

### Part A – General Terms for BigPond services

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#### 1 About this Part

##### Our Customer Terms

- 1.1 This is the BigPond service section of Our Customer Terms.
- 1.2 Subject to clause 1.3, the General Terms of Our Customer Terms do not apply to this Part.
- 1.3 Even if the General Terms of Our Customer Terms have been excluded or are otherwise inconsistent with something in this BigPond service section, clause 16 of the Consumer General Terms (relating to compliance with the *Online Safety Act 2021* (Cth)) apply to this section as though the relevant clause was set out in full here (notwithstanding if you would otherwise be classified as a small business or corporate customer).

##### Parts of the BigPond service section

- 1.4 The BigPond service section is divided into separate documents:
- (a) Part A – General Terms for BigPond services;
  - (b) Part B – Cable;
  - (c) Part C – ADSL;
  - (d) Part D – Wireless Broadband;
  - (e) Part E – Satellite;
  - (f) Part F – BigPond Additional Services;
  - (g) Part H – Special Offers.

##### Group members or administrators

- 1.5 If you have signed up to a group administrator account (“**group administrator**”) or have been nominated by a group administrator to use a service on a group administrator account (“**group member**”), the terms of this Part may apply differently to you. Please see clauses 18 and 19 for more information about how these terms apply to you.

##### Meaning of “you” and “us”

- 1.6 In this BigPond service section of Our Customer Terms:
- (a) “**you**” and “**your**” mean the customer (including a group administrator and a group member where applicable); and
  - (b) “**we**”, “**us**” and “**our**” means

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- (i) until 1 January 2023, Telstra Corporation Limited ABN 33 051 775 556;
- (ii) on and from 1 January 2023, Telstra Limited ABN 64 086 174 781.

and employees; as well as their agents, sub-agents and their respective employees.

#### Service commencement

1.7 Your service commences on the following dates:

- (a) if you have an ADSL or Cable service and you choose professional installation, the date on which we install the broadband transmission facilities on your premises;

**Broadband transmission facilities** has the meaning given to it in clause 11 of this Part.

- (b) if you have a Cable or Wireless Broadband service and you choose to self-install, the earlier of:

- (i) the date you (or, if you are a group administrator, your group member) first use your service;
- (ii) 21 days after we notify you that your service has been activated (if you or your group member already have the equipment); or
- (iii) 21 days after we notify you of the expected delivery date of your self-installation kit;

- (c) if you have an ADSL Broadband service and you choose to self-install, the date of activation that we provide you when you sign up to your service. If this date changes we will make reasonable efforts to inform you of the change;

- (d) if you have a Satellite service, the date of activation of your satellite broadband transmission facilities;

**Satellite broadband transmission facilities** has the meaning given to it in clause 2 of Part E of the BigPond service section.

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## 2 Acceptable use policy

### Introduction

2.1 You must comply with this acceptable use policy when you use your service.

2.2 A reference to "you" in this acceptable use policy includes a reference to your officers, employees, contractors, agents and anyone else (other than us or our representatives) who uses the service. If you are a group administrator, it also includes your group members.

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- 2.3 A reference to "us" in this acceptable use policy includes a reference to Telstra or our related bodies corporate which provide the relevant service.

#### **What you cannot use the service for**

- 2.4 You must not use the service, attempt to use the service or allow the service to be used in any way:

#### ***Your breach of Our Customer Terms or law***

- (a) which causes you to breach any applicable part of Our Customer Terms, or to breach a law (including a foreign law), a code or an instrument which governs your conduct;

#### ***Our breach of law***

- (b) which could cause us to breach, or be involved in a breach of law (including infringement of copyright and a foreign law), a code or an instrument which governs our conduct;

For more information on copyright infringement see the "Copyright Compliance" section of the BigPond website.

#### ***Our liability to third parties***

- (c) which could result in us incurring a liability to any person;

#### ***Interference***

- (d) which could interfere with the service, our networks or equipment or those of another person, or the provision by us of services to you or another person;

Examples of these types of activities are set out on our website at [www.bigpond.com](http://www.bigpond.com)

To avoid doubt, your ordinary use of the service will not be a breach of this clause. For example, a high level of usage on a BigPond plan with no excess usage fees or unlimited usage plan will not, by itself, be a breach of this clause.

#### ***Our reputation or brand***

- (e) to engage in conduct or activities that we consider could adversely affect or prejudice the BigPond reputation or brand; or

#### ***Usage limits***

- (f) which attempts to manipulate or bypass any limitations on the service by any means.

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#### Remedial Action

- 2.5 If you breach this acceptable use policy, we may take remedial action. We may also take remedial action if the law or a regulator or other authority requires us to do so.
- 2.6 The types of remedial action which we may take include:
- (a) for a serious breach, immediately terminating or suspending your service;
  - (b) for a non-serious breach where the consequences are serious, immediately terminating or suspending your service;
  - (c) for all other breaches, immediately suspending your service and then terminating the service if you do not remedy the breach;
  - (d) if your service involves us publishing, hosting or making available material or content provided or selected by you, removing or disabling access to that material or content;
  - (e) giving you a notice to stop the activities or conduct, or to take steps to remedy your breach;
  - (f) giving you a warning that any further repetition of the activity or conduct will result in us immediately terminating or suspending your service; and
  - (g) reporting of the activities or conduct to relevant authorities.
- 2.7 We will try to tell you before we terminate or suspend your service if it is reasonably possible for us to do so.

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### 3 Your obligations

- 3.1 You must ensure your personal computer (or “PC”) meets the requirements set out on our website.
- See <http://my.bigpond.com/internetplans/broadband/adsl/sysreq/> for ADSL connections, <http://my.bigpond.com/internetplans/broadband/cable/sysreq/> for Cable connections, <http://my.bigpond.com/internetplans/broadband/wireless/sysreq/> for Wireless Broadband connections, <http://www.bigpond.com/internetplans/broadband/satellite/sysreq/> for Satellite customers.
- 3.2 You must pay all fees and charges associated with your (and any of your group members') use of the service, in accordance with clause 5.
- 3.3 You must:
- (a) keep your account information, password, data and equipment secure;

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- (b) regularly check the default email address that we have allocated to you for messages about your service;
- (c) if you have a satellite service, ensure that any additional users comply with the acceptable use policy, as set out in section 2 of this Part;
- (d) if you have a Cable, ADSL, Dial-Up or Wireless Broadband service, ensure that any equipment provided by you does not damage the service or any of our facilities that we use to provide the service; and
- (e) comply with our reasonable directions that are necessary for us to provide the service to you.

