

## mate communicate general terms june 2018

### 1. introduction

- (a) These are the Mate standard terms for consumers who connect to a service with Mate on or after 1 June 2018.
- (b) Your Agreement with Mate consists of these general terms, as well as your Application, the service description, the pricing tables and the appendices. In order to understand your rights and obligations, Mate recommends that you read all of the documents that relate to you and the service you select.
- (c) The service description is a detailed description of the services offered by Mate, including the different features, options and availability of a service.
- (d) The pricing tables set out the fees or charges for your use of the service that Mate may charge you, as well as other information such as eligibility criteria and specific details of any pricing plans and some specials that Mate may have on offer. Mate recommends that you carefully check the pricing tables so you know what fees and charges apply to your use of the service.
- (e) The appendices contain additional information that may apply to your use of the service, such as information about other call charges and our usage policies (including our Fair Use Policy). You will be referred to an appendix by the pricing tables or these general terms that is relevant to the service you have chosen.
- (f) All of the information contained in these General Terms, service descriptions, pricing tables and appendices can also be found on our website, which is: [www.letsbemates.com.au](http://www.letsbemates.com.au).

### 2. the agreement

#### 2.1 The Agreement

- (a) The Agreement is made up of:
- (i) Your application,
  - (ii) These general terms,
  - (iii) The service description,
  - (iv) The pricing tables, and
  - (v) The appendices.
- (b) The Agreement is a non fixed-length Agreement.

#### 2.2 Priority in the event of inconsistency between the different parts of the Agreement

- (a) Where there is an inconsistency between a provision in these General Terms, and provision in another part of the Agreement, then unless otherwise stated these General Terms prevail to the extent of the inconsistency.
- (b) The terms contained in Clause 14 of these General Terms prevail over all other terms

#### 2.3 Commencement

The Agreement commences on the service start date. If you are a new or existing customer and you have not activated

your service within 5 business days of the Application being approved, Mate may then activate the service automatically and without further notice.

#### 2.4 When does Mate commence providing the service to you under the Agreement?

Mate will commence providing the service to you under the Agreement from the service start date. As soon as Mate accepts your application and you give us any valid user information asked for, Mate will connect you to the service and Mate will open an account in your name or add your service to an existing account held by you.

#### 2.5 Term of the Agreement

(a) Where the Agreement is a not for a fixed term, Mate will continue to deliver the service to you in accordance with the Agreement until the service is cancelled in accordance with clause 12, 'Cancelling the service', below.

#### 2.6 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. amending the agreement

#### 3.1 Our right to amend the Agreement

Mate can make any type of amendment to an Agreement if:

- (a) The amendment will benefit or will not adversely affect you;
- (b) You agree to the amendment; or
- (c) Mate reasonably expects the amendment to adversely affect you and gives you reasonable notice of the amendment.

#### 3.2 How does Mate determine that an amendment will affect you?

Mate considers that an amendment will affect you if you have used or been billed for the service affected by the amendment during the 6 months before our notice and Mate considers that the amendment will have more than a minor detrimental affect on you.

#### 3.3 Notice in writing

When Mate is required to give you a notice in writing under clause 3.5 below of an amendment to the Agreement, Mate can do so by giving it to you in person, sending it to you by mail or to your email address, by bill message or bill insert, or in the case of prepaid services, by making the information available on our website or at retail outlets and informing you (by recorded message, text message or in writing) of how to obtain information about the amendment.

#### 3.4 Fair terms

(a) When Mate is required to give you notice of an amendment

on fair terms Mate will:

- (i) Give you at least 21 days notice in writing of the amendment before the amendment occurs; and
- (ii) Offer you the right to cancel the service within 42 days from the date of our notice in writing.

(b) If you choose to cancel the service under clause 3.4(a)(ii) above:

(i) MAtE 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); and

(ii) You will only have to pay:

(A) Your usage charges or minimum monthly spend (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.

(c) If you have overpaid for the service because:

- (i) The service is cancelled during a billing cycle; or
- (ii) The amendment 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, Mate will use reasonable endeavours to notify you that you have overpaid and refund the overpayment.

