporate to provide the Iridium Service.

**Iridium Service** means the mobile satellite telecommunications service provided using the Iridium Network as described in Part A.

**Iridium Short Burst Data Charges** means the charges for the use of the Iridium Short Burst Data Service.

**Iridium Short Burst Data Device** means either a Dual Mode Short Burst Data Device or a Single Mode Short Burst Data Device.

**Iridium Short Burst Data Network** means the constellation of satellites owned and operated by Iridium Communications Inc. and associated ground based infrastructure used by Pivotal Satellite and its Related Bodies Corporate to provide the Iridium Short Burst Data Service.

**Iridium Short Burst Data Service** means the satellite messaging service provided using the Iridium Short Burst Data Network as described in Part A.

**Law** means any:

- (a) legislation, regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) government agency requirement or authorisation (including any conditions of any authorisation);



- (d) mandatory codes, standards and guidelines;
- (e) writ, order, injunction or judgement; or
- (f) local government legislation including regional, district and zone plans, regulations, by-laws, declarations and other subordinate legislation.

**Non-excludable Rights** means rights and remedies conferred on a party by the *Consumer and Competition Act 2010* (Cth) and similar legislation which cannot be excluded, restricted or modified.

**Messaging** in the context of a Call Type, includes without limitation Globalstar Simplex messages, Iridium Short Burst Data messages, short message services (SMS) and multi-media messages (MMS).

**Minimum Monthly Fee** means the minimum monthly fee payable by a Customer Connected to a Call Plan.

**PIN** means the personal identification number used by a Customer to access the Service, or any part of the Service.

**Personal Satellite Communications Service** means personal satellite communications messaging service provided using the Globalstar Simplex Network or the Iridium Short Burst Data Network as described in Part A.

**Pivotel Satellite** means Pivotel Satellite Pty Limited ABN 81 099 917 398.

**Pivotel Satellite Call Plans** means the various Call Plans available to eligible Customers, as set out in Part B of this Agreement.

**Privacy Act** means the *Privacy Act 1988* (Cth) as varied or replaced from time to time.

**Privacy Policy** means the privacy policy of Pivotel Satellite as varied or replaced from time to time, and made available to Customers by contacting Pivotel Satellite Customer Care on 1300 882 448 or by download from the website [www.pivotel.com.au](http://www.pivotel.com.au).

**Re-connected** means the re-activation of a Connection which has been Disconnected.

**Related Body Corporate** has the meaning given to the term in the *Corporations Law*.

**Roaming** means where a Customer uses the Service on another carrier's network to make calls or otherwise access the Service either within Australia or outside Australia. Roaming charges normally apply for all inbound usage (Call termination) in addition to any outbound usage (Call origination). Roaming normally incurs charges that are significantly higher than for use of the Cellular Service, and Call records take can take a number of days to be made available to Pivotal Satellite by the Roaming network. Roaming relies on the networks of other carriers over which Pivotal Satellite has no control. Pivotal Satellite cannot guarantee the quality and reliability of mobile services when a Customer is Roaming.

**Satellite Mode** means the operation of a Dual Mode Handset or Single Mode Handset such that it connects to and communicates directly with a Satellite Service Network.

**Satellite Service Network** means either the Globalstar Network, the Globalstar Simplex Network, the Iridium Network, the Iridium Short Burst Data Network, or the Thuraya Network as the context dictates.

**Service** means the Satellite Service incorporating the GSM Service as the context dictates, and for the avoidance of doubt, excludes any roaming or pre-paid service.

**Service Network** means the Globalstar Network, the Iridium Network, the Telstra Wholesale Network, the Thuraya Network, and the Vodafone Wholesale Network.

**SIM** means the subscriber identity module card, to be used with a Dual Mode Handset to enable use of the Globalstar/GSM Service in either Satellite Mode or GSM Mode, or in conjunction with either the Classic Service, or the Swift Service.

**Single Mode Handset** means a handset capable of operating on the Globalstar Network, the Iridium Network or the Thuraya but not capable of operating in Cellular Mode.

**Single Mode Simplex Device** means a device capable of operating on the Globalstar Simplex Network and no other Service Network.

**Single Mode Short Burst Data Device** means a device capable of operating on the Iridium Short Burst Data Network and no other Service Network.

