



Pivotel New Zealand Limited

NZBN 9429033338835

**STANDARD AGREEMENT
FOR THE SUPPLY OF
SATELLITE MOBILE SERVICES**

INDEX

Dictionary

PART A – Service Description

PART B – Pivotel Call Plans

PART C – General Terms and Conditions

PART D – Service Specific Terms and Conditions

Customer Enquiries call **0508 882 448** or visit the web site at

www.pivotel.co.nz

DICTIONARY

1.1 Definitions

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 2001*.

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

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

CLI means calling line identification.

ComCom means the Commerce Commission.

Compatible Device means a device compatible with the specific Satellite Service Network with which it is intended to be used.

Complaint Handling Policy means the policy for handling Complaints developed by Pivotal.

Confidential Information means all confidential information about the Service, Pivotal, its Related Bodies Corporate, the Pivotal 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.

Content means any data or other digital material created, transmitted, distributed or displayed by You when using the Services.

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 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.

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.

FTA means the *Fair Trading Act 1986*.

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 Service means the single mode mobile satellite telecommunications service provided using the Pivotal Network as described in Part A.

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

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

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

Globalstar Simplex Device means a Single Mode Simplex Device.

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

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

GST Legislation means *Goods and Services Tax Act 1985* 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 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 a Single Mode Short Burst Data Device.

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

Inmarsat Charges means the charges for the use of the Inmarsat Service.

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

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

Inmarsat IsatDataPro Charges means the charges for the use of the Inmarsat IsatDataPro Service.

Inmarsat IsatDataPro Device means a Single Mode Inmarsat IsatDataPro Device.

Inmarsat IsatDataPro Service means the satellite messaging service provided using the Inmarsat Network as described in Part A.

Inmarsat Network means the constellation of satellites owned and operated by Inmarsat Global Limited and associated ground based infrastructure used by Pivotal and its Related Bodies Corporate to provide the Inmarsat Service.

Inmarsat Service means the mobile satellite telecommunications service provided using the Inmarsat 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.

MBIE means the Ministry of Business, Innovation and Education.

Non-excludable Rights means rights and remedies conferred on a party by the FTA 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.

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

Personal Satellite Communications Service means personal satellite communications messaging service provided using the Pivotel Network or the Iridium Network as described in Part A.

Pivotel means Pivotel New Zealand Limited NZBN 9429033338835.

Pivotel 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 1983* as varied or replaced from time to time.

Privacy Policy means the privacy policy of Pivotel as varied or replaced from time to time, and made available to Customers by contacting Pivotel Customer Care on 0508 882 448 or by download from the website www.pivotel.co.nz.

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*.

Reporting Entity has the meaning set out in the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*.

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 Pivotel by the Roaming network. Roaming relies on the networks of other carriers over which Pivotel has no control. Pivotel cannot guarantee the quality and reliability of mobile services when a Customer is Roaming.

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

Satellite Mode means the operation of a 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 Iridium Network, the Inmarsat Network, the Thuraya Network, or the VSAT Network as the context dictates.

Service means the Satellite Service incorporating the 3G Service as the context dictates, and for the avoidance of doubt, excludes any roaming or pre-paid service.

Service Network means the Pivotel Network, the Iridium Network, the Inmarsat Network, the VSAT Network, and the Thuraya Network.

SIM means the subscriber identity module card.

Single Mode IsatDataPro Device means a device capable of operating with the Inmarsat IsatDataPro Service on the Inmarsat Network and no other Service Network.

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

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

SM means the security module card, which forms part of the Globalstar Satellite Handset to enable use of the Globalstar Service.

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

Standard Agreement means this standard agreement for the supply of mobile satellite services.

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.

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

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 Pivotel and its Related Bodies Corporate to provide the Service.

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

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 or Cellular Mode or with the Service generally, as described in Part A of this Agreement.

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.

VSAT means very small aperture terminal.

VSAT Charges means means the charges for the use of the VSAT Service.