### **3.5 Amendments that are likely to benefit you or have a neutral or minor detrimental affect on you**

(a) If you can demonstrate that such a amendment has had more than a minor detrimental affect on you and the amendment is not of a type described in paragraph 3.6 Mate:

(i) Will offer you the right to cancel the service without incurring fees or charges other than:

(A) Usage charges or your minimum monthly payment (incurred to the date on which the service is cancelled, which is the date on which you notify us you wish to cancel the service); and

(B) Any outstanding amounts that cover installation costs or equipment charges (where the equipment can be used in connection with services provided by any third party); and

(ii) May offer you an alternative remedy to address the affect the amendment has had on you.

### **3.6 How can you amend anything in the Agreement?**

Unless expressly otherwise stated in the Agreement, you cannot make any amendments to the Agreement without first obtaining the prior written consent of Mate.

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

### **4.1 What is the service?**

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

### **4.2 Who does Mate connect to the service?**

Our services are designed for consumers only. Mate only offers the service to customers who are consumers.

### **4.3 When may Mate refuse your application?**

Mate may refuse your application if:

- (a) You are not a consumer; or
- (b) You do not provide satisfactory proof of identification; or
- (c) You do not meet the eligibility criteria for the service; or
- (d) The service is not available at the location where you wish to connect the service; or
- (e) You do not have an appropriate credit rating.

## **5. dealing with personal information**

### **5.1 Collection, use and disclosure**

(a) Mate may collect, use and disclose your personal information to decide whether to start, stop or limit supply to you of personal credit, the service or any products and services offered by Mate or its related companies.

(b) Mate may collect, use and disclose your personal information (which may include, for example, numbers called, time of call, location of call) for purposes related to the delivery 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 other products and services offered by Mate, its related companies and other organisations.

(c) Mate may collect, use and disclose your personal information (which may include, for example, numbers called, time of call, location of call) for the purposes in paragraphs (a) and (b) above to or from:

- (i) A credit reporting agency or credit provider;
  - (ii) Another related corporation of Mate;
  - (iii) Third parties who are not related to Mate, including third party suppliers, agents of Mate, affinity partners, dealers, contractors and franchisees;
  - (iv) Suppliers who need access to your personal information to provide Mate with services to allow delivery of the service to you; and
  - (v) Joint venture partners of Mate and its related corporations.
- (d) Mate may be permitted or required by applicable laws to collect, use or disclose your personal information (which may include, for example, numbers called, time of call, location of call), including disclosure to:
- (i) The operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data;
  - (ii) Emergency services organisations; and
  - (iii) 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 Customer Service to make a request to opt out. Mate will not charge you for processing a request to opt out.

### **5.3 Being able to correct your personal information**

If you are an individual, you are entitled to:

- (a) Gain access to your personal information held by Mate, unless Mate is permitted or required by any applicable Law to refuse such access; and
- (b) Correct any personal information held by Mate.

#### 5.4 Supplying your personal information

If you do not supply part or all of the personal information that Mate reasonably requests from you, then Mate may refuse to provide, or limit the provision of, personal or commercial credit to you, or the service.

#### 5.5 Consent

By supplying your personal information to Mate and obtaining the service, you acknowledge and consent to the collection, use and disclosure of your personal information as set out in this clause 5 and in accordance with Mate's privacy policy. You may view the Mate Privacy Policy on the Mate website

#### 5.6 Recording of calls

Mate may record all incoming calls to us. If you do not consent to your call being recorded, you may advise the operator at the start of the call. There are some transactions that Mate is required by law to record. MAtE may not be able to assist you with these if you do not consent to Mate recording your call.

#### 5.7 Keeping your password confidential

You must keep confidential any password, code or personal identification number (or PIN) that you choose or Mate gives you to use in connection with the service.

#### 5.8 Secondary contacts

You consent to mate:

- (a) Disclosing any information in relation to your account to; and
- (b) Changing information in relation to your account in response to a request from, any person who can quote your password, code or PIN or any person you have authorised to be a secondary contact in relation to your account.

You consent to you and any person you have authorised to be a secondary contact or person who enters your password, code or PIN, being able to access your account information on the Mate website

## 6 USING THE SERVICE

### 6.1 Connecting the service

You must reasonably co-operate with Mate to allow us, or a supplier, to establish and deliver the service to you safely and efficiently. If you do not do so, Mate may be entitled to cancel the service under clause 12.3(a)(v) or (vi) or suspend the service under clause 13.1(vii) or (viii).