**SM** means the security module card, which forms part of the Globalstar/CDMA Dual Mode Handset to enable use of the Globalstar/CDMA Service in either Globalstar Mode or CDMA Mode.

**Special Services** means special services available with the Service to approved Customers, as described in Part A of this Agreement.

**Standard Agreement** has the meaning given to the term by Part 23 of the Act.

**Swift Service** means the 3G/GSM digital mobile service provided using the Vodafone Wholesale Network as described in Part A.

**Tax Invoice** means an invoice which complies with the requirements for such an invoice under the GST Legislation.

**Taxable Supply** has the meaning given in the GST Legislation.

**TCP Code** means C628:2012 *Telecommunications Consumer Protection Code* registered by ACMA on 1 September 2012.

**Telstra** means Telstra Corporation Limited.

**Telstra Wholesale Network** means the parts of the 2G/GSM telecommunications network operated by Telstra Wholesale used to provide the Classic Service.

**Thuraya Charges** means the charges for the use of the Thuraya Service.

**Thuraya/GSM Service** means the dual mode mobile satellite telecommunications service provided using the Thuraya Network and the Vodafone Wholesale Network as described in Part A.

**Thuraya IP Data Service** means the IP data mobile satellite telecommunications service provided using the Thuraya Network as described in Part A.

**Thuraya IP Data Terminal** means an IP data mobile satellite telecommunications terminal used in conjunction with the Thuraya Network as described in Part A.

**Thuraya Network** means the satellite owned and operated by Thuraya Telecommunications Company and associated ground based infrastructure used by Pivotal Satellite and its Related Bodies Corporate to provide the Service to the extent that they have a satellite footprint in Australia.

**Thuraya Service** means the mobile satellite telecommunications service provided using the Thuraya Network as described in Part A.

**TIO** means the Telecommunications Industry Ombudsman.

**TracerTrak Charges** means the charges for the use of the TracerTrak Service.

**TracerTrak Service** means the Internet based tracking and telemetry service using various Service Networks as described in Part A.

**Unreasonable Use** has the meaning set out in Part D.

**Value Added Services** means the value added services available in Satellite Mode and/or in either CDMA Mode or GSM Mode or with the Service generally, as described in Part A of this Agreement.

**Vodafone** means Vodafone Hutchison Australia Limited.

**Vodafone Wholesale Network** means the 3G/GSM telecommunications network operated by Vodafone Wholesale used to provide the Swift Service.

**Voice** in the context of a Call Type, means a service designed to transfer voice over a voice channel between end users using digital or analogue voice codecs. Outbound voice Calls are usually made by direct dialling a telephone number, and inbound voice Calls are usually received by answering a voice Call which has dialled the Customer's telephone number. For the sake of doubt, VOIP and Video calls are Data Call Types.

**VOIP** means voice over IP, and in the context of a Call Type, is a Data service designed to transfer voice over a Data channel between end users. VOIP calls are usually made by using a software application on the handset in conjunction with a Data service to transfer voice as Data between end users.

**You** means the Customer entering into this Standard Form of Agreement. **Your** and **Yourself** have a corresponding meaning.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and visa versa;
- (c) all references to dollars, value and price are to the Australian currency;
- (d) references to a party includes its successors and permitted assigns;
- (e) references to payment to any party includes payments to another person on the direction of that party; and
- (f) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.

## PART C - GENERAL TERMS AND CONDITIONS

### 1. THE SERVICE

1.1 Pivotal Satellite supplies You with the Service on the terms and conditions set out in this Agreement.

1.2 Pivotal Satellite will take all reasonable steps to make sure that You can receive the Service. However, You acknowledge that:

- (a) the Service is not free from faults or interruptions;

- (b) You may not be able to use the Service in some areas, or in some buildings, or at certain times;
- (c) Pivotel Satellite does not warrant currency, availability, accuracy, security or the quality of any information which You receive or can access using the Service;
- (d) You are responsible for any reliance on or use of the information which You receive or can access using the Service; and
- (e) the Service can only be used in areas where the Service Network is present.

1.3 Subject to the *Telecommunications Numbering Plan 1997* (Cth), and national regulatory policy on numbering:

- (a) Pivotel Satellite may allocate a number to Your Service and vary that number; and
- (b) You have not, and You cannot claim any legal interest or goodwill in any number or PIN allocated by Pivotel Satellite.