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#### **4 Limits of the service**

- 4.1 Subject to clause 4.2 below, there are certain things that, despite our best efforts, we cannot guarantee or provide in relation to the service. These things include those set out in this clause 4. These terms do not affect your rights under consumer protection laws.
- 4.2 We will use due care and skill in providing your service in accordance with Our Customer Terms. There may also be other non-excludable statutory guarantees, implied conditions or warranties under consumer protection laws (such as the Competition & Consumer Act 2010 and State and Territory Fair Trading Acts) that cannot be excluded which may apply to goods or services we supply to consumers, including that services be fit for their purpose. However, given the nature of telecommunications systems, we cannot promise that your service will be continuous, accessible at all times or fault free.
- 4.3 The service is not available if you are a Telstra wholesale customer or an end user of a Telstra wholesale customer.
- 4.4 Where you provide your own wireless modem, router or similar device, you are responsible for any loss caused by an unauthorised interception of your service.
- 4.5 Subject to the Australian Consumer Law provisions in this BigPond service section of Our Customer Terms, we are not responsible for any loss caused by equipment provided by someone other than us.
- 4.6 We may not be able to provide detailed information about your usage (or any of your group members' usage) of the service (for example, information about what sites were visited and when).
- 4.7 We may monitor use of the service to see whether you (or any of your group members) are complying with the acceptable use policy as set out in section 2 of this Part or to investigate a breach (or suspected breach) of that policy. However, we are not under any obligation to enforce the acceptable use policy or any other policy that applies to anyone using services that we provide to them.

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### **5 Charges for your service**

5.1 If you signed up for your service:

- (a) on or after 13 December 2007 or changed your plan on or after this date, the charges for your plan are set out in the relevant Part of this BigPond service section (unless you are changing back to your original Program plan during your Program term in which case the charges will be as set out in your original BigPond Member agreement that you accepted when you signed up for your Program service). You must pay the charges for your selected plan (including any charges associated with your group members' use of the service), starting from the date your service commences; or
- (b) before 13 December 2007 and have not changed your plan on or since this date, the charges for your plan are set out in the BigPond Member agreement that you accepted when you signed up for the service.

5.2 You are responsible for and have to pay for any use of your service, whether you authorise it or not. We recommend you consider taking measures to protect yourself from unauthorised use of your service. If you have a ADSL, Cable or Satellite service:

- (a) if you do not disconnect your service when you leave your premises, you have to pay for any use of the service by later occupants or others; and
- (b) any person who uses your service, or allows someone else to use it, after you have vacated your premises, is jointly and individually liable with you for any charges relating to that use.

5.3 If you have an ADSL service, you must also pay all charges associated with your standard Telstra basic telephone service.

5.4 Unless otherwise provided in this BigPond service section, all monthly fees are payable in advance and any additional usage charges are payable in arrears. Other fees and charges that are payable by you as set out in the charges section for your plan are payable by the date on the invoice.

5.5 We process and issue invoices within 30 days of the end of each billing period.

5.6 You may choose to be billed for the service by:

- (a) nominating a Telstra account on which we will include charges for the service; or
- (b) giving us your credit card details for us to debit charges for the service, if your plan permits payment via this method; or
- (c) other billing methods that we may make available from time-to-time.



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- 5.7 If you use your credit card to pay for your service, we may:
- (a) bill all charges to your credit card on a monthly basis from the date that your service commences;
  - (b) disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details;
  - (c) take steps to verify that there is sufficient credit on your credit card account to meet likely fees; and
  - (d) charge any cancellation fee payable under the applicable parts of Our Customer Terms to your credit card.
- 5.8 If you use your credit card to pay for your service, we may also charge you a payment processing fee. Refer to your bill for the amount of the fee.
- 5.9 If you use a Telstra account to pay for your service:
- (a) we will bill all charges payable for your service to your Telstra account number (including any cancellation fees); and
  - (b) if you choose to add the charges for your service to a Telstra Single Bill:
    - (iv) the Telstra Single Bill terms and conditions at Section 6 of the General Terms found at <http://www.telstra.com.au/customer-terms/home-family/index.htm> will apply;
    - (v) you must be the owner of the fixed line Telstra service to which the Telstra Single Bill relates; and
    - (vi) if that fixed line Telstra service is disconnected, we may suspend and/or terminate your service.
- 5.10 You may obtain a detailed statement of all fees incurred in the last 3 billing periods by visiting My BigPond.
- 5.11 If you do not pay a bill by its due date, we may charge you an administrative fee of:
- (a) \$5.00 if the amount outstanding on your bill after the due date is \$65.00 or more but less than \$130.00;
  - (b) \$11.00 if the amount outstanding on your bill is \$130.00 or more but less than \$200.00; or
  - (c) \$15.00 if the amount outstanding on your bill is \$200.00 or more.

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No administrative fee is charged if the amount outstanding on your bill after the due date is less than \$65.00.

- 5.12 We can also suspend or cancel your service provided we comply with our rights to cancel or suspend your service set out in our rights to cancel or suspend your service under clauses 7.7, 7.8 and 7.9.
- 5.13 If you pay a bill by cheque and the cheque is dishonoured, you must also pay us a fee of \$15.00. If you pay a bill by direct debit and there are insufficient funds in the account, you must also pay us a fee of \$10.00. These fees do not attract GST.

#### **Adjustments**

- 5.14 We can pay you amounts we owe you by deducting them from amounts you owe us.
- 5.15 If we require you to pay any charges in advance (eg, monthly access fees) and they are varied or the service is cancelled, we will refund you any overpayment and you will have to pay us any underpayment.
- 5.16 If we include a credit or amount on your account that you were not entitled to receive (or we give you more than you were entitled to receive), we can recover the over-credit or over-payment from you by:
- (a) including a debit on your bill;
  - (b) if your service has been terminated, including a debit on a bill for any other service we provide to you; or
  - (c) if you no longer have any billing relationship with us, by taking other reasonable steps.

#### **Security**

- 5.17 At any time, we can require you to provide some form of security (eg, a security deposit, a charge or bank guarantee) or pay some or all of the charges for your service in advance. We will only do so if we have reasonable concerns about your credit worthiness or have reasonable grounds for believing that we may not be paid for the service. In the case of new services, we can refuse to provide you the services until we receive the security. In the case of existing services, if you do not provide the security within 14 days of our request, we can restrict, suspend or cancel the service – this is in addition to any other rights that we may have.
- 5.18 If you cancel all your services, we will return the security deposit or advance payment to you less any outstanding charges within a reasonable time.
- 5.19 Our acceptance of any form of security or advance payment does not affect any other terms of Our Customer Terms.

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#### Other work we do for you – Fee-for-service charges

- 5.20 We may perform additional connections, adds, moves or changes, maintenance and repair work (including work beyond the first socket) for you which is not provided as part of your BigPond service. The charges for these services vary depending on the nature of the services provided and when they are completed. We will tell you about these charges before you agree to proceed with a service request. Such charges are fee-for-service charges, as set out in the Fee-for-Service (Other work we do for you) section of Our Customer Terms - for home and family customers [click here](#); business and government customers [click here](#).

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## 6 Changing your plan

#### Terms that apply until 2 August 2019

- 6.1 You can change to a higher or lower plan using My BigPond, which is available at <http://www.bigpond.com/mybigpond>, or by calling 13 POND (13 7663).
- 6.2 Changing your plan will not usually affect your minimum term.
- 6.3 If you have a Satellite service, you acknowledge that in relation to a plan change in accordance with clause 6.1:
- (a) it may take us up to 30 hours to effect the change;
  - (b) your plan at the time your request is made will continue to apply until we effect the change;
  - (c) the date on which we effect the change will be your new billing date (you can confirm your billing date at any time by going to the "My BigPond" link at <http://www.bigpond.com/myaccount/broadband>); and
  - (d) your next bill will separately itemise the charges for the service before and after the change.