### 6.2 Quality of the service

Mate will deliver the service to you with all due care and skill and will endeavour to make the service available to you at all times. However, at times the quality and availability of the service may be affected by factors outside Mate's control, such as weather and faults in phone networks. Also, the network and

the service may from time to time need upgrading, maintenance or other work during which the service could be interrupted or unavailable. In the event of unexpected faults Mate will use reasonable endeavours to ensure the service is restored as soon as possible.

### 6.3 Blocking Calls

Mate may block access to a number (other than an emergency service number) if Mate reasonably requires this to be done for technical, operational or commercial reasons.

### 6.4 Permitted uses of the service

(a) When you use the service, you must comply with:

- (i) All applicable Laws;
  - (ii) All directions by a Telecommunications Regulator;
  - (iii) All notices issued by authorisation of or under a relevant Law (for example, under the Copyright Act 1968 (Cth)); and
  - (iv) All reasonable directions given to you by Mate.
- (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); or
  - (ii) To transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (iii) To access or send any "prohibited content" (as defined in the Broadcasting Services Act 1992) or for other unlawful purposes or knowingly or negligently allow any other person to do so; or
  - (iv) To expose Mate to liability, or
  - (v) In any way that damages, interferes with or interrupts the service, or the network used to supply the service.

(c) Mate may ask you to stop doing something that Mate reasonably believes is contrary to paragraph (b) above. You must immediately comply with any such request. If you fail to do so, then Mate may take any steps reasonably necessary to ensure compliance by you with paragraph (b) above or the request.

(d) You acknowledge that, where the service is a carriage service, Mate, 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 6.4, Mate 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).

### 6.5 Unusually high use

Mate may contact you if Mate 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 Mate are under no obligation to do so unless the Fair Use Policy applies. For example, if you suddenly make an unusually high volume of calls to international destinations using the service Mate may contact you to determine whether that use is likely to continue.

If so, Mate may ask you to make a pre-payment usage charge under clause 3.5 of the service description. Please note that Mate may also be entitled to bar or suspend the service under

clause 13.1(a)(iv) for an unusually high use of the service, or under the Fair Use Policy for a breach of that policy.

### 6.6 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.

### 7.1 Your responsibilities in relation to equipment

(a) You must ensure that all equipment you use in connection with the service and the way you use that equipment complies with:

- (i) All applicable Laws;
  - (ii) All directions by a Telecommunications Regulator;
  - (iii) All notices issued by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)); and
  - (iv) All reasonable directions given to you by Mate
- (b) If you breach paragraph (a) above, Mate may:
- (i) Disconnect the equipment from the service;
  - (ii) Suspend the service in accordance with clause 12.3(a)(v) or 12.3(a)(vi); or
  - (iii) Cancel the service in accordance with clause 13.1(a)(vii) or 13.1(a)(viii).

(c) Mate will try to give you reasonable notice before Mate disconnects the equipment under paragraph (b)(i) above, but Mate may disconnect the equipment, suspend the service or cancel the service immediately if there is an emergency.

### 7.2 Ownership of the Equipment

(a) Equipment owned by Mate.

(i) Any equipment owned by Mate remains the property of Mate at all times.

(ii) Subject to your statutory rights as a consumer, you are responsible for any equipment owned by Mate as and from the date on which you receive it.

(iii) You must not mortgage or grant a charge, lien or encumbrance over any equipment owned by Mate

(b) You may, but are not obliged to, purchase equipment from Mate or any of our personnel to use in connection with the service.

(c) You may purchase equipment from a third party to use in connection with the service.

(d) You can purchase equipment from Mate or any of our personnel to use in connection with the service:

- (i) By paying for the equipment in one payment at the point of sale, or
  - (ii) By any other means advised by Mate from time to time.
- (e) All equipment used in connection with the service, must be of a kind, make and model approved by Mate.

### 7.3 Installation of the equipment

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

### 7.4 Maintenance and repair of any equipment owned by Mate

Unless both parties agree otherwise, you must only allow our personnel or a third party supplier referred by Mate to service, modify, repair or replace any equipment owned by Mate.

### 7.5 Lost, stolen and damaged equipment

(a) You are responsible for any lost, stolen or damaged equipment owned by Mate, unless Mate or our personnel cause it.

(b) You will be responsible for any outstanding payments for equipment that you have purchased from Mate or our personnel, even when that equipment is lost, stolen or damaged, unless Mate or our personnel cause it.

## 8. network maintenance, fault reporting and rectification

### 8.1 Maintenance on the network used to deliver the service

Maintenance may be conducted on a network used to deliver the service.

