



Swoop Mobile
Standard Form of Agreement
(Consumer Terms)

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Please read these terms carefully as they may have important consequences for you

1. About these *consumer terms*

- a) These are *Swoop Mobile's consumer terms*. They set out our standard customer terms for *consumers*.
- b) The meanings of the words printed in italics *like this* are set out at the end of the *consumer terms*.
- c) These *consumer terms*, together with *your application*, the *service description*, and the *critical information summary* relevant to *your service*, forms the *agreement with us*. To understand *your* rights and obligations *you* need to read all of the documents that relate to *you* and the *service you* select.
- d) The *critical information summary* relevant to *your service* sets out the detailed description of individual *services* *Swoop Mobile* offers, including the different features, options, availability of a *service*, and fees or charges *we* may charge *you* for *your* use of the *service*. Please check the relevant *critical information summary* carefully to see what fees and charges apply to *your* use of the *service*.
- e) *You* may obtain a copy of the latest version of the *consumer terms*, *critical information summaries*, and other policies from *us* or on our website <https://swoop.com.au/mobile>.

2. The *agreement*

- a) The *agreement* is made up of:
 - i. *your application*;
 - ii. these *consumer terms*; and
 - iii. the *critical information summary* relevant to *your service*.

2.1 When does the *agreement* apply?

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

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

- a) If anything in these *consumer terms* is inconsistent with another part of the *agreement*, then unless otherwise stated, the *consumer terms* prevail to the extent of the inconsistency.
- b) Section 14 of this document prevails over all other terms.

2.3 When does the *agreement* start?

The *agreement* starts when *we* accept *your application*.

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

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

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

- a) If the *agreement* is a *non-fixed-length agreement*, we will provide the *service to you* in accordance with the *agreement* until the *service* is cancelled in accordance with clause 12 below.
- b) If the *agreement* is a *fixed-length agreement*, we will provide the *service to you* in accordance with the *agreement*:
 - i. for the *minimum term*; or
 - ii. until the *service* is cancelled in accordance with clauses 12.1 or 12.3 below; or
 - iii. if neither *you* nor *we* cancel the *service* at the end of the *minimum term*, until the *service* is cancelled in accordance with clauses 12.1 or 12.3 below.

2.6 For how long will we provide the *service to you* in accordance with the *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 12 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 12 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 3 below before the end of the *minimum term*.

2.7 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*.

3. Changing the *agreement*

3.1 When can we make changes to fixed length or non-fixed length *agreements*?

We can make any type of change to a fixed length *agreement* or a non-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 herein.

3.2 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 3.6 or 3.7 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 3.6 or 3.7 below, we must comply with *our* obligations set out in clauses 3.6 or 3.7.

3.3 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-month period before our notice and we consider that the change will have more than a minor detrimental impact on *you*.

3.4 What do we mean by notice in writing?

When we have to give *you* notice in writing under clause 3.5 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* and informing *you* (by recorded message, text message, or in writing) of how to obtain information about the change.

3.5 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; and
- b) If *you* choose to *cancel the service* under the clause 3.5(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 if:
 - 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.

3.6 When can we make changes to fixed length or non-fixed length agreements?

- 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 inform *you* beforehand. Before *you* travel overseas *you* should contact *us* for indicative pricing. Go to <https://swoop.com.au/mobile> or call *our* customer service team on 1300 66 55 75 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) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is in relation to a fee or a charge for a *service* ancillary to the supply of the *service* (for example, a billing fee or credit card transaction fee). If the change impacts *you*, we will offer *you*:
 - i. use of a reasonable alternative at no fee or charge, or
 - ii. a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service* is cancelled, which is the date on which *you* notify *us* *you* wish to *cancel the service*),
- c) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is to increase the price of a *content* or premium *service* (where we are passing on an increase in the cost charged to *us* by the *supplier* who supplies that *content service* or premium *service* to *us*. If the change impacts *you*, we will:

- i. wherever possible, still try to give *you* at least 21 days' notice in writing of the increase in price if *you* have used the *content* or premium *service* within the previous 6 months; and
 - ii. allow *you* to elect to not use the *content* or premium *service* without attracting any additional charges.
- d) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is a result of another carrier or *service* provider varying their *agreement* with us so that we need to make changes to the *agreement*. If the change impacts *you*, we will:
- i. whenever possible, still try to give *you* at least 21 days' notice in writing of the change; and
 - ii. give *you* 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
 - a. usage charge or *access fees* (incurred to the date on which *you* notify *us* that *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 *service* provided by any third party).