VSAT Network means the satellites owned and operated by Optus Satellite Limited and associated ground based infrastructure used by Pivotel and its Related Bodies Corporate to provide the Service.

VSAT Service means the fixed satellite telecommunications service provided using the VSAT Network as described in Part A.

VSAT Terminal means a fixed satellite telecommunications terminal used in conjunction with the VSAT Network as described in Part A.

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 Pivotel supplies You with the Service on the terms and conditions set out in this Agreement.
- 1.2 Pivotel 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 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 national regulatory policy on numbering:
- (a) Pivotel 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.

2. YOUR OBLIGATIONS

2.1 You must:

- (a) keep the SIM safe and in good condition;
- (b) return the SIM to Pivotel immediately upon request;
- (c) notify Pivotel immediately of loss of, or damage to, a SIM;
- (d) use the spend control tools provided by Pivotel, and otherwise diligently monitor Your Call usage so that You do not overcommit Yourself financially;
- (e) pay Pivotel 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 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 as soon as You becomes aware of any claim You may have against Pivotel in relation to the Service.

2.2 You must not:

- (a) disclose to any person any Confidential Information or security number provided by Pivotel (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's prior written approval, which approval may be withheld by Pivotel 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 may, in its absolute discretion suspend, limit or terminate the provision of the Service if:

- (a) Pivotel 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 MBIE or ComCom instructs Pivotel to do so; or
- (e) there are technical problems with the Service Network which require corrective action by Pivotel; 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 that You have lost a SIM, handset or device used with the Service; or

- (h) Pivotel has an incomplete record of information about You; or
 - (i) Pivotel 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) Pivotel reasonably believes that the Service is being used to commit unauthorised, criminal or unlawful activities; or
 - (l) Pivotel reasonably believes that You have engaged in fraudulent activities in relation to a Service provided by Pivotel; or
 - (m) Pivotel reasonably believes that You have resupplied the Service to another person without Pivotel's prior written approval; or
 - (n) Pivotel is required by law to do so, or is requested to do so by a law enforcement agency; or
 - (o) Pivotel 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 Pivotel suspends, limits or terminates the Service under clause 3.1 (b)-(o), Pivotel will use its reasonable endeavours to provide notice to You.
- 3.3 Pivotel 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 Pivotel may suspend or limit the Service provided to You if, in Pivotel's reasonable opinion, the amount of Call charges accrued on Your account is unusually high. In making this determination, Pivotel 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

- 4.1 Pivotel and/or its agents and service providers may collect Your personal information. Pivotel collects Your personal information to provide You with personalised services. Pivotel 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's services or conducting analysis in order to provide a better service to You).
- 4.2 Pivotel will provide You with access to Your personal information in accordance with the Privacy Act and the Privacy Policy.
- 4.3 Pivotel 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 group for purposes that are related to providing you with a telecommunications service which would be reasonably expected.
- 4.4 Unless You consent, Pivotel will not disclose Your personal information to third parties, other than those who have contracted with Pivotel 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's customer call centre may be recorded for quality assurance purposes.

5. TERMINATION

- 5.1 Pivotel 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. 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, 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 Pivotel's termination rights, Pivotel 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 Pivotel to which Pivotel 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 Pivotel under this Agreement.
- 6.2 On termination of this Agreement, Pivotel 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. Pivotel, in its absolute discretion, may set-off any amounts payable to You until You pay Pivotel 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 Pivotel.
- 7.2 If Pivotel 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**), Pivotel 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 Pivotel 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 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 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 by contacting Pivotel customer care on 0508 882 448 [free call when using the Service], or by email to mail@pivotel.co.nz, or by writing addressed to Pivotel New Zealand Limited, 15 Te Puni Street Petone 5012 PO Box 38-415 WMC 5045

9.3 In all cases, Pivotel will acknowledge the Complaint in accordance with its Complaints Handling Policy, and issue a unique reference number to enable You and Pivotel to track the subject matter of the Complaint to resolution.