### 8.2 Reporting faults

(a) Mate will provide a fault reporting service for you to report faults.

(b) Before you report a fault to Mate, you must take all reasonable steps to ensure that any equipment that is not equipment owned by Mate does not cause the fault.

### 8.3 Assisting Mate in investigating and repairing a fault

You must provide all reasonable assistance to enable Mate or our personnel, or where necessary a third party supplier referred by Mate, to investigate and repair a fault.

### 8.4 Mate's responsibility for repairing faults in the service

(a) Unless the service description expressly provides otherwise, Mate is not responsible for repairing any fault in the service where the fault arises in or is caused by:

- (i) A network fault; or
- (ii) Equipment that is not owned by Mate; or
- (iii) Facilities outside the Mate network.

(b) Where:

- (i) The fault arises in or is caused by a supplier's network;
- (ii) Mate becomes aware of the fault; and
- (iii) Mate is not responsible for the repair of that fault, Mate will notify the supplier of the fault and request that the fault be corrected promptly, but Mate will not bear any further liability or responsibility arising from the fault.

(c) Where the fault arises in or is caused by equipment that is not owned by Mate, Mate is not responsible for the repair of that fault. If you ask Mate to investigate and repair such a fault:

- (i) Mate will give you an estimate of the probable cost of investigating the fault and, if you agree to pay those costs, Mate will undertake an investigation and Mate will then charge you for the cost of investigation;
- (ii) If Mate has investigated the fault, Mate will use reasonable endeavours to inform you of the fault's probable cause; and
- (iii) If you request Mate to repair the fault and Mate

agrees to repair the fault, Mate will give you an estimate of the probable cost of repairing the fault and Mate will then charge you for the actual cost of repairing the fault, which you hereby agree to pay.

(d) If Mate investigates a fault and determines that the fault is attributable to an excluded event, then Mate may still charge you for any costs that Mate has incurred in investigating and, if applicable, repairing the fault.

### 8.5 Loss of access

If the fault results in a significant and sustained loss of access to, or use of, the service, you should check if you are entitled to a refund or rebate under clause 11.4 below. You may also be entitled to cancel the service under clause 12.1(a)(ii)(A) below.

## 9. specials

(a) Mate may offer you a special offer from time to time (including a special offer in relation to a particular pricing plan).

(b) Mate will notify you of any specials offered to you either through general advertising or by specifically advising you. The terms of each special offer will be set out in the pricing table for the relevant service, in an appendix, in advertising material, or you will be advised separately in writing.

(c) A special offer may be an offer to vary the price or the terms of delivery (including the minimum term) and it may be subject to certain conditions.

(d) If you accept a special offer, the terms of the special offer, subject to the Fair Use Policy, will prevail to the extent that the terms of the special offer are inconsistent with the terms of this Agreement. Otherwise, the terms and conditions of this Agreement will continue to apply to the special offer.

(e) After the special offer expires, Mate may end the special offer and the full terms and conditions of this Agreement will once again apply.

(f) Where Mate provides you with discounted calls, text and photo messaging rates for text and photo messages sent to another Mate customer ("TC 2 TC") those rates are not available for bulk commercial use.

(g) Where Mate provides you with a special call rate to another Mate mobile phone number and that number ceases to be a Mate mobile phone number for any reason, the special call rate will no longer apply to calls to that number.

## 10. taxes (including gst)

(a) Unless otherwise indicated, the fees and charges set out in this

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 Mate in relation to, or on any, supply under or in connection with this Agreement, Mate 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. complaints and disputes

### 11.1 How to make a complaint

(a) If you have any complaints in connection with the service, you may complain in writing (including by sending an email to [feedback@mate.com.au](mailto:feedback@mate.com.au)) or by calling Mate on 1300MATE.

(b) Mate will handle your complaint in accordance with Mate's Complaints Handling Policy. You may view this Policy on Mate's website: [www.mate.com.au/legal/feedback](http://www.mate.com.au/legal/feedback)

(c) Mate will use its best endeavours to resolve your complaint. However, if Mate is not able to resolve your complaint to your satisfaction, you can refer your complaint to the Telecommunications Industry Ombudsman, the Department of Fair Trading or The Department of Consumer Affairs in your State or Territory, or to the Office of the Federal Privacy Commissioner.