3.7 Changes that are likely to benefit *you* or have a neutral or minor detrimental impact on *you*

- a) We can make changes to a fixed length *agreement* relating to the characteristics of the *service* (including price) if the change is likely to benefit *you* or have a neutral or minor detrimental impact on *you*.
- b) If *you* can demonstrate that such a change has had more than a minor detrimental impact on *you* and the change is not a type described in clause 3.6 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* that *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 *service* 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* include:

- 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* include:

- withdrawing a minor feature of the *service*;
- changing the *content* available with *your service*;
- a small increase in a *content* charge.

3.8 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.
- You* are able to request a change to which *service* we supply to *you* in the form of a *plan change*, with certain limitations such as:
 - the *service you* wish to change to must be available at the time of requesting the change;
 - the *service you* wish to change cannot be changed if it is a fixed-length agreement, unless the initial term of the fixed-length agreement has already passed; and
 - the *service you* wish to change to cannot be a data-only plan if your current service is a mobile plan and vice versa.
- Any changes to *your* service will only apply at the beginning of *your* new *billing cycle* (see section 10 herein for more information regarding *your* billing cycle).
- Within your *yearly billing cycle*, *you* are entitled to two free *plan changes*, with any additional *plan change* incurring a \$20 *plan change* fee.

4. *Your application* for the supply of the *service*

4.1 What is the *service*?

The *service you* have selected is detailed in the relevant *critical information summary*, available upon request from *us* or on *our* website.

4.2 When may we refuse *your application*?

We may refuse *your application* if:

- you* do not provide satisfactory proof of identification;
- you* do not meet the eligibility criteria for the *service*;
- the *service* is not available at the location where *you* wish to acquire the *service*; or
- you* do not have an appropriate *credit rating*.

5. How we deal with *your personal information*

5.1 Collection, use and disclosure

- 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*.
- We may collect, use, and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, and location of call) for

purposes related to the supply of the *service* (or for purposes which would be reasonably expected) including billing and *account* management, business planning and product development, and to provide *you* with information about promotions, as well as the other products and *services* that *we* may offer.

- c) *We* may collect, use, and disclose *personal information* about *you* (which may include, for example, numbers called, time of call, and location of call) for the purposes in paragraphs (a) and (b) above to or from:
 - i. a credit reporting agency or credit provider;
 - ii. third parties who are not related to *us*, including our agents, dealers, and contractors;
 - iii. *suppliers* who need access to *your personal information* to provide *us* with the *service* to allow supply of the *service*, and
- 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, and 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 service organisations, and
 - iii. to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.2 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 Swoop Mobile customer service to make a request to opt-out. *We* will not charge *you* for processing a request to opt-out.

5.3 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*.

5.4 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*.

5.5 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 clause 5.1 above and in accordance with *our* privacy policy. *You* may obtain a copy of our privacy policy by requesting it from *us* or by visiting our website.

6. Using the *service*

6.1 Connecting the *service*

You must reasonably cooperate 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 12.3(v) or 12.3(a)(vi) or suspend the *service* under clause 13.1(a)(vii) or 13.1(a)(viii).

6.2 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.

6.2.1 Blocking calls

We may block access to a number (other than an emergency *service* number) if *we* reasonable require this to be done for technical, operation and commercial reasons.

6.3 Permitted uses of the *service*

- a) When *you* use the *service*, *you* must comply with:
 - i. all laws;
 - ii. all direction by *regulator*;
 - iii. all notices issued by authorisation of or under law (for example, under the Copyright Act 1968(Cth)); and
 - iv. reasonable directions by *us*.
- b) *You* must not use, or attempt to use, the *service*:
 - i. to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright);
 - ii. to transmit, publish, or communicate material which is defamatory, offensive, abusive, indecent, menacing, or unwanted,
 - iii. to expose *us* to *liability*; or
 - iv. in any way which damages, interferes with, or interrupts the *service*, the Optus *network*, or a *supplier's network* used to supply the *service*.
- c) *We* may ask *you* to stop doing something which *we* reasonably believe is contrary to paragraph (b) above. *You* must immediately comply with any such request. If *you* do not, then *we* may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- d) *You* acknowledge that, where the *service* is a carriage *service*, *we*, or any *supplier* whose *network* is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor *your* usage of the *service* and communications sent over it.
- e) If *you* do not comply with this clause (6.3), *we* may be entitled to *cancel the service* under clause 12.3(a) (v) or (vi) or suspend the *service* under clause 13.1(a) (vii) or (viii).