#### Terms that apply on and from 2 August 2019

- 6.4 From 2 August 2019, you will no longer be able to change within your current plan range if you have a BigPond service. To change plans, you will need to move to one of our available current in-market plans.

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## 7 Termination

### Cooling-off period

7.1 Some legislation gives customers time to cancel an agreement for goods or services in specified circumstances (“**Cooling-Off Period**”). If you are entitled to a Cooling-Off Period in respect of your service or equipment we provide to you for use with your service:

- (a) you may cancel your service at any time within the Cooling-Off Period by telling us; and
- (b) we may choose not to provide the service or the equipment to you until the end of the Cooling-Off Period.

### Your right to terminate your service

7.2 You may terminate your service at any time by calling us on 13 POND (13 7663).

7.3 However, subject to clause 7.1, if you terminate your service after the end of any Cooling-Off Period and before the end of any applicable minimum term, you must pay us the cancellation fee set out in the charges section for your plan.

7.4 You may also terminate the service if:

- (a) we are in serious breach of the applicable parts of Our Customer Terms; and

For example, we will be in serious breach if we breach our obligation to use reasonable care and skill in providing the service or our obligations under clause 4.2.

- (b) you have notified us in writing of our breach and we have failed to remedy the breach within 30 days of your notice (if the breach can be remedied). If the breach is something which cannot be remedied, you may immediately terminate your service with notice to us.

7.5 If you terminate the service under clause 7.4 during your minimum term:

- (a) you will not have to pay us the cancellation fee set out in the charges section for your plan; or
- (b) if you are a Satellite customer and you wish to purchase the Satellite broadband transmission facilities that we have provided to you under clause 5 of Part E of the BigPond service section, you must pay us the cancellation fee set out in the charges section for your plan. The cancellation fee is the only charge you need to pay for this purchase.

Your obligation to pay a cancellation fee does not limit or affect the rights you may have under the Trade Practices Act 1974 (Cth) in relation to the equipment or the service.

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7.6 If you have a Satellite service:

- (a) you will not have to pay a cancellation fee if we ask you to do one of the following and you do as we ask:
  - (vii) return the satellite broadband transmission facilities (that we have provided to you under clause 5 of Part E of the BigPond service section) to us in good working order; or
  - (viii) permit us or our authorised representatives to enter into your premises to repossess the satellite broadband transmission facilities that are in good working order; and
- (b) if your service is terminated under clauses 7.3 or 7.7 and we later agree to reinstate the service, you must pay any fees relating to the installation of the satellite broadband transmission facilities, if any.

#### **Our right to terminate or suspend your service**

7.7 We may terminate your service if:

- (a) you are in serious breach of Our Customer Terms; and

You will be in serious breach if you breach your obligation to pay our charges for the service, breach the acceptable use policy as set out in section 2 of this Part (if applicable) or breach clauses 3.3(a), 3.3(c), 3.3(d), 11.13, 14.3 or 21.2 of this Part, clause 2.9 or 5.3 of Part E of the BigPond service section.

You will also be in serious breach if you use your service in a way which we reasonably believe is fraudulent.

- (b) we have written to you about your breach and you do not remedy it within 30 days (if the breach can be remedied). If the breach is something which cannot be remedied, we may immediately terminate your service by telling you.

Breaches that cannot be remedied are: engaging in conduct that breaches the acceptable use policy as set out in section 2 of this Part (except for clause 2.4(d)) or breaching clauses 3.3(a), 3.3(c), 3.3(d), 11.13, 14.3 or 21.2 of this Part, clause 2.9 or 5.3 of Part E of the BigPond service section

We can also cancel, suspend or restrict your service if you die, by providing as much warning as we reasonably can to the appropriate person. We will not charge you any applicable cancellation fee if we cancel your service for this reason.

7.8 We can also cancel, suspend or restrict your service by telling you with as much warning as we reasonably can if:

- (a) you become bankrupt or insolvent or appear likely to do so; or
- (b) we reasonably consider that you pose an unacceptably high credit risk to us.

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We consider that you pose an unacceptably high credit risk to us when there is some doubt as to your ability to pay by the due date based on factors such as:

- previous payment history and payment behaviour (eg late payments, dishonoured payments or failure to pay);
- any previous advice from you about a potential inability or unwillingness to pay;
- your usage is inconsistently high when compared with previous usage patterns; or
- your response where we have told you of this unusually high usage.

7.9 If we terminate your service under clause 7.7, 7.8 or 7.9 during your minimum term, you must pay us the cancellation fee set out in the charges section for your plan.

7.10 We may suspend your service during the 30 day period before we terminate your service under clause 7.7, 7.8 or 7.9. If we do this, we will refund any monthly fees (pro-rated if necessary) that you paid during the suspension.

7.11 We may terminate your service before the end of your minimum term if we:

- (a) get your consent;
- (b) take reasonable steps to appropriately offset the effect of the cancellation on you (for example by providing a credit or a rebate to you);
- (c) transfer you to a reasonably comparable service; or
- (d) transfer you to an alternative service and take reasonable steps to offset any material detrimental impacts of the transfer caused by the material differences between your service and the alternative service. If we transfer you to a reasonably comparable alternative service and this has more than a minor detrimental impact on you, you may cancel your service without having to pay any early termination charges for that service.

#### **New and recontracting fixed length customers from 5 June 2012**

7.12A If you're a fixed length contract customer at the date on which we're required to disconnect your service as part of the migration to the nbn network, we will terminate your service and your access to existing networks. No early termination fee will be charged in these circumstances.

*You will be a fixed length contract customer if you are acquiring your service under a contract that has a fixed term and the contract requires you to pay an early termination fee if your service is cancelled before the end of that fixed term or if you are a pre-paid customer.*

7.13 If we terminate the service for any reason, you must still pay us any charges incurred before the cancellation.

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1.14 We may also terminate the service;

- (e) at any time after the end of your minimum term (unless you acquire the service under a Program); or
- (f) if you acquire the service under a Program, after the end of your Program term; or

by telling you via letter or email at least 30 days beforehand.

**Program** has the meaning given to it in clause 21.1 of this Part.

**Program term** has the meaning given to in clause 21.4 of this Part.

7.12 Sometimes, we may need to suspend your service if it is necessary for the maintenance, integrity, protection or restoration of our networks or the users of our networks or a network used to supply your service. If we need to suspend your service, we will give you as much notice as we reasonably can in the circumstances and we will try to ensure that the suspension is for as short a period as is reasonably possible. This does not affect your minimum term. If we need to limit or suspend your service under this clause, usually we will give you 24 hours' notice, unless the maintenance is urgent, in which case we will give you as much notice as we reasonably can. We will try to ensure that the limitation or suspension is at night and for as short a period as is reasonably possible. However, where your service is provided on the nbn network, we are relying on NBN Co to determine the times for this work and to provide us with information about the nbn network. In these circumstances we will try and give you as much warning as we reasonably can.