### 11.2 Suspending payment obligations

(a) Where your complaint is about a fee or charge for the use of the

service, provided Mate reasonably believes your complaint is bona fide, Mate will:

(i) In most cases, suspend your payment obligation for that fee or charge only, until the complaint has been investigated and resolved; or

(ii) If you pay by direct debit, reverse any incorrect fees or charges that have been applied to your account, once the complaint has been investigated and resolved.

(b) All other fees and charges that are not in dispute remain due and payable in accordance with this Agreement.

### 11.3 Financial hardship policy

The Mate Financial Hardship Policy contains information about how Mate can assist customers who are experiencing financial hardship. You can view the Policy at [www.mate.com.au/legal](http://www.mate.com.au/legal) or have a copy sent to you by calling Mate on 1300MATE.

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

(a) Where your complaint is about a significant loss of access to, or

use of, the service and the loss was not as a result of circumstances reasonably attributable to you or equipment that Mate is not responsible for, you:

(i) Will be entitled on request to a refund or a rebate of any minimum monthly payment for the period in which your access or use was interrupted (including when an intervening event occurs); and

(ii) May be entitled to cancel the service under clause 12.1(a)(ii)(A) below.

(b) You should contact Customer Service to lodge your complaint.

## 12. cancelling the service

### 12.1 Your right to cancel the service

(a) You may cancel the service at any time by:

(i) Giving Mate notice in writing or advising via telephone (please note that you are required to give us this notice if you do not wish to continue to use the service after the end of the minimum term of a fixed-length Agreement, otherwise Mate will continue to supply the service to you – see clause 2.6(b) above), or

(ii) Giving Mate notice in writing, if:

(A) Mate breaches a material term of this Agreement and Mate cannot remedy that breach, including where there is a significant and sustained loss of access to, or use of, the service and the loss was not as a result of circumstances reasonably attributable to you or equipment not owned by Mate; or

(B) Mate breaches a material term of this Agreement and Mate can remedy that breach, but Mate does not remedy that breach within 30 days after you give Mate notice in writing requiring Mate to do so; or

(C) Any intervening event prevents the supply of the service in accordance with this Agreement for more than 14 days.

(b) If this Agreement is an unsolicited consumer Agreement regulated by *the unsolicited consumer Agreement provisions of the Australian Consumer Law*, you may also cancel the service:

(i) In accordance with any additional termination rights you may have relating to unsolicited consumer Agreements under the Australian Consumer Law. Details about these additional rights to cancel the Agreement are set out in the information provided to you at the time that you complete your Application.

### **12.2 Mate's right to cancel the service - non fixed-length Agreement**

If the Agreement is a non fixed-length Agreement, Mate may cancel the service at any time by giving you at least 30 days notice.

### **12.3 Mate's right to cancel the service - non fixed-length Agreement and fixed-length Agreement**

(a) Mate may cancel the service at any time, if:

(i) There is an emergency;

(ii) Mate reasonably suspects fraud by you or any other person in connection with the use of the service;

(iii) Any amount owing to Mate 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 Mate gives you notice in writing requiring payment of that amount to be made, and you fail to pay that amount in full within ten (10) business days after Mate gives you that notice;

(iv) Mate reasonably considers you a credit risk because you have not paid amounts owing to Mate or any related corporation, 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 in writing requiring payment of that amount to be made to that related corporation and you fail to pay that amount in full within the required period;

(v) You breach a material term of this 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 the service) and you cannot remedy that breach;

(vi) You breach a material term of this Agreement (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.4 above or your obligations relating to the use of the service set out in the service description or otherwise misuse the service) and you can remedy that breach, and you do not remedy that breach within 30 days after Mate gives you notice in writing requiring you to do so;

(vii) Mate are required to comply with an order, instruction, request or notice of a Telecommunications Regulator (for example under the numbering regulations), an emergency services organisation, any other competent authority, by authorisation of or under any applicable Law or under any applicable industry code,

(viii) You suffer an insolvency event and Mate reasonably believes that Mate is unlikely to receive payment for amounts due from you;

(ix) You die, or if you are a partnership and the partnership is dissolved, or an Application is made to dissolve the partnership, or you are a corporation and the corporation is wound up, or an Application is made to wind up the corporation, and Mate reasonably believes that Mate is unlikely to receive payment for amounts due from you;

(x) The service is suspended for more than 14 days, unless otherwise set out in this Agreement;

(xi) Any intervening event prevents the delivery of the service in accordance with this Agreement for more than 14 days;

(xii) The Telstra Wholesale network is no longer made available to Mate; or

(xiii) Mate is otherwise entitled to do so under this *Agreement*.