6.4 *Unusually high use*

We may contact *you* if we become aware of an *unusually high use* of the *service* by *you* (including to verify any costs or charges which *you* may have incurred). However, we are under no obligation to do so. For example, if *you* suddenly make an unusually high volume of calls to international destinations using the *service*, we may contact *you* to determine whether that use is likely to continue. If so, we may ask *you* to make a pre-payment usage charge under clause 9.2. Please note that we may also be entitled to suspend the *service* under clause 13.1(a) (iv) for an *unusually high use* of the *service*.

6.5 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.

7. Equipment

- a) If *you* use *your* own equipment in connection with the *service* (for example, you own the mobile telephone), *you* must ensure that *your* equipment:
 - i. complies with all relevant laws and directions of relevant authorities; and
 - ii. complies with all *our* reasonable requirements
- b) If *your* equipment does not meet the requirements of this agreement, we may, without notice to *you*:
 - i. prevent access by *your* equipment to the *service*;
 - ii. suspend *your* access to the *service*; or
 - iii. cancel the *service* and terminate this *agreement*.

8. Network maintenance, fault reporting, and rectification

8.1 Maintenance on the *network* used to supply the *service*

- a) If *you* experience any problem, disruption, or other fault with the *service*, *you* may report the problem, disruption, or fault to *us* on 1300 66 55 75.
- b) We will investigate, or arrange for *our suppliers* to investigate, each reported fault and will take an action necessary to rectify the fault.

8.2 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 11.3 below. *You* may also be entitled to *cancel the service* under clause 12.1(a)(ii) below.

9. Fees and charges

9.1 What are the fees and charges for using the *service*?

- a) *You* must pay:

- i. the fees and charges for the *service*, which are set out in the *critical information summaries* for services provided by *us*, including any applicable *special*; and
 - ii. any additional fees and charges noted in the *agreement* (including in *your application*) or notified by *us* in accordance with the *agreement* from time to time.
- b) *You* must pay all fees and charges which are incurred for the *service* even if *you* did not authorise its use.
- 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 11.3 below if:
 - i. *you* suffer a significant *loss* of access to, or use of, the *service*; and
 - ii. the *loss* was not a result of circumstance 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*.

9.2 Types of fees and charges (including administration 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*, paper bill fees, non-direct debit fees, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the *critical information summary* 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*).

9.3 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.

9.4 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 *critical information summary* for the relevant *service*, in an appendix, in advertising material, on *our* website, 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* apply.

9.5 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.

10. Billing and payments

10.1 How often will we bill you?

We will bill *you* on a monthly basis (either in advance or in arrears), unless otherwise set out in the *service description*. The Swoop Mobile billing cycle, which is the period in between each monthly billing date, is either a calendar month cycle or an anniversary cycle.

10.1.1 Calendar billing

A calendar month *billing cycle* begins on the first day of every calendar month and ends on the last day of that same calendar month.

10.1.2 Anniversary billing

With anniversary billing *your* bill will be issued on the monthly anniversary of *your* activation date. *Your* *billing cycle* commences on the date of *your* first *service* being connected, and resets on the same numbered day of the following month.

10.2 Electronic billing (my *account* & email bill)

- a) *Swoop Mobile* will email *your* bill every month, should *you* have provided *us* with a valid email address. *You* can also access *your* bills on our website by logging into *your* *account* with *your* *account* number and *your* password at <https://swoop.com.au/mobile>.
- b) If *we* send *your* bill via email, *we* will not charge *you* the *paper invoice fee*. However, if *you* notify *us* that *you* would prefer to receive a paper bill posted to *you*, *we* will provide *you* with a paper bill instead of an emailed bill and charge *you* the *paper invoice fee* of \$2.50.

10.3 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, afterward it may not be possible to obtain individual bills for *your services*.

- c) If *you* receive an email bill and *you* notify *us* that *you* prefer to receive a paper bill posted to *you* in accordance with clause 10.2(b) above:
 - i. by default, the paper bill that *we* provide *you* with may only display a summary of charges for *your account* and *your services*; and
 - ii. *you* will be able to view fully itemised and detailed charges online at <https://swoop.com.au/mobile>.