## **2. YOUR OBLIGATIONS**

**2.1** You must:

- (a) keep the SIM safe and in good condition;
- (b) return the SIM to Pivotel Satellite immediately upon request;
- (c) notify Pivotel Satellite immediately of loss of, or damage to, a SIM;
- (d) use the spend control tools provided by Pivotel Satellite, and otherwise diligently monitor Your Call usage so that You do not overcommit Yourself financially;
- (e) pay Pivotel Satellite all fees and charges which are incurred in Your use of the Service, as set out in Part A and Part B of this Agreement and all applicable government taxes, duties, imposts or levies such as GST;
- (f) comply with all Laws concerning use of the Service;
- (g) give Pivotel Satellite all information and co-operation it may require in relation to the Service;
- (h) not resell, distribute or reproduce any part of the Service;
- (i) notify Pivotel Satellite as soon as You becomes aware of any claim You may have against Pivotel Satellite in relation to the Service.

## **2.2** You must not:

- (a) disclose to any person any Confidential Information or security number provided by Pivotel Satellite (including but not limited to Your enquiry number, barring number or PIN); or
- (b) use the Service for any improper, immoral, unauthorised or unlawful purpose or allow any other person to use the Service for such purposes; or
- (c) resupply the Service to any other person without Pivotel Satellite's prior written approval, which approval may be withheld by Pivotel Satellite in its sole discretion; or
- (d) use the CLI or information derived from the CLI except in accordance with the Act; or
- (e) place, attempt or accept a reverse charge call using the Service.

## **3. SERVICE SUSPENSION, LIMITATION OR TERMINATION**

3.1 Subject to applicable Law, Pivotel Satellite may, in its absolute discretion suspend, limit or terminate the provision of the Service if:

- (a) Pivotel Satellite gives You thirty (30) days written notice of its intention to do so, provided only that You have been Connected for a period exceeding the Contract Term; or
- (b) You exceed the Credit Limit; or
- (c) You are in breach of this Agreement; or
- (d) a regulatory authority such as the ACMA or ACCC instructs Pivotel Satellite to do so; or
- (e) there are technical problems with the Service Network which require corrective action by Pivotel Satellite; or
- (f) the use of the Service by any person including You might damage the Service Network; or
- (g) You, or someone acting on Your behalf, informs Pivotel Satellite that You have lost a SIM, handset or device used with the Service; or
- (h) Pivotel Satellite has an incomplete record of information about You; or
- (i) Pivotel Satellite reasonably suspects that its record of information about You contains materially incorrect or incomplete information; or

- (j) You:
    - (i) die;
    - (ii) are a partner in a partnership, and the partnership dissolves; or
    - (iii) suffer an Insolvency Event;
  - (k) Pivotal Satellite reasonably believes that the Service is being used to commit unauthorised, criminal or unlawful activities; or
  - (l) Pivotal Satellite reasonably believes that You have engaged in fraudulent activities in relation to a Service provided by Pivotal Satellite; or
  - (m) Pivotal Satellite reasonably believes that You have resupplied the Service to another person without Pivotal Satellite's prior written approval; or
  - (n) Pivotal Satellite is required by law to do so, or is requested to do so by a law enforcement agency; or
  - (o) Pivotal Satellite is required to do so under any agreement with a third party or because a telecommunications service is unavailable from a third party; or
  - (p) if You port out a phone number.
- 3.2 Where Pivotal Satellite suspends, limits or terminates the Service under clause 3.1 (b)-(o), Pivotal Satellite will use its reasonable endeavours to provide notice to You.
- 3.3 Pivotal Satellite will promptly suspend the Service if informed by You or someone acting on Your behalf that a SIM, handset or device used with the Service has been lost or stolen. However, You are responsible for all Call charges incurred up to the suspension of the Service.
- 3.4 Pivotal Satellite may suspend or limit the Service provided to You if, in Pivotal Satellite's reasonable opinion, the amount of Call charges accrued on Your account is unusually high. In making this determination, Pivotal Satellite may have regard to matters including:
- (a) Your previous average daily Call spend;
  - (b) the total of Your unbilled Call charges; and
  - (c) any unusual Call spending patterns.