(b) Mate may cancel the service under paragraph (a) above as soon as Mate give you notice in writing of its intention to do so, unless otherwise set out in this Agreement. Mate will give you as much prior written notice as Mate reasonably can before Mate cancels the service. However, Mate may cancel the service immediately if there is an emergency.

### **12.4 Multiple services**

If you have more than one service with Mate and you are in breach of your Agreement under any service, Mate has the right to cancel all of your services if the breach is not rectified and if there are reasonable grounds for Mate to believe your continued use of that service represents a credit risk to Mate.

### **12.5 How can you cancel the service?**

(a) You can ask Mate to cancel the service by calling us or sending us an email. Your call or email will be deemed as your notice to cancel the service.

(b) You may also be able to cancel the service by electing to have an equivalent service to the current service delivered by another carrier or carriage service provider (including, by transferring or porting). That carrier or carriage service provider will inform Mate that you have elected to have the relevant service delivered by them or have it transferred to them and Mate will then cancel the service immediately.

## 12.6 When will the service be cancelled?

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

## 12.7 What happens when the service is cancelled?

(a) This Agreement terminates when the service is cancelled.

(b) If the service is cancelled:

(i) You are liable for any charges incurred up to, and including on, the cancellation date and any cancellation fee or early termination fee. You should check the service description and pricing tables for your service (and relevant advertising material) for details of any applicable cancellation fee. You will not be liable for any such charges under this subsection if you cancel the service in accordance with clause 12.1(b)(i) above.

(ii) Because an intervening event prevents the delivery of the service in accordance with this Agreement for more than 14 days (under clause 12.1(a)(ii)(C) or 12.3(a)(xi) above). You are liable for any charges incurred up to the cancellation date. However, unless it is fair and reasonable for us to do so, Mate will not charge you any cancellation fee in these circumstances.

(iii) You authorise Mate to apply any over payment on your account and/or money that you have paid in advance for the service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee, if any).

(iv) Subject to paragraph (ii) above and unless otherwise set out in the service description (for example Mate may not refund or redeem for cash any included call credits on a postpaid service), Mate will on request 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 by cheque, unless you have paid by credit card in which case the refund will be processed back to that credit card.

(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 Mate to debit any undisputed outstanding charges (including any cancellation fee, if any) from your credit card or bank account.

(c) If you wish to reinstate the service you should contact Mate. If the service is cancelled as a result of circumstances reasonably attributable to you and Mate reinstates the service, then you may be required to pay to Mate a reconnection or reactivation fee.

(d) 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 12.7.

## 13. suspending the service

### 13.1 Mate's right to suspend the service

(a) Mate may suspend the service at any time, if:

(i) There is an emergency; or

(ii) Doing so is necessary to allow Mate or a supplier to repair, maintain or service any part of Mate's network or a supplier's network used to deliver the service; or

(iii) Mate reasonably suspects fraud by you or any other person in connection with the use of the service; or

(iv) Mate reasonably believes there has been an unusually high use of the service or otherwise in accordance with the Fair Use Policy; or

(v) Any amount owing to Mate in respect of the service (which is not the subject of a valid dispute under clause 12.2 above) is not paid by its due date and Mate gives you notice in writing requiring payment of that amount and you fail to pay that amount in full within ten (10) business days after Mate gives you that notice in writing, unless otherwise set out in this Agreement; or

(vi) Mate reasonably considers you a credit risk because you have not paid amounts owing to Mate or any Mate group company (which is not the subject of a valid dispute under clause 12.2 above) in respect of any service by its due date and you are given notice in writing requiring payment of that amount by that Mate group company and you fail to pay that amount in full within the required period; or

(vii) You breach a material term of this 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 the service or breach clause 7.1 above, and you cannot remedy that breach; or

(viii) You breach a material term of this 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 or breach clause 7.1 above, and you can remedy that breach, and you do not remedy that breach within 30 days after Mate gives you notice in writing requiring you to do so; or

(ix) Mate is required to do so to comply with an order, instruction, request or notice of a Telecommunications Regulator, an emergency services organisation, any other competent authority or by authorisation of or under any relevant Law, or any relevant Industry Code; or

(x) Problems are experienced interconnecting Mate's network with any supplier's network; or

(xi) You suffer an insolvency event and Mate reasonably believe Mate is unlikely to receive payment for amounts due; or

(xii) You die or if you are a partnership and the partnership is dissolved or an Application is made to dissolve the partnership, or you are a corporation and the corporation is wound up or an Application is made to wind up the Corporation, and Mate reasonably believe Mate are unlikely to receive payment for amounts due; or

(xiii) Mate are otherwise entitled to do so under this Agreement.