However, if *you* notify *us* that *you* prefer *your* paper bill to display detailed, fully itemised charges for *your services*, *we* will provide *you* with a fully itemised, detailed paper bill. (For the avoidance of doubt, if *we* charge *you* the *paper invoice fee*, the amount of the *paper invoice fee* will be the same amount whether *your* paper bill displays a summary of charges or is a fully itemised, detailed bill.)

10.4 What types of payment methods may *you* use?

You may pay by one of the payment methods as set out in the “How to Pay” section of *your* bill or on our website.

10.5 When must *you* pay *your* bill?

Subject to clause 11.2, *you* must pay the entire amount billed by the due date specified in the payment notification, bill, or as otherwise notified by *us*.

10.6 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) process your direct debit again if your due date debit has failed or your *account* is still overdue.
- b) charge *you* a late fee. *You* should see the relevant *critical information summary* for the *service* concerned to check the late fee that applies.
- c) suspend or *cancel the service*, in accordance with clause 12 or 13 as relevant or the relevant *service description*. 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 *critical information summary* for the *service* concerned to check what fees apply, and if fees do apply, what that fee is.
- d) engage a mercantile agent to recover the money *you owe us*. If *we* engage a mercantile agent, *we* may charge *you* a recovery fee.
- e) institute legal proceeding against *you* to recover the money *you owe us*. If *we* institute legal proceedings, *we* may seek to recover *our* reasonable legal costs incurred.
- f) on-sell any unpaid amounts to a third party. If *we* do this, any outstanding amounts will be payable to that third party.

10.7 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 overpayment.

10.8 Taxes (including GST)

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

11. Direct Debit Agreement

11.1 Debiting *your* account

- a) When *you* sign up online or over the phone and make *your* first payment via credit or debit card *you* hereby give *us* the authority to use this card for ongoing direct debits from *your* account. *You* may later change your direct debit to a bank account or another credit card at *your* discretion.
- b) Usually, a 10-day period would be provided to pay *your* bill from the day *you* would normally receive it. However, by entering into this agreement, *you* agree that *we* will debit any charges from *your* nominated account 3 working days from the day *you* can be assumed to have received *your* bill. *Your* bill is sent to the address/email address nominated by *you* during the sign-up process.
- c) *We* will continue to rely on *your* authority to directly debit the amount of each bill from *your* nominated account until *you* advise *us* of any changes to the arrangements. *We* reserve the right to cancel the direct debit if one of more drawings are returned unpaid by *your* nominated institution and to arrange with *you* an alternative payment method.
- d) *You* also authorise Swoop Mobile to process *your* direct debit again if for whatever reason *your* due date direct debit has failed or *your* account is still overdue.
- e) If a company *you* represent is utilising a corporate account, *you* agree that *you* are an authorised representative of the company and are able to enter into the Direct Debit Request on behalf of the company.

11.2 Changes by *us*

We may vary any details of this agreement or a direct debit request at any time by giving *you* at least 14 days' notice.

11.3 Changes by *you*

- a) Subject to section 11.3b below, *you* may change or cancel the arrangement under a direct debit request by contacting *us* at least 2 business days before *your* payment due date by calling *us* on 1300 66 55 75 from any phone (local call rates apply) or by emailing mobilesupport@swoop.com.au.

- b) If *you* cancel *your* direct debit request through *your* financial institution without notifying *us* or providing *us* with an alternative means of payment, additional charges may apply. Please refer to Section 9 of this document for more information.

11.4 Your obligations

- a) It is *your* responsibility to ensure that there are sufficient funds available in *your* account to allow a direct debit payment to be made.
- b) If there are insufficient funds in *your* account:
 - i. *you* may be charged a fee and/or interest by *your* financial institution; and
 - ii. *you* must arrange for the debit payment to be made by another method or arrange for sufficient funds to be in *your* account by an agreed time so that we can process the debit payment.
- c) *You* are responsible for checking that all billing information provided to *you* is correct before the associated direct debit transaction occurs. *You* should also check your account statement(s) to verify that the amount(s) debited from *your* account are correct.