7.13 We cannot control some external events that may affect us providing the service to you. If a regulatory event occurs, we may not be able to continue providing the service to you at all or may not be able to provide it on the same terms. If this happens, we will give you as much notice as we reasonably can. If we need to change the terms on which we supply the service, your minimum term will not be affected. If we need to terminate these terms, your minimum term will end but you will not pay any cancellation fee.

A **regulatory event** includes:

- (a) a determination or notice issued by the Australian Competition and Consumer Commission; or
- (b) a determination by any court; or
- (c) a determination by us that, in our opinion, on reasonable grounds and acting in good faith, the supply of the BigPond service, these terms or any action taken or required to be taken in accordance with these terms contravenes or may contravene any applicable law including, without limitation, the Telecommunications Act 1997 (Cth) or the Trade Practices Act 1974 (Cth).

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#### **Our right to transfer your service**

- 7.14 At any time after the end of your minimum term (or if you acquire your service under a Program, after the end of your Program term), we may transfer you to an alternative service or plan by telling you a reasonable time beforehand. If you are not satisfied with the alternative service or plan, you may terminate your service by telling us, or change to another in-market plan as provided under clause 6.

#### **The effect of termination**

- 7.15 If you are a Cable, ADSL or Wireless Broadband customer and your service is terminated:
- (a) any software licences granted to you as part of your service will immediately terminate and you must return to us or destroy any software we supplied to you and all copies as we direct; and
  - (b) you must immediately return any of our property to us.

#### **Refund of prepayments**

- 7.16 If you cancel your service under this clause, we will refund to you any other amount you have prepaid. However, we can deduct from your refund any amounts that you owe to us (unless these terms say otherwise). For example, we can deduct charges you have incurred before cancellation or any applicable cancellation fee.

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## **8 Our liability to you**

#### **Terms applying to your service**

- 8.1 Your service is supplied on the terms expressly set out and subject to non-excludable rights under consumer protection laws. Other representations or statements we make to you, whether in person, over the phone or in advertising or other materials you received, are not part of these terms. However, you may have other legal rights in relation to those representations.

#### **Australian Consumer Law**

- 8.2 Subject to clause 8.4, nothing in this BigPond service section of Our Customer Terms excludes or limits, or has the effect of excluding or limiting, the operation of the Australian Consumer Law or any right you may have under the Australian Consumer Law.

#### **Liability and excluded types of loss**

- 8.3 If you are a residential customer:



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- (a) except as set out in the paragraphs below, we accept our liability to you for breach of contract or negligence under the principles applied by the courts and for breach of any non-excludable rights under consumer protection laws;
- (b) as your service is provided to you for the primary purpose of personal, domestic or household use, we do not accept liability to you for losses that result from the use of your service in connection with the conduct of a business. However, we will accept that liability if it cannot be excluded under any legislation; and
- (c) we are not liable for any loss to the extent that it is caused by you (for example, through your negligence or breach of contract).

8.4 If you are a business customer provided it is lawful to do so under consumer protection laws:

- (a) we limit our liability to you for any losses caused by any interruption or delay to your service to an amount equal to the service charges billed to you for the affected service for the period of the interruption or delay;
- (b) we accept our liability to you for breach of contract or negligence under the principles applied by the courts:
  - (i) for any personal injury or death to you, your employees, agents and contractors in relation to the supply of the service;
  - (ii) for any damage to your property (real or tangible) resulting from the supply of the service, but we limit our liability to our choice of repairing or replacing the property or paying the cost of repairing or replacing it; and
  - (iii) unless clause 8.4(a) applies, for any other cost or expense reasonably incurred as a direct result of our breach or negligence (but excludes loss of profits, likely savings and data), but we limit our liability for all such claims in aggregate to the total amount payable to us by you for the first year of your minimum term for the service;
- (c) other than to the extent we have accepted liability under this clause 8 and for liability that cannot be lawfully excluded or limited under consumer protection laws, we exclude all other liability to you or a third party for breach of contract, negligence or any other law. For any liability that cannot be lawfully excluded but can be limited, our liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods;
- (d) we are not liable for any loss to the extent that it is caused by you, your employees, agents or contractors; and

## Part A – General Terms for BigPond services

- (e) we are not liable for any loss caused by us failing to comply with our obligations in relation to your service where that is caused by events outside our reasonable control (such as a failure in equipment that is not owned or operated by us, an industrial strike or an act of God).

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### **9 Your liability to us**

- 9.1 You are liable to us for breach of contract or negligence under the principles applied by the courts. However, you are not liable to us for:
- (a) any loss to the extent that it is caused by us (for example, through our negligence or breach of contract);
  - (b) any loss to the extent that it results from our failure to take reasonable steps to avoid or minimise our loss;
  - (c) any loss suffered or incurred by us in connection with the Bigpond service section of Our Customer Terms or our service that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the loss; and
  - (d) any loss or damage caused by events outside of your reasonable control.

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### **10 Changing these terms**

#### **Terms applying to BigPond services connected before 25 June 2019**

- 10.1 Unless otherwise stated in the relevant part of this BigPond service section, we can change these terms (including any prices) in accordance with this clause 10.
- 10.2 We will tell you at least 30 days before a change, unless:
- (a) we need to make the change immediately in order to act legally or the change results from changes in the law. If this is the case, we will give you as much notice as we reasonably can; or
  - (b) we reasonably believe the change will benefit you, has no impact on you, or has neutral impact on you. If this is the case and subject to clause 21.4(e), we can make the change without telling you first, but will publish a notice on our website to let our customers know about the change.
- 10.3 If we make a change to your service during your minimum term and the change means that you are materially worse off (and does not fall within clause 10.2(a) or clause 2.6 in Part C - ADSL of the BigPond service section), you may terminate your service by telling us within 42 days from when we tell you about the change (or, if we did not tell you about the change, 42 days from when we publish a notice on our website about the change). If

### Part A – General Terms for BigPond services

you terminate your service, you will not have to pay us the cancellation fee and the service will be terminated from the date the change takes effect.

- 10.4 If we make a change to your service after the end of your minimum term and you do not accept the change, you may cancel your service by telling us. Your service will be terminated from the date the change takes effect.
- 10.5 If you choose to cancel your service under clauses 10.3 or 10.4, we will refund you any unused portion of your monthly charges and give you a pro-rata rebate for any equipment you bought from us that cannot be used elsewhere.
- 10.6 If you do not tell us about your decision to terminate your service under clauses 10.3 or 10.4 and you (or any of your group members) continue using the service from the date on which the change comes into effect (or in the case of clause 10.4, 42 days from the date on which we told you about the change), the changes will apply to you.

#### **Terms applying to Bigpond services connected on and from 25 June 2019**

- 10.7 These clauses 10.7 to 10.19 apply to you and your Bigpond service if your Bigpond service was connected on or after 25 June 2019.
- 10.8 We can change your Bigpond service by:
- (a) getting your consent; or
  - (b) complying with this clause.
- 10.9 The steps we have to take depend on the type of change.