(b) Mate may suspend the service under paragraph (a) above as soon as Mate give you notice in writing of its intention to do so, unless otherwise set out in this Agreement. Mate will give you as much prior written notice as Mate reasonably can before Mate suspends the service. However, Mate may suspend the service immediately if there is an emergency.

(c) If Mate suspends the service, Mate may later cancel the service for the same or a different reason.

### 13.2 Multiple services

If you have more than one service with Mate and you are in breach of your Agreement under any service, Mate has the right to suspend all of your services if the breach is not rectified and if there are reasonable grounds for Mate to believe your continued use of that service represents a credit risk to Mate.

### 13.3 What happens when the service is suspended

(a) If you have a fixed-length Agreement and:

- (i) Mate agrees to suspend the service, at your request; or
- (ii) Mate suspends the service in accordance with clause 13.1(a)(ii) – (viii) or as Mate is otherwise permitted to do under the Communications Alliance Telecommunications Consumer Protection Industry Code, the period for which your service remains suspended will not count towards the minimum term; and
- (iii) The calculation of the minimum term will recommence when your service is reactivated. The first bill you receive after your service is reactivated will include any applicable equipment charges (such as phone instalments) for that month and your minimum monthly payment on a pro-rata basis for the period your service was suspended.

(b) You remain liable for all charges due under this Agreement throughout any period of suspension.

(c) You can still make calls to emergency services during any period of suspension.

(d) If the service is suspended, your minimum monthly payment and equipment charges will also be suspended for the period of the service suspension.

(e) If the service is suspended and the suspension was not as a result of circumstances reasonably attributable to you or equipment not owned by Mate, you will be entitled upon receipt of a written request to a refund or a rebate of any monthly service charges for the period of suspension. You should contact Customer Service for your refund or rebate.

(f) If the service is suspended as a result of circumstances reasonably attributable to you, you may have to pay Mate a suspension fee. You should check the relevant pricing table for the service concerned to see if a suspension fee applies.

(g) If the service is suspended under clause 13.1(a)(v) Mate will reactivate the service on receipt of payment of the full amount owing.

(h) If you wish to lift the suspension you should contact Mate. If the service is suspended as a result of circumstances reasonably attributable to you and Mate reactivates the service, you may have to pay Mate a reconnection or reactivation fee.

(i) If you ask Mate to suspend your use of the service and Mate does not agree to do so, you must still pay any remaining equipment charges by their due date for payment.

## 14. what are you and mate liable for

### 14.1 Your liability to Mate

(a) You are liable to Mate for any breach of this Agreement by you that causes foreseeable substantial loss to Mate.

(b) You are not liable to Mate for any consequential losses Mate suffers or for any costs, expenses, loss or charges that Mate

incurs, which are not a direct result of something you have done.

(c) If you did not purchase the service from Mate for personal use, Mate excludes all liability to your end users (in contract, tort (including negligence), statute or otherwise so far as the law permits). If an end user makes a claim against Mate in relation to:

- (i) The use (or the attempted use) of your service; or
- (ii) Equipment used in connection with your service,

you indemnify Mate against (and must pay Mate for) any loss or damage Mate suffers in connection with that claim, including legal costs on a solicitor and client basis.

### 14.2 Mate's liability to you

(a) Mate has 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) Applicable Laws, Regulations and Codes.

Nothing in this 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.

Mate guarantees that:

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

If the goods or services Mate supplies fail to meet a consumer guarantee, you may have rights against Mate. This may include the right to a repair, replacement or refund. In certain circumstances Mate may choose how Mate remedies its failure. In other circumstances, you may choose how the failure should be remedied.

You may not be entitled to a refund or replacement under the Australian Consumer Law if the goods are not rejected within a reasonable period; you have lost, destroyed or disposed of the goods; or the goods have been damaged after delivery. You may be entitled to recover reasonably foreseeable loss or damage

suffered for Mate's failure to meet a consumer guarantee.