#### **4. DISCLOSURE OF INFORMATION BY PIVOTEL SATELLITE**

- 4.1 Pivotel Satellite and/or its agents and service providers may collect Your personal information. Pivotel Satellite collects Your personal information to provide You with personalised services. Pivotel Satellite may use Your personal information for purposes that are related to providing You with those services which would be reasonably expected by You (including for the purpose of keeping You informed about the features of Pivotel Satellite's services or conducting analysis in order to provide a better service to You).
- 4.2 Pivotel Satellite will provide You with access to Your personal information in accordance with the Privacy Act and the Privacy Policy.
- 4.3 Pivotel Satellite may receive and disclose personal information or documents about You to or from:
- (a) credit providers or credit reporting agencies for purposes permitted under the Privacy Act;
  - (b) law enforcement agencies to assist them in the prevention of criminal activity; or
  - (c) Financial Institutions for the purpose of preventing fraud and to assist in fraud investigation; or
  - (d) our service and content providers, Authorised Dealers and agents, or any company within the Pivotel Satellite group for purposes that are related to providing you with a telecommunications service which would be reasonably expected.
- 4.4 Unless You consent, Pivotel Satellite will not disclose Your personal information to third parties, other than those who have contracted with Pivotel Satellite to keep the information confidential, or who are subject to obligations to protect Your personal information.
- 4.5 You acknowledge that any calls made to Pivotel Satellite's customer call centre may be recorded for quality assurance purposes.

#### **5. TERMINATION**

- 5.1 Pivotel Satellite can terminate this Agreement in accordance with clause 3.1.
- 5.2 Subject to Part D, You may terminate this Agreement at any time upon giving written notice to Pivotel Satellite. If You wish to terminate the Agreement before the completion of the Contract Term, You must pay an early termination fee as set out in Part A.
- 5.3 Subject to Part D, when issued a notice of a material adverse change by Pivotel Satellite, You may terminate this Agreement during the period specified in the material adverse change notice.



- 5.4 You acknowledge that a request to port out a phone number does not result in termination of this Agreement. Subject to Pivotal Satellite's termination rights, Pivotal Satellite may assign a new number to the relevant Connection.

## **6. OBLIGATIONS ON TERMINATION**

- 6.1 On termination of this Agreement, You must:
- (a) return all property to Pivotal Satellite to which Pivotal Satellite has rights (including but not limited to the SIM), whether under this Agreement or under the general law; and
  - (b) pay all amounts due to Pivotal Satellite under this Agreement.
- 6.2 On termination of this Agreement, Pivotal Satellite must refund to You any monies held on account for You after any of Your debts and liabilities have been met under clause 6.1. Pivotal Satellite, in its absolute discretion, may set-off any amounts payable to You until You pay Pivotal Satellite all due amounts.

## **7. ASSIGNMENT**

- 7.1 You must not transfer or assign any rights and obligations under this Agreement without the prior written permission of Pivotal Satellite.
- 7.2 If Pivotal Satellite sells or otherwise reorganises its business such that the Services will be supplied by a substantially different Supplier, or using a different Service Network **(Transfer)**, Pivotal Satellite must issue notice to You before Your Service is Transferred informing You:
- (a) that the Service will be Transferred to a new Supplier or Service Network, and the contact details for that new Supplier if relevant;
  - (b) any material adverse impact to Your use of the Services, or any equipment used to access the Services expected as a result of the Transfer;
  - (c) when the Transfer is likely to be effected;
  - (d) the contact details for lodging an enquiry or Complaint about the Transfer; and
  - (e) Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.
- 7.3 Pivotal Satellite will use reasonable efforts to notify you of the completion of the Transfer on the day on which it occurs.

## **8. REPRESENTATIONS & WARRANTIES**

8.1 You represent and warrant that:

- (a) You have provided full and accurate personal information to Pivotel Satellite in connection with this Agreement;
- (b) You have full power and authority to enter into this Agreement; and
- (c) You will take all necessary action to execute, deliver and perform this Agreement in accordance with the terms.

8.2 Pivotel Satellite represents and warrants that:

- (a) it is a carriage service provider under the Act; and
- (b) subject to the terms and conditions of this Agreement, it will provide the Service with all reasonable care and in a timely manner.