#### **Changes we can make immediately without telling you**

- 10.10 We can change your Bigpond service immediately without telling you if we reasonably consider the change is likely to:
- (a) benefit you; or
  - (b) have a neutral impact on you.

#### **Changes we can make by telling you at least 3 days before**

- 10.11 We can change your Bigpond service by telling you at least 3 days beforehand if we reasonably consider the change is likely to have a minor detrimental impact on you.
- 10.12 You can cancel your service on Fair Terms if you are a fixed term customer and you can demonstrate that the change has more than a minor detrimental impact on you.

#### **Urgent changes**

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10.13 We can make urgent changes to your Bigpond service that are:

- (a) required by law; or
- (b) necessary for security reasons, to prevent fraud or for technical reasons,
- (c) by telling you at least 3 days before the changes, or if we are unable to do so, by giving as much notice as we reasonably can.

#### **Changes we can make by telling you at least 30 days before**

10.14 We can change your Bigpond service by telling you at least 30 days beforehand if we reasonably consider that it has more than a minor detrimental impact on you.

10.15 You can cancel your service on Fair Terms within 42 days of us telling you of the change if you are a fixed term customer.

#### **When we reasonably consider that a change impacts you**

10.16 In this clause 10, in determining whether we reasonably consider that a change is likely to have a detrimental impact on you, we will take into account whether:

- (a) you have used, or been billed for, the affected service in the last 6 months;
- (b) the service is an optional ‘add-on’ or ‘value add’ service that you have acquired in the past; and
- (c) the service is a ‘once-off service’ and we reasonably determine that you are likely to acquire the service in future.

#### **What we mean by cancelling the contract for a service on “Fair Terms”**

10.17 In this clause 10, if you cancel your service on “Fair Terms” you will only incur the following fees and charges:

- (a) usage and other charges up to the cancellation date;
- (b) installation fees; and
- (c) cost of equipment we have provided to you that you have not paid us for where the equipment can be used with another service provider,

and you will not be required to pay any early termination charges or cancellation fees in relation to your service.

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- 10.18 If you have paid upfront costs for equipment that cannot be used with another service provider and you cancel your service on “Fair Terms”, we will refund those costs according to the following formula:

#### How we can tell you about the changes

- 10.19 We can tell you about changes to your Bigpond service by any method we consider reasonable in the circumstances, including: bill message, bill insert, direct mail, email, SMS/MMS, the My Telstra App or our other mobile apps, online account management tools (such as My Account or Your Telstra Tools), or telephone. We may use these methods to direct you to further information about the changes, such as on Telstra.com or at a Telstra Shop.

Please note that Clause 4 (Changing Our Customer Terms) of the [General Terms](#) does not apply to Bigpond Plans connected on and from 25 June 2019.

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## 11 ADSL & Cable broadband transmission facilities

- 11.1 This clause 11 only applies to you if you are an ADSL or Cable customer.

In this clause, **broadband transmission facilities** mean:

- (a) for an ADSL service, the equipment and facilities installed to your premises on the network side of the **boundary of our telecommunications network**, including a standard Telstra fixed telephone line;
- (b) for a Cable service, the equipment and facilities installed to your premises on the network side of the wall plate through which the BigPond Cable service is supplied, including optical fibre, coaxial cable, ducts, conduits and the wall plate;

but excluding the equipment (e.g. modem, filters) and any software we give you.

The **boundary of our telecommunications network** has the meaning set out in Clause 11.12.

#### Self-installation

- 11.2 If you have chosen the self-installation option:

- (a) when your self-installation kit is delivered, we ask you to check that it is unopened, and contact us if this is not the case; and
- (b) you are responsible for installing the broadband transmission facilities at your premises using the self-installation kit.

- 11.3 If you tell us that your self-installation kit contains faulty components, you must give us sufficient information to assess the kit (including allowing us to test your personal computer to evaluate its performance). If the relevant part is not faulty, we may need to

### Part A – General Terms for BigPond services

charge you our fee-for-service charges. We will tell you the amount of the service fee before we test the self-installation kit.

#### **Professional installation**

- 11.4 If we reasonably think that your service needs to be professionally installed and you agree, or if you ask for professional installation, then you must pay the professional installation costs set out in the charges section for your plan and the following terms will apply to you. Professional installation is not available for all services.
- 11.5 If you choose to have your service professionally installed, we will install the broadband transmission facilities at your premises. We will also maintain those facilities for so long as we continue to supply the service to you.
- 11.6 If you pay for a Professional Installation we will also connect up to five “network ready” devices
- 11.7 Not available on Linux operating systems.
- 11.8 You are responsible for all data charges (if any) associated with the Professional installation services (including but not limited to downloading of any software, software updates, and drivers).
- 11.9 You acknowledge that as part of supplying you with the Professional Installation services, and unless otherwise specified, we do not separately back-up any of your data to avoid potential data loss. You also acknowledge that there is a risk that some or all of your data may be lost during our supply of Professional Installation services.
- 11.10 Unless otherwise stated, the cost of any software and hardware is not included in the price of the Professional Installation and you are responsible for the cost of any such software and/or hardware.
- 11.11 All customer software related to the service being provided must be legal and have a valid licence.
- 11.12 You are responsible for backing up your software and data before we provide any Professional installation services to you.
- 11.13 You will ensure that a person of at least 18 years of age is present to provide us with access to the areas of your premises that we need access to provide the services, passwords to your computer and systems (as required), electrical power and internet access (where required) and reasonable assistance with using your systems so that we can perform the services.
- 11.14 To the extent that you are giving Telstra access to personal information of other individuals as part of providing the services, you must ensure that you have obtained any necessary

### Part A – General Terms for BigPond services

- 11.15 If we tell you a date for installation, we will try to keep to that date. However, if we cannot keep the date, we will tell you and will install the service as close to that date as reasonably possible.
- 11.16 If you choose to have your service professionally installed, and you (or, if you are a group administrator, your group member) are not the owner of the premises, you (or, if you are a group administrator, your group member) must obtain prior permission from the owner (including any body corporate) for us to enter the premises and install, maintain or remove the broadband transmission facilities.
- 11.17 If you ask us to install the broadband transmission facilities in a particular way and we tell you that we do not recommend that method of installation, subject to the Australian Consumer Law provisions in this BigPond service section of Our Customer Terms, we are not responsible for any loss that results from acting in accordance with your instructions.
- 11.18 You must ensure we are given safe access to the premises when we come to install, maintain or remove the broadband transmission facilities.
- 11.19 Sometimes we may need another party to help to install the broadband transmission facilities at the premises (such as a qualified plumber or electrician), or for a third party network operator to disconnect their telecommunications services or cables on the premises. If we need this kind of help, we will tell you first. You will need to arrange for the work to be completed before we proceed with our installation.

#### **Ownership and use**

- 11.20 The broadband transmission facilities remain our property at all times.
- 11.21 The boundary of our telecommunications network means the boundary as ascertained in accordance with section 22 of the Telecommunications Act 1997 and is a physical point where our network ends. Generally this is located at a customer main distribution frame or, where there is no main distribution frame, a Telstra network termination device or, where there is no main distribution frame and no network termination device, the first socket (wall plate).
- 11.22 You must not:
- (a) damage the broadband transmission facilities in any way;
  - (b) use or allow anyone else to use the broadband transmission facilities (except to access your service in accordance with these terms) without our prior permission; or
  - (c) remove any marking which identifies the broadband transmission facilities as belonging to us.