11.5 Your obligations

- a) If *you* believe that there has been an error in debiting *your* account, *you* should notify *us* directly on 1300 66 55 75 by phone (local call rate applies) or by emailing mobilesupport@swoop.com.au.
- b) Any queries *you* may have about an error made in debiting *your* account should be directed to *us* in the first instance so that *we* can attempt to resolve the matter between *us* and *you*. If *we* cannot resolve the matter *you* can still lodge a direct debit claim through *your* financial institution.
- c) *You* should check
 - i. with *your* financial institution whether direct debiting is available from *your* account; and
 - ii. that *your* account details which *you* have provided *us* are correct.

12. Complaints and disputes

12.1 Making complaints

- a) If *you* have any complaints in connection with the *service*, *you* may complain in writing (including by completing our complaints form on our website: <https://swoop.com.au/mobile> or by calling us.
- b) *We* will handle *your* complaint in accordance with our complaints procedure. *You* may obtain a copy of this procedure from us or on our website.
- 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.

12.2 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.

12.2.1 Financial hardship policy

The *Swoop Mobile* Financial Hardship Policy contains information about how we can assist customers who are experiencing financial hardship. *You* can see and print a copy on our website at <https://swoop.com.au/mobile> or have a copy sent to *you* by calling *us* on 1300 66 55 75.

12.3 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 a result of circumstances reasonable attributable to *you* or equipment that we are not responsible for, such as equipment that is owned by *you* or it 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.
- b) may be entitled to *cancel the service* under clause 12.1(a)(ii) below.

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

13. Cancelling the *service*

13.1 *Your* right to *cancel the service*

- a) If *your service* is a non-fixed-length agreement, *you* may *cancel the service* at any time by giving us notice in writing or over the phone. Please note that upon receiving this request we will immediately cancel *your service*, rendering it unusable. If *you* wish to cancel at a future date, *you* will need to organise to give us notice on the date *you* wish the *service* to be cancelled as we are unable to automatically cancel *your service* on a given date.
- b) If *your service* is a fixed-length agreement, *you* may *cancel the service* at any time by giving us notice in writing or over the phone. However, doing so will incur an early termination charge equal to the monthly *access fee* multiplied by the term length in months and subtracting the monthly *access fee* for every month completed on the contract term.
- c) If the agreement is a fixed-length agreement, *you* may also *cancel the service* in accordance with clause 3 above. Clause 3 sets out the circumstances which give *you* the right to *cancel the service* if we change the agreement.

13.2 Our right to *cancel the service* – *non-fixed-length agreement*

If the *agreement* is a *non-fixed-length agreement*, we may cancel the *service* at any time by giving *you* at least 30 days' notice.

13.3 Our right to *cancel the service* – *non-fixed-length agreement* and *fixed-length agreement*

a) We may *cancel the service* at any time if:

- iii. there is an emergency;
- iv. we reasonably suspect fraud by *you* or any other person in connection with the *service*;
- v. any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 11.2 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* 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* (which is not the subject of a valid dispute under clause 11.2 above) in respect of any *service* by its due date and *you* are given notice requiring payment of that amount by *us* 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 6.1 and 6.3 above or *your* obligation 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 Swoop Mobile Fair Use Policy or breach clause 7.1 above) and *you* cannot remedy that breach;
- viii. *you* breach a material terms of the *agreement* (other than a breach which is separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.3 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 Swoop Mobile Fair Use Policy or breach clause 7.1 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. *you* suffer an *insolvency event* and we reasonably believe we are unlikely to receive payment for amounts due;
- xi. *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;
- xii. the *service* is suspended for more than fourteen (14) days, unless otherwise set out in the *agreement*;

- xiii. any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than fourteen (14) days; or
- xiv. we are otherwise entitled to do so under the *agreement*.

- b) In most circumstances, we will give you as much notice as we reasonable can before we *cancel the service*. However, in some circumstance, such as in an emergency or if we consider your use of the *service* unreasonable and in breach of our Fair Use Policy, we may *cancel the service* without notice to you.

13.4 How can you cancel the service?

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

13.5 When will the service be cancelled?

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

13.6 What happens when the service is cancelled?

- a) The *agreement* terminates when the *service* is cancelled.
- b) If the *service* is cancelled:
 - i. you are liable for any charges incurred (including the *cancellation fee*, and outstanding *equipment charges* if any, up to, and including, the *cancellation date* (you should check the *service description* and *critical information summary* 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 fourteen (14) days (under clause 12.1(a)(ii)(C) or 12.3(a)(xi) above), you are liable for any charges incurred (including outstanding equipment charge if any) up to the *cancellation date*. However, unless it is fair and reasonable for us to do so, we will not charge you any *cancellation fee* in these circumstances.
 - iii. you authorise us to employ 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*, 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 terms*, subject to clause 3, 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 circumstance reasonable 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 (12.6).