## **9. YOUR RIGHTS**

9.1 You have rights including the Non-excludable Rights.

9.2 If You have a complaint about the Service (the **Complaint**), You must in the first instance attempt to resolve the Complaint with Pivotel Satellite by contacting Pivotel Satellite customer care on 1300 882 448 [free call when using the Service], or by email to [mail@pivotel.com.au](mailto:mail@pivotel.com.au), or by writing addressed to Pivotel Satellite Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.

9.3 In all cases, Pivotel Satellite will acknowledge the Complaint in accordance with Chapter 4 of the TCP Code, and issue a unique reference number to enable You and Pivotel Satellite to track the subject matter of the Complaint to resolution.

9.4 Pivotel Satellite must attempt to resolve the Complaint in accordance with the Complaint Handling Policy, and the requirements of the TCP Code.

9.5 If the Complaint is not resolved after contacting Pivotel Satellite in accordance with clause 9.2, You may contact the TIO by calling 1800 062 058, or visiting their website at [www.tio.com.au](http://www.tio.com.au), by sending a fax to 1800 630 614, or by writing the TIO at PO Box 276, Collins Street West, VIC 8007, or You can contact the ACCC or the Office of Fair Trading in the Customer's relevant State or Territory.

## **10. TITLE**

Except for any SIM, property in any goods which You take possession of under this Agreement passes to You on the first payment by You of monies to Pivotel Satellite unless otherwise provided by the Part D.

## **11. LIMITATION OF LIABILITY**

- 11.1 To the full extent permitted by law and subject to clause 11.3, Pivotal Satellite excludes all liability including any Consequential Loss under or in connection with this Agreement or the supply of the Service except to the extent that You suffer direct loss or damage (excluding Consequential Loss) as a result of any negligent act or omission of Pivotal Satellite under or in connection with this Agreement.
- 11.2 Notwithstanding clause 11.1, Pivotal Satellite's maximum liability under or in connection with this Agreement or the supply of the Service will not exceed the total of the fees and charges paid by You under this Agreement:
- (a) if the time between the commencement date of this Agreement and the date of the Claim is 6 months or more - during the 6 month period immediately preceding the date of the Claim; or
  - (b) if the time between the commencement date of this Agreement and the date of the Claim is less than 6 months - during the period from the commencement date of this Agreement to the date of the Claim.
- 11.3 Non-excludable Rights
- (a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
  - (b) Pivotal Satellite does not exclude any Non-excludable Rights including without limitation the guarantees set out in clause 11.3(a), but does exclude and You cannot rely on all other conditions, representations and warranties implied by custom, law or statute other than those expressly contained in this Agreement.
  - (c) Pivotal Satellite's liability in respect of any Non-excludable Right is limited, at Pivotal Satellite's option, to:
    - (i) in the case of goods,
      - A. the replacement of the goods or the supply of equivalent goods;
      - B. the repair of the goods;
      - C. the payment of the cost of replacing the goods or acquiring equivalent goods;
      - D. the payment of the cost of having the goods repaired.

- (ii) in the case of services,
  - A. the supply of the services again; or
  - B. the payment of the cost of having the services supplied again.

## **12. INDEMNITY**

- 12.1 You indemnify Pivotel Satellite against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which Pivotel Satellite pays, suffers or incurs, or is liable for in respect of the Your use of the Service or the Service Network.
- 12.2 Clause 12.1 does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Pivotel Satellite pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of Pivotel Satellite.
- 12.3 The indemnity in this clause 12 is a continuing obligation of You which will continue despite:
  - (a) any settlement of account;
  - (b) the termination of this Agreement; or
  - (c) the occurrence of any other thing,

and remains in full force and effect until all monies owing by You to Pivotel Satellite have been paid in full.

## **13. PROHIBITION & ENFORCEABILITY**

- 13.1 Any provision of, or the application of any provision to, this Agreement or a right, power, authority, discretion or remedy of a party under this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 13.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of the remaining provisions in that or in any other jurisdiction. The application of this clause 13 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

## **14. WAIVER**

- 14.1 Pivotel Satellite may not waive any right under this Agreement except in writing.

- 14.2 A waiver by Pivotal Satellite will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- 14.3 A failure or delay in enforcing a right under this Agreement does not constitute a waiver.