## Part A – General Terms for BigPond services

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### **12 Ownership and use of equipment**

- 12.1 We may provide equipment to you to help you access and use the service. This may include, as applicable, a modem, telephone filters, cabling from your wall plate to the modem and from the modem to your PC, and home wireless network adaptors.
- 12.2 If we provide equipment to you, subject to clause 4.2, responsibility for loss of or damage to the equipment passes to you when it is delivered to your premises.
- 12.3 Except for Satellite customers, we own the equipment until your service commences. From then, you will own it. For Satellite customers, we own the equipment until the earlier of:
- (a) your minimum term ending, or
  - (b) the cancellation of your service and your purchase of the equipment under clause 7.5(b).
- 12.4 Except for Satellite customers, until your service commences, you must not:
- (a) sell or damage the equipment; or
  - (b) give the equipment to another person or allow someone else to use it without our prior consent.

For Satellite customers, you must not do these things until you own the equipment under clause 12.3.

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### **13 Maintenance**

#### **Maintenance of the service**

- 13.1 You can use our technical support services for genuine problems with your service.
- 13.2 We will use reasonable efforts to fix the problem as soon as possible. However:
- (a) we do not provide technical support services for configuring your local area networks to connect to your service, and do not provide assistance with local area network-related difficulties;
  - (b) if we need to attend the premises in response to a technical support call, and we believe on reasonable grounds that there is no service problem, or that we did not cause the service problem, we may charge you our fee-for-service charges. We will tell you the amount of the service fee before our site visit; and
  - (c) we will only provide support for connecting your service to a single PC (as we do not support multiple network cards and devices).



### Part A – General Terms for BigPond services

- 13.3 We may charge you our fee-for-service charges or the amount set out in the applicable part of the BigPond service section (or other amounts that we notify you of in advance) to cover our reasonable costs in finding a fault and fixing it where you report a fault and you caused the fault (except where the fault was caused as a result of our instructions).
- 13.4 We may also charge you the amount set out in the applicable part of the BigPond service section or the Fee-for-Service (Other work we do for you) section of Our Customer Terms – home and family customers [click here](#); business and government customers [click here](#) (or another amount that we notify you of in advance) to cover our reasonable costs in finding a fault where you report a fault and:
- (a) based on the information available, we reasonably consider that there is no fault or that we did not cause the fault and we tell you this;
  - (b) you still ask us to visit your premises; and
  - (c) upon visiting your premises, we confirm that there is no fault or that we did not cause the fault.

#### **Maintenance of Cable, ADSL and Wireless equipment**

- 13.5 Clauses 13.5 to 13.9 only apply to you if you are a Cable, ADSL or Wireless Broadband customer. If you get equipment from us or any new BigPond branded equipment from our authorised dealers in addition to any non-excludable rights you have under consumer protection laws, we voluntarily warrant:
- (a) that we will service and maintain that equipment and keep it free from any defects in workmanship and materials associated with normal use, during the maintenance period (subject to availability of suitable parts, components, materials and labour); and
  - (b) if for any reason the equipment does not work within the maintenance period, we may at our sole discretion repair, refurbish or replace all or part of the equipment (subject to availability of suitable parts, components, materials and labour). Replacement parts may be new or refurbished. If we give you a replacement part, you must return the replaced part to us.

#### **maintenance period** means:

- (a) for new customers, the longer of your minimum term or 12 months from the date on which we deliver the equipment to you; or
  - (b) for existing customers obtaining new equipment from us, 12 months from the date we provide the equipment to you.
- 13.6 We may sometimes need to remotely upgrade the equipment connected to the broadband network, to ensure the security, correct operation and performance of that device on the

### Part A – General Terms for BigPond services

service. During a firmware upgrade, you may experience a short service interruption of approximately 30 seconds.

13.7 Subject to clause 13.9, we are only responsible under our voluntary warranty for servicing and maintaining the equipment under clause 13.5 if:

- (a) you tell us about the defect during the maintenance period and follow the procedures for requesting maintenance services, as set out on the BigPond website;
- (b) we supplied the relevant equipment (including new or refurbished equipment) or our authorised dealer supplied new BigPond branded equipment;
- (c) the equipment has been used and maintained in accordance with our instructions and has not been modified in any way; and
- (d) the equipment has only been used with our broadband network or service.

This clause does not limit your rights under consumer protection legislation.

13.8 Also, subject to clause 13.9, we are not responsible for servicing and maintaining the equipment under clause 13.5 if the equipment is defective or does not work due to:

- (a) any abuse, misuse or neglect of the equipment; any accident by you or a someone else; any improper maintenance or service; or any unusual hazards affecting the equipment (including, but not limited to, exposure to excessive humidity, heat, cold, dust, food, liquids, magnetic or electromagnetic interference, or incorrect power voltage);
- (b) electrical supply problems or if you do not provide a suitable environment for the equipment; or
- (c) any natural disaster (including floods, lightning and fire), acts of terrorism, or any other cause beyond our reasonable control.

13.9 These maintenance terms:

- (a) no longer apply if your service is terminated before the end of the maintenance period; and
- (b) are in addition to any rights you have under consumer protection legislation which cannot be excluded, including those under the Competition & Consumer Act 2010.

## Part A – General Terms for BigPond services

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### **14 Software licences**

- 14.1 This clause 14 only applies to you if you are a Cable, ADSL or Wireless Broadband customer.
- 14.2 We may supply software to you and grant you a revocable non-exclusive licence to use the software on these terms.
- 14.3 If we supply software to you, you must:
- (a) only use it (including storing, loading, installing, executing or displaying it on a computer) with the service;
  - (b) only use it in accordance with our reasonable directions from time to time;
  - (c) not sub-licence, assign, share, sell, lease or otherwise transfer any right to use it to someone else;
  - (d) not copy (other than making one copy for archival or backup purposes), translate, adapt, modify, alter, de-compile, disassemble, or reverse-engineer the software; create any derivative work of the software; merge the software with any other software; or change the software in whole or in part, except as permitted under the *Copyright Act 1968 (Cth)*; and
  - (e) not alter or remove any copyright or other intellectual property notifications applied to the software.

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### **15 Information**

- 15.1 Information concerning you will be held in a database. The database will contain your name, address, telephone numbers, bank account or credit card details (unless you are a group member), billing details (unless you are a group member), information relating to the provision and use of the service, and information you provide in connection with the service.
- 15.2 We may give credit information about you to a credit reporting agency to:
- (a) obtain a consumer credit report about you; or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.
- 15.3 We may (in accordance with the *Privacy Act 1988 (Cth)*):
- (a) obtain and use information concerning your commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on

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commercial credit worthiness to assess your application for the service (if the application is for consumer credit) or to collect overdue payments;

- (b) obtain or use a consumer credit report about you from a credit reporting agency to assess your application for the service (if it is for commercial credit) or collect overdue payments; and
- (c) disclose information about you to other credit providers or obtain and use information from other credit providers for the purposes of assessing your application for the service, your ongoing credit worthiness or the status of any account held by you with us or with any other credit provider.