(b) Mate is liable to you for:

(i) Any damage to your property which has been caused by the fault, negligence or fraud by Mate or Mate's personnel during installation, repair or maintenance;

(ii) Interruptions in your use of the service as a result of a fault or negligence of Mate, or Mate's personnel, to the extent of a refund or rebate for the period of the interruption and, where required by Law, for compensation for any reasonable loss incurred by you;

(iii) Death or personal injury caused by Mate or Mate's personnel.

(c) If you have contributed to any loss or damage you are claiming against Mate, the liability of Mate is reduced to the extent of your contribution.

(d) Subject to your statutory rights as a consumer, Mate is not liable to you for any consequential losses you suffer or for any costs, expenses, loss or charges that you incur.

(e) To the extent permitted by Law, Mate's total liability for loss that is not covered by or excluded or limited by clauses 14.2(a) to 14.2(e) is limited in aggregate for any claim or series of connected claims to \$5 million.

## 15. assigning the agreement to a third party

### 15.1 How can Mate assign its responsibilities to a third party

(a) Mate may assign some or all of its rights under this Agreement (where those rights are assignable) to any person.

(b) Mate may transfer some or all of its obligations under this Agreement to any Mate related body corporate that is able to perform those obligations.

(c) Mate may perform any of its obligations under this Agreement by arranging for them to be performed by another person, including a supplier or another Mate related body corporate. Mate will still be responsible for the performance of the obligations. 15.2 How can you assign your responsibilities to a third party

(a) You may assign your rights under this Agreement (where those rights are assignable), so long as you have Mate's prior written consent to do so.

(b) You may transfer your obligations under this Agreement if:

(i) The person to whom you are transferring the obligations:

(A) Is a consumer;

(B) Provides satisfactory proof of identification;

(C) Meets the eligibility criteria for the service;

(D) Has an appropriate credit rating; and

(ii) The service is available at the location where they wish to acquire the service.

## 16. general

### 16.1 Which laws and courts govern this Agreement?

(a) This Agreement is governed by the Laws of the State of New South Wales.

(a) You and Mate submit to the exclusive jurisdiction of the Courts of New south Wales, and any Appellate Courts. 16.2 Intellectual Property Protections

(a) Mate owns all material (including Intellectual Property Rights) developed by Mate or Mate's personnel, or at Mate's direction.

(b) Mate may permit you to use this material, or other material licensed by Mate, as part of the service. This permission is subject to any conditions which Mate 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, Mate may suspend the service under clause 13.1(a)(vii) or (viii) or cancel the service under clause 12.3(a)(v) or (vi).

### 16.3 Events outside your or Mate's control

(a) If an intervening event occurs which prevents you (or any of your personnel) from performing any of your obligations under this Agreement (other than an obligation to pay money), then you will not be liable for failing to perform that obligation. You must notify Mate of the intervening event and use your best efforts to resume performance in accordance with this Agreement as soon as reasonably possible. Mate's obligations continue during the intervening event, except if Mate is not able to perform its obligations because you are unable to perform your obligations due to the intervening event.

(b) If an intervening event occurs which prevents Mate (or any of Mate's personnel) from performing any of Mate's obligations under this Agreement (other than an obligation to pay money), then Mate will not be liable for failing to perform that obligation. Mate must notify you of the intervening event and use its best endeavours to resume performance in accordance with this Agreement as soon as reasonably possible. Your obligations continue during the intervening event, except if you are not able to perform your obligations because Mate is unable to perform its obligations due to the intervening event.

### 16.4 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, Mate may immediately cancel the service by giving you notice.*

### 16.5 When does Mate waive a right Mate has under this Agreement?

If you breach this Agreement and Mate does not exercise a right that Mate has because of your breach, Mate does not necessarily waive its entitlement to exercise that right because of your breach at any later time.

### 16.6 Payment of commission by Mate

Mate may pay a commission to any of its personnel in connection with this Agreement.

### 16.7 Directory Assistance

Directory Assistance is available by calling 1223. Please refer

to the pricing tables for further details and pricing for the 1223 service.

#### **16.8 Information about your rights**

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

#### **16.9 Contacting Mate**

Customer Service: By phone: 1300 876 283

On the internet: [www.letsbemates.com.au](http://www.letsbemates.com.au)