14. Suspending the *service*

14.1 Our rights to suspend the *service*

- a) We may suspend the *service* at any time if:
 - i. there is an emergency;
 - ii. doing so is necessary to allow us or a *supplier* to repair, maintain or *service* any part of the Optus *network* or a *supplier's network* used to supply the *service*;
 - iii. we reasonably suspect fraud by you or any other person in connection with the *service*;
 - iv. we reasonably believe there has been an *unusually high use* of the *service*;
 - v. any amount owing to us in respect of the *service* (which is not the subject of a valid dispute under clause 11.2 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 (which is not the subject of a valid dispute under clause 11.2 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 Swoop group company and you fail to pay that amount in full within the required period;
 - vii. you break a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.3 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 Swoop Mobile Fair Use Policy or breach clause 7.1 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 6.1 and 6.3 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 Swoop Mobile Fair Use Policy or breach clause 7.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so;
- ix. *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth));
- x. problems are experienced interconnecting the Optus *network* with any *supplier's network*;
- xi. *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due;
- xii. *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due; or
- xiii. *we* are otherwise entitled to do so under the *agreement*.

14.2 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 a result of the 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 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 *critical information summary* for the *service* concerned to see if a suspension fee applies.
- d) If *you* wish to lift the suspension *you* should contact *us*.

15. What are *you* and *we* liable for?

15.1 *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 are not direct results of something *you* have done.

15.2 *Our liability to you*

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

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

Your statutory rights as a consumer

Under the *Australian Consumer Law*, if *you* enter into an *agreement* to purchase goods or *services* from *us* which cost less than \$40,000 or are normally acquired for personal, domestic or household use, and, in the case of goods, the goods are not re-supplied by *you*, certain *consumer* guarantees apply to those goods and *services* in relation to acts or omissions that occur on or after 1 January 2011 (*consumer* guarantees).

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

We guarantee that:

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

- b) *We* are liable to *you* for:

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

16. Transferring the *agreement* to a third party

16.1 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*.
- c) We will be still responsible for the performance of the obligations.

16.2 How can we novate this agreement to a third party?

- a) We may novate *our* interest in (including *our* right and obligations under) this *agreement* (and any direct debit agreement under clause 11) to any person that we reasonably consider to have the experience, skills, resources, and financial capacity to perform this agreement so that such novation will benefit or not adversely affect *you* and *you* consent to such novation.
- b) Compliance with clause 9.6 of the Telecommunications Consumer Protections Code 2019 is sufficient notice of a notice under clause 16.2(a).

16.3 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* obligation 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*.

17. General

17.1 Which laws and courts govern the *agreement*?

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

17.2 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 13.1(a)(vii) or (viii) or *cancel the service* under clause 12.3(a)(v) or (vi).

17.3 What happens if *you* can't fulfil *your* obligation 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), the *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 obligations. *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*, expect if *you* are not able to perform *your* obligations because *we* are unable to perform our obligations due to the *intervening event*.

17.4 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.

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

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.

17.6 Payment by commission by us

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

17.7 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.