## **15. VARIATION**

- 15.1 Pivotal Satellite may vary any term of this Agreement at any time in writing.
- 15.2 In circumstances where a variation of this Agreement is likely to have a material adverse change, Pivotal Satellite will notify You in advance of any such variation. The notice given by Pivotal Satellite for a material adverse change to your Service will set out Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.
- 15.3 If you do not terminate the Agreement within the material adverse change notice period, you will be deemed to have accepted the variation and be bound by the terms of the Agreement as varied.

## **16. STANDARD FORM OF AGREEMENT**

This Agreement constitutes a Standard Form of Agreement with the meaning of the Act.

## **17. GOVERNING LAW AND JURISDICTION**

- 17.1 This Agreement is governed by the laws of New South Wales.
- 17.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

## **18. AGENCY**

- 18.1 You appoint Pivotal Satellite as Your agent for the purposes of completing a Customer Authorisation Form on Your behalf.

## **PART D – SERVICE SPECIFIC TERMS AND CONDITIONS**

### **1. COMMENCEMENT AND TERMINATION**

- 1.1 This Agreement starts when Your Service is first Connected to the Service Network, and terminates when Your Service is Disconnected from the Service Network.

### **2. FEES AND CHARGES**

- 2.1 Pivotel Satellite will invoice You once every month, and You must pay all outstanding amounts not more than 14 days from the date of the invoice.
- 2.2 The invoice which Pivotel Satellite provides to You will be in a standard form. If You require a different form of invoice, You must pay any applicable charges. To enable You to verify Your use of the 3G/GSM Service, Call records and other relevant billing information will be clearly itemised on the invoice in accordance with the billing requirements set out in Chapter 5 of the TCP Code.
- 2.3 Pivotel Satellite may vary its fees and charges from time to time. You acknowledge that before entering into this Agreement You have seen a copy of Pivotel Satellite's current fees and charges. You may obtain a copy of Pivotel Satellite's current fees and charges, by contacting Pivotel Satellite at any time.
- 2.4 You must remain Connected to the Service Network for the Contract Term or pay an early termination fee set out in Part A.
- 2.5 If Pivotel Satellite imposes a Credit Limit and You exceed the Credit Limit, Pivotel Satellite may suspend, or limit the Service until You pay all outstanding fees and charges.
- 2.6 Pivotel Satellite may require You to pay a security deposit if You intend to use Value-Added Services. If You pay Pivotel Satellite a security deposit, Pivotel Satellite may apply the deposit, or any part of it, in payment of any outstanding fees and charges for the Service.
- 2.7 If You do not pay Pivotel Satellite's invoices on time for two successive months, Pivotel Satellite may require You to pay its accounts by direct debit or registered credit card for the term of this Agreement. You must not cancel that direct debit or credit card authority, without Pivotel Satellite's agreement in writing. If You cancel the direct debit or credit card authority in breach of this clause, Pivotel Satellite may exercise its rights under Part C, and You will become liable for any extra charges determined by Pivotel Satellite in accordance with Part A.
- 2.8 Pivotel Satellite may pay an Authorised Dealer or agent a commission for introducing You to the Service.

### **3. YOU ARE RESPONSIBLE FOR MONITORING CALL CHARGES**

- 3.1 You have a personal responsibility to monitor Your use of the Services to ensure that You do not overcommit yourself financially. You are liable for all Calls made or received using Your Service.
- 3.2 To assist You to monitor Your own use of the Services, Pivotal Satellite provides a 24x7 secure online facility providing You with access to Your billed and unbilled Call usage. The facility is known as Selfcare, and can be accessed at [www.pivotal.com.au/selfcare](http://www.pivotal.com.au/selfcare).
- 3.3 Alternatively You can contact Pivotal Satellite customer care on 1300 882 448 [free call when using the Service], or by email to [mail@pivotal.com.au](mailto:mail@pivotal.com.au), or by writing addressed to Pivotal Satellite Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.
- 3.4 Pivotal Satellite will use reasonable efforts to contact You when we discover abnormal usage or a significantly higher pattern of usage. In accordance with Part C and this Part D, we may suspend or limit Your Service if we cannot contact You promptly. You should not rely solely on Pivotal Satellite to contact You about high Call usage, as You have a personal responsibility to control Your financial commitment to Pivotal Satellite.
- 3.5 Call records are normally received within 48 hours of the Calls being made or received. In some circumstances, such as temporary system delays, the Call records may take longer to process and appear in Pivotal Satellite's billing system. Call records for Special Calls and International Roaming may take up to seven (7) days before they are available in Pivotal Satellite's billing system. You must monitor Your ongoing use of the Services, keeping in mind the normal delays in Pivotal Satellite receiving and processing Call records from the Service Networks, from premium services providers, and from overseas networks.