9.4 Pivotel must attempt to resolve the Complaint in accordance with the Complaint Handling Policy.

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 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, Pivotel 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 Pivotel under or in connection with this Agreement.

11.2 Notwithstanding clause 11.1, Pivotel'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) Pivotel 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) Pivotel's liability in respect of any Non-excludable Right is limited, at Pivotel'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 against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which Pivotel 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 pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of Pivotel.
- 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 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 may not waive any right under this Agreement except in writing.
- 14.2 A waiver by Pivotel 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 Pivotel 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, Pivotel will notify You in advance of any such variation. The notice given by Pivotel 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 Zealand.
- 17.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.

18. AGENCY

- 18.1 You appoint Pivotel 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 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 provides to You will be in a standard form. If You require a different form of invoice, You must pay any applicable charges.
- 2.3 Pivotel 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's current fees and charges. You may obtain a copy of Pivotel's current fees and charges, by contacting Pivotel 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 imposes a Credit Limit and You exceed the Credit Limit, Pivotel may suspend, or limit the Service until You pay all outstanding fees and charges.
- 2.6 Pivotel may require You to pay a security deposit if You intend to use Value-Added Services. If You pay Pivotel a security deposit, Pivotel 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's invoices on time for two successive months, Pivotel 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's agreement in writing. If You cancel the direct debit or credit card authority in breach of this clause, Pivotel may exercise its rights under Part C, and You will become liable for any extra charges determined by Pivotel in accordance with Part A.
- 2.8 Pivotel 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, Pivotel 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.pivotel.co.nz/selfcare.

- 3.3 Alternatively You can contact Pivotel customer care on 0508 882 448 [free call when using the Service], or by email to mail@pivotel.co.nz, or by writing addressed to Pivotel New Zealand Limited, 15 Te Puni Street Petone 5012 PO Box 38-415 WMC 5045.
- 3.4 Pivotel 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 Pivotel to contact You about high Call usage, as You have a personal responsibility to control Your financial commitment to Pivotel.
- 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 Pivotel's billing system. Call records for Special Calls and International Roaming may take up to seven (7) days before they are available in Pivotel's billing system. You must monitor Your ongoing use of the Services, keeping in mind the normal delays in Pivotel receiving and processing Call records from the Service Networks, from premium services providers, and from overseas networks.

4. CUSTOMER DISCONNECTION FROM PIVOTEL

- 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 Pivotel 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 not 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, 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 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 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 may immediately disconnect Your Service if Pivotel has reason to suspect that:

(a) the SIM is being used in a device that is not approved by Pivotel (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 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 Pivotel reserves the right to vary the terms of the Fair Use Policy from time to time.

8.3 Pivotel 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 Pivotel 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 Pivotel 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 Pivotel'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, Pivotel 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, Pivotel may, without further notice to You:
- (a) suspend or limit the Services (or any feature of it) for any period Pivotel believes is reasonably necessary; or
 - (b) terminate the Service Agreement and Disconnect the SIM.

11. CONTENT LICENCE FROM YOU

- 11.1 You agree that you are solely responsible for (and that Pivotel has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and any associated software and for the consequences of your actions by doing so.
- 11.2 You acknowledge that certain messages (for example, messages used in conjunction with the Tracertrak or Personal Communication Services) may include your location information.
- 11.3 You retain copyright and any other rights you already hold in Content which you submit, post, or display on or through the Services. You acknowledge and agree that by submitting, posting or displaying the content you give Pivotel a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive licence to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Services and any associated software. Furthermore, you agree that this licence includes a right for Pivotel to make such Content available to other companies, organizations or individuals as required for the provision of the Services.

11.4 In order to provide the Services, Pivotel may be required to transmit or distribute your content over various public networks and in various media. Pivotel may also be required to make changes to your Content if so required by the technical requirements of connecting networks, devices, services or media.