18. What do terms in the *agreement* mean?

18.1 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*.
- **account** means the account held at your financial institution from which *we* are authorised to arrange for funds to be debited.
- **agreement** means the terms and conditions on which *we* supply the *service* to *you*.
- **application** means the part of the *agreement* which is the written or verbal *application* *you* complete to request that *we* supply the *service* to *you*.
- **Australian Consumer Law** means The *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- **billing cycle** means the monthly period between *your* billing dates.
- **business day** means a day other than a Saturday, a Sunday, or a public holiday listed throughout Australia.
- **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 *critical information summary* relevant to *your service*.
- **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 Number Plan 1997.
- **churn** means to change from having a *service* supplied by one carrier or carriage *service* provider to having the *service* supplied by another carrier or carriage *service* provider.
- **Competition and Consumer Act** means the *Competition and Consumer Act* 2010 (Cth), (named the Trade Practises Act before 1 January 2011) as amended or replaced from time to time.
- **consequential loss** means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator*, and any *loss* that is an indirect *loss*.
- **consumer** means a person who acquires and uses the *service* for personal, domestic, or household use only.
- **consumer terms** means this document.
- **content** means:
 - a) all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined; and
 - b) any *content service* sent and received across a *network*. For the avoidance of doubt, *content* includes, but is not limited to, SMS and MMS.
- **credit rating** means information about *your* credit worthiness, credit standing, credit history, or credit capacity that credit providers are entitled to give to each other under the Privacy Act 1998 (Cth).
- **critical information summaries** means the documents outlining information about plans provided by *us*
- **debit day** or **due date** means the day that payment by *you* to *Swoop Mobile* is due.
- **debit payment** means a particular transaction where a debit is made.
- **direct debit request** means the written, verbal, or online request between *you* and *Swoop Mobile* to debit funds from your nominated *account*.
- **equipment charges** means any payment for equipment obtained from *us* including, for example, phones or modems, and includes the cost of any software or licenses 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.
- ***your financial institution*** is the financial institution where you hold the monetary account that you have authorised *us* to arrange to debit.
- ***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.
- ***insolvency event*** means:
 - a) bankruptcy proceeding 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*).
- ***loss*** means any *loss*, cost, liability or damage, including reasonable legal costs.
- ***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 for time stated on the *application*, unless otherwise set out in the *agreement*. For a *non-fixed-length agreement*, there is no *minimum term*.
- ***network*** means any interconnected telecommunications equipment, *facilities*, or cabling.

- **non-fixed-length agreement** means an *agreement* that does not have a *minimum term*, or a *fixed-length agreement* where the *minimum term* has expired. A *non-fixed-length agreement* includes a *month-to-month agreement*.
- **Optus network** means the *Optus network* used to supply the *service*, as set out in the *service description*.
- **paper invoice fee** means the fee charged in accordance with clauses 10.2(c) and 10.2(e) and set out in the *critical information summary* for *your service*.
- **personal information** means information about *you* from which *your* identity is apparent or can reasonably be ascertained. *Personal information* includes *your* name, address and other details, and *your* personal or commercial *credit rating*.
- **personnel** of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of Swoop Mobile.
- **plan change** is the process of changing the *service* which we supply to *you*
- **premises** means locations:
 - a) at which *we* supply the *service*, and/or
 - b) to which *we* need to have access to supply the *service*.
- **pricing plan** contains information about the terms and conditions and prices of the plan *you* have selected in *your application*. *You* may also hear a *pricing plan* referred to as a 'rate plan'.
- **regulator** means the Australian Communications and Media Authority, the Australian Competition and *Consumer* Commission, the 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).
- **roaming** means the ability to use the *network* of overseas mobile *carriers* when travelling overseas.
- **service** means the *service*, with the features requested in the *application* as described in the *service description*, and any related goods (including equipment) and ancillary *services* which *we* supply to *you* in connection with that *service*.
- **service start date** for the *service* means the date on which *we* start supplying that *service* to *you*, unless otherwise specified in the *service description*.
- **special** means a *special* promotion or offer made by *us* in connection with the *service*.
- **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*.

- **Swoop Mobile owned equipment** means any equipment or cabling *we*, or *our personnel*, may provide or lease to *you* to use in connection with the *service*.
- **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 XIB, PART XIC and related provisions of the *Competition and Consumer Act*, including the *Australian Consumer Law*.
- **tethered modem** refers to the use of a mobile phone as a modem when connected to a computer or laptop, enabling connection to the internet over a mobile *network*. The connection to the computer or laptop may be either with cables or wireless. Use of a mobile phone as a *tethered modem* requires both an active mobile *service* together with a *tethered modem* data plan.
- **Trade Practices Act** means the *Trade Practices Act* 1974 (Cth).
- **yearly billing cycle** means a billing cycle of yearly length that begins on your *service start date* and restarts one year later
- **you** means the person who fills out the *application* (*your* and *yours* are to be construed accordingly). Only one person may fill out the *application*.
- **your statutory rights as a consumer** means *your* rights and remedies as a *consumer* under the *Australian Consumer Law* (see the explanatory box at clause 14.2 of these *consumer terms*).
- **we** means *Swoop Mobile* specified in the *service description* as supplying the *service* (and *us* and *ours* is to be construed accordingly).
- **we, us** and **our** means Telcopay Pty Ltd (ACN: 610 525 856) trading as Swoop Mobile.
- **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*.

18.2 Interpretation

- a) The following words have the same meanings 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 inclusions 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, amendment, re-enactments, or replacement of any of them.
- g) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.