### **4. CUSTOMER DISCONNECTION FROM PIVOTAL SATELLITE**

- 4.1 You must not Disconnect from the Service Network until:
- (a) the Contract Term has expired, or You have given written notice of termination and paid the early termination fee set out in Part A; and
  - (b) You have otherwise satisfied the terms of this Agreement.
- 4.2 If You wish to be Disconnected from the Service Network at the end of the Contract Term, or at any time after the Contract Term, You must provide Pivotal Satellite with written notice. On receipt of such notice, the Connection will be Disconnected at or prior to the conclusion of the Customer's current monthly billing cycle for the Service.

### **5. PROHIBITION ON RESUPPLY**

- 5.1 You must resell or resupply the Service to any person.

## **6. USE OF THE SERVICE**

6.1 You must not use the Service:

- (a) in contravention of any Law; or
- (b) in any manner that is indecent, obscene or otherwise offensive, menacing, threatening or abusive; or
- (c) in any manner that is defamatory or tortious or infringes the rights of any third party; or
- (d) in a way that interferes with the use of the Services by other customers of Pivotel Satellite, or the relevant Service Network.

6.2 You agree that the following terms and conditions apply to Your use of the relevant Service Network:

- (a) You are responsible for all equipment and software necessary to use the relevant Service Network, as well as for the security and integrity of any information You transmit or receive; and
- (b) You acknowledge that Pivotel Satellite does not check and is not obligated to monitor the content of information or material available from the relevant Service Network or the Internet, and that Pivotel Satellite is not liable for Loss suffered by You or any other person as a result of using information or material obtained using the relevant Service Network or the Internet, including, but not limited to, Loss caused by a virus.

## **7. IMMEDIATE DISCONNECTION OF SERVICE**

7.1 You agree that Pivotel Satellite may immediately disconnect Your Service if Pivotel Satellite has reason to suspect that:

- (a) the SIM is being used in a device that is not approved by Pivotel Satellite (such as a SIM box or similar device); or
- (b) fraudulent or illegal activity is, or will be, conducted using the relevant SIM, handset or device.

## **8. FAIR USE POLICY**

8.1 It is important that all Pivotel Satellite customers are able to access the Services. Accordingly, this Fair Use Policy applies to:

- (a) use of the Services; and
- (b) any promotions or Services which are advertised by us as subject to the Fair Use Policy (Fair Use Promotion).



- 8.2 Pivotal Satellite reserves the right to vary the terms of the Fair Use Policy from time to time.
- 8.3 Pivotal Satellite may rely on the Fair Use Policy where:
- (a) Your use of Services represents Unreasonable Use; or
  - (b) Your participation in a Fair Use Promotion represents Unreasonable Use.

## **9. UNREASONABLE USE**

- 9.1 Unreasonable Use means the use of the Service where Your use of the Service is reasonably considered by Pivotal Satellite to be fraudulent, or to adversely affect the Service Network, or other Customers' use of or access to a Service or the Service Network.
- 9.2 Unreasonable Use in respect of a Fair Use Promotion is where Your participation in a Fair Use Promotion is reasonably considered by Pivotal Satellite to be fraudulent, or to adversely affect the Service Network, or another Customer's use of or access to a Service or the Service Network.
- 9.3 Without limitation, fraudulent use includes resupplying a Service without Pivotal Satellite's consent so that someone else may access or use the Service or take advantage of a Fair Use Promotion.

## **10. CONSEQUENCES OF UNREASONABLE USE**

- 10.1 Where there is a breach by You of this Fair Use Policy, Pivotal Satellite may contact You to discuss how to change Your use of the Service so that it conforms to the Fair Use Policy.
- 10.2 If, after we have contacted You, and Unreasonable Use continues, Pivotal Satellite may, without further notice to You:
- (a) suspend or limit the Services (or any feature of it) for any period Pivotal Satellite believes is reasonably necessary; or
  - (b) terminate the Service Agreement and Disconnect the SIM.