In this clause, **credit information** means:

- (a) identity particulars (name, address, date of birth, ABN, ACN or ARBN);
- (b) your application for credit or commercial credit, including the amount applied for;
- (c) the fact we are a current credit provider to you;
- (d) payments which are overdue by more than 60 days and for which debt collection has commenced;
- (e) advice that payments are no longer overdue in respect of a default which has been listed;
- (f) information that you have committed a serious credit infringement; and
- (g) cheques drawn by you for more than \$100 and which have been dishonoured more than once.

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## 16 Transferring your service

16.1 You can transfer legal responsibility for your service if you get our written consent first. Our consent will not be unreasonably withheld.

16.2 We can assign, novate or transfer our rights, benefits, obligations and/or liabilities under Our Customer Terms to another person (**Incoming Party**) provided that:

- (a) the Incoming Party is a related body of us, or is a company of substance;
- (b) the Incoming Party will assume those rights, benefits, obligations and/or liabilities;
- (c) your rights and the services provided to you under Our Customer Terms will not be prejudiced as a result of the assignment, novation or transfer;
- (d) the assignment, novation or transfer is occurring as part of a sale of our business or business restructure; and

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- (e) we have given you 30 days' prior notice of any such novation, assignment or transfer.
- 16.3 You must accept performance by the Incoming Party in place of performance by us.
- 16.4 If you are an ADSL, Cable or Satellite customer:
- (a) you can ask us to change the place where the service is provided and we will do this if we can;
  - (b) you may need to pay a charge for installing the service at the new address. You may experience some delays from a change of address; and
  - (c) we cannot guarantee that we will be able to provide the service at the new place or take responsibility for any delays.

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## 17 Taxes

- 17.1 The charges in the charges section for your plan may not include all taxes. You must pay us any applicable taxes that we include as part of your invoice for the service. Applicable taxes may include any stamp and other duties, fees, taxes (including GST) and charges relating to your purchase of any equipment from us on these terms.
- 17.2 If GST is imposed on any supply we make to you under Our Customer Terms and the consideration payable for the supply under any other clause of Our Customer Terms is not expressed to be inclusive of GST, you must pay us on demand an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or set-off) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed.
- 17.3 Unless otherwise stated, all pricing, fees and charges stated in this BigPond service section are GST inclusive.

*"GST" and "Tax Invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).*

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## 18 Group Members

- 18.1 If you are a group member, this clause applies to you. If this clause is inconsistent with any other part of Our Customer Terms, this clause will apply to the extent of the inconsistency. However, this clause does not apply if you are acquiring a service under a Program.
- 18.2 The following clauses of this Part and other parts of Our Customer Terms do not apply to group members: 1.6, 3.2, 5, 7.1, 7.1(a), 7.4, 10.3, 11.4, 12, 13, 15.2, 15.3, 16.3 and 17,

## Part A – General Terms for BigPond services

- 21.4 and the part of clause 7.5 of this part which would otherwise give you the right not to be charged a cancellation fee if you cancel your service for cause.
- 18.3 As a group member, you will not be responsible for the payment of any fees or charges in relation to the service (including cancellation fees). The group administrator is responsible for the payment of all fees and charges relating to a group member service.
- 18.4 As a group member, you have limited rights in relation to the service. As such, you will not:
- (a) have any right, title or interest in any of the equipment provided to you for use in connection with the service;
  - (b) be entitled to receive any refunds, rebates or credits in relation to the service. Any applicable refunds, rebates or credits will be paid to the group administrator's account; or
  - (c) be permitted to perform certain tasks in relation to the service, including (but not limited to), changing the plan, moving (relocating) the broadband service to another address and purchasing additional services and additional mailboxes (unless your group administrator has allowed you to do this).
- 18.5 The group administrator may make changes to the service at any time without telling you first, including changing the plan, moving (relocating) the service to another address, changing the account password and permitting or restricting access to additional services and additional mailboxes.
- 18.6 The service may also be terminated at any time by us or by your group administrator in accordance with these terms. We do not have to tell you before the service is terminated.
- 18.7 If you terminate your service, you must inform your group administrator that you have done so as soon as practicable.

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## **19 Group Administrators**

- 19.1 If you are a group administrator who has signed up to a group administrator account, this clause applies to you. If this clause is inconsistent with any other part of Our Customer Terms, this clause will apply to the extent of the inconsistency. However, this clause does not apply to you if you are acquiring a service under a Program.
- 19.2 As a group administrator, you are responsible for paying all fees and charges in relation to your group member services, including payment of any cancellation fees (regardless of whether the service is terminated by you or your group member), installation fees, service fees, excess usage charges and charges for additional services and/or additional mailboxes (where you have allowed your group member to purchase additional services/mailboxes).

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- 19.3 As a group administrator, you must ensure that your group members comply with Our Customer Terms.

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### **20 Mail Limits**

- 20.1 The mail limits for BigPond customers who have a MyInbox account (as part of MyConnect) are set out in Part E of the Mobiles Section of Our Customer Terms: [http://www.telstra.com.au/customerterms/home\\_mobile\\_sms\\_mess.htm](http://www.telstra.com.au/customerterms/home_mobile_sms_mess.htm).

- 20.2 The mail limits for BigPond customers who have a BigPond powered by Windows Live email account are set out in the BigPond powered by Windows Live terms available at: <http://explore.live.com/microsoft-service-agreement?mkt=en-au>

**The mail limits below are for a previously offered BigPond webmail service, and will cease to apply to BigPond customers from the date their BigPond e-mail account is changed to a MyInbox or BigPond powered by Windows Live account (after which the mail limits for those services will apply).**

- 20.3 We set limits on the size of emails sent to or by you using your BigPond email account, the period for which email messages can be stored on BigPond servers and the maximum disk space that will be available on BigPond servers for your service. These limits are set out in the terms for your plan (“**Mail Quota**”).
- 20.4 We will delete any email message sent by you or addressed to you using your BigPond email account if:
- (a) the size of the mail message addressed to you (including attachments) exceeds your Mail Quota;
  - (b) the size of the mail message sent by you (including attachments) exceeds 10MB;
  - (c) the total of your undeleted messages (including attachments) exceeds your Mail Quota; or
  - (d) you have not deleted the message within 180 days of it becoming available to you (whether read or unread). We recommend that you delete emails on a regular basis. You will not be able to retrieve the message once it is deleted.
- 20.5 You must not send any email message via SMTP that is sent using a server other than the BigPond SMTP server. Please note this does not restrict your use of email services accessed solely via a web browser such as Hotmail.
- 20.6 We will delete any email message in your BigPond email account where the message has been stored in the Deleted or Spam folders 7 days after the message becomes available to you.

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- 20.7 If we delete any email messages in your BigPond email account under these terms we do not have to tell you or the sender of the mail message(s).
- 20.8 If your service is cancelled, we may delete any stored or received emails in your BigPond email account after 30 days.

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## 21 Broadband Connect and the Australian Broadband Guarantee

- 21.1 If you acquire your service under a Program, your service includes:

**Program** means the Australian Government's Broadband Connect or the Australian Broadband Guarantee programs.

- (b) a peak downlink data speed of at least 256kbps and a peak uplink speed of 64 kbps from you, or for a Threshold Service or an Added Value Service, a peak downlink data speed of at least 512kbps and a peak uplink speed of 128kbps ;

**Threshold Service** means a broadband service as defined by the Australian Broadband Guarantee Program Guidelines, available online at <http://www.dbcde.gov.au/>.

**Added Value Service** means a broadband service as defined by the Broadband Connect Guidelines or the Australian Broadband Guarantee Program Guidelines (as applicable), available online at <http://www.dbcde.gov.au/>.

- (c) average data download and upload speeds of at least 60 per cent of the peak downlink / uplink speeds at least 75 per cent of the time (as measured by us in accordance with the Program Guidelines);

**Program Guidelines** can be accessed at <http://www.dbcde.gov.au/>.

- (d) a minimum monthly usage allowance (download and upload) of at least 500MB, or for a Threshold Service or an Added Value Service under the Australian Broadband Guarantee program, a minimum monthly usage allowance (download and upload) of at least 1GB;

- (e) availability 99 per cent of the time, averaged over a quarterly period;

- (f) free 24 hour fault reporting;

- (g) staffed helpdesk services available during the hours of operation specified at <http://www.bigpond.com/help/ContactUs/>;

- (h) where usage limits apply, usage information updated at least once per day; and

- (i) where requested, information regarding current usage and any associated costs.

- 21.2 You (or, if you are a group administrator, your group member) must complete an attestation form when applying for a Program service. You also agree to provide (or if you are a group administrator, to ensure your group members provide) to us, upon



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request, any evidence we reasonably require supporting the information submitted when completing the form.

21.3 If you are a group administrator, you cannot complete an attestation form to demonstrate eligibility under a Program on behalf of a group member. If a prospective group member is eligible for a Program service, you should tell them to sign up for the service, be activated on the Program service and then transfer the service to the group.

21.4 If you acquired your service under a Program:

- (a) you may change from a Program plan to a non-Program plan however your remaining minimum term will continue to apply to your non-Program plan;
- (b) you can change back to your original Program plan at any time during your Program term, provided that your service is still on the same technology platform as your original Program plan;

**Program term** means the term beginning on the date that your Program service commences and ending 36 months later.

- (c) we will not terminate your service under clause 7.12(b)(c) or (d) of this Part without prior approval from the Commonwealth of Australia as represented by the Department of Broadband, Communications and the Digital Economy, and we will give you at least 30 days notice of termination after such approval;
- (d) we cannot increase the prices for your selected plan as set out in your product's plan table during your Program term;
- (e) we will not change these terms as they apply to you without prior approval from the Commonwealth of Australia as represented by the Department of Broadband, Communications and the Digital Economy, and we will give you prior notice of any changes in a manner approved by the Department of Broadband, Communications and the Digital Economy; and
- (f) if you move address and you are not eligible for a Program plan at the new address, you may need to change to a non-Program plan. If this is the case, we will tell you before installing the service at the new address.

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## 22 Malware Suppression

22.1 Telstra may, at no additional charge, provide you with a network feature which helps identify when a device connected to your Telstra broadband service is infected with malware ("Malware Suppression Service").

### Eligibility

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22.2 Malware Suppression is for customers with a BigPond ADSL, BigPond Cable, BigPond BigPond Mobile Broadband or Telstra on the nbn network (including T-Biz™ Broadband).

#### **What is Malware Suppression?**

22.3 Malware (or malicious software) can infect your computer without your knowledge. Malware can use your internet connection to communicate with what is known as a Command and Control server. The Command and Control server can then use your computer to carry out malicious activities and potentially access your personal information.

22.4 Malware Suppression is provided using software on the BigPond network. The software helps identify when malware on a computer (or other device) connected to the BigPond network attempts to connect to its Command and Control server. The new technology will stop that connection from occurring.

22.5 The new technology also helps identify previously unknown Command and Control servers. Where the DNS server notices a pattern of queries from a number of different users which looks suspicious, we may send information about the suspicious target domain to our partner in the United States to examine whether the domain being queried is related to a botnet or Command and Control server. Our partner does not receive any information which enables the identification of individual customers.

22.6 There will be domains relating to botnets and Command and Control servers that have not yet been detected and cannot be blocked by Malware Suppression. Malware Suppression will not always prevent malware from connecting with Command and Control servers. You therefore should continue to secure your computers and devices.

22.7 While we use reasonable care and skill in providing Malware Suppression to you, there are also non-excludable statutory guarantees, implied conditions or warranties under consumer protection laws (such as Competition & Consumer Act 2010 (Cth)) that may apply to goods or services we supply, including guarantees that services be fit for their purpose. However, due to the nature of Malware Suppression, it may not be effective or available or may become unavailable due to any number of factors including, without limitation, acts of God, technical failure, telecommunications infrastructure, or delay or disruption attributable to viruses, denial of service attacks, increased or fluctuating demand, actions and omissions of third parties, or any other cause reasonably beyond our control.

This clause is not intended to limit your rights under consumer protection legislation, or limit or exclude the Australian Consumer Law provisions in this BigPond service section of Our Customer Terms.

### Part A – General Terms for BigPond services

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#### 23 Miscellaneous

- 23.1 Your rights under these terms belong to you alone. You may not transfer your rights and obligations in respect of the service or these terms without our prior consent. Our consent will not be unreasonably withheld.
- 23.2 These terms are governed by the laws of the Australian State or Territory in which you are connected to the service.
- 23.3 If we need to notify you of any matters relating to these terms we ask, and you agree, that we may use post, fax, or email to the default email address we allocated to you. You must regularly check any email address that you provide to us.
- 23.4 For new and recontracting customers entering into a fixed length contract from 5 June 2012, where your service is provided on the nbn network we or NBN Co may need access to your premises. You agree to provide us and NBN Co with safe access to your premises to:
- (a) install equipment for a service to be provided;
  - (b) inspect, test, maintain, repair or replace equipment;
  - (c) recover our equipment or NBN Co equipment after your service provided on the nbn network is cancelled or after we transfer you to another service in accordance with our rights under clauses 7.12A, 7.12B and 7.12C; and
  - (d) to perform any other work reasonably required.
- 23.5 In this BigPond Service Section of the Our Customer Terms:
- (a) **Australian Consumer Law** means the law of that name set out in schedule 2 of the *Competition and Consumer Act 2010* (Cth).
  - (b) **nbn network** means the network that is owned or controlled by, or operated by or on behalf of, NBN Co (or any related body corporate of NBN Co) and includes any other network, systems, equipment and facilities used by NBN Co in connection with the supply of services.
  - (c) **NBN Co** means NBN Co Limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060 and its related body corporates, officers, employees, agents, contractors, sub-contractors and consultants.