

Terms and Conditions

Voicetalk Pty Ltd ABN 87 104 357 726

We, Voicetalk, will provide you, our customer, with services in accordance with these terms and conditions.

1. Our Agreement with you

- 1.1 These terms and conditions have been formulated under section 479 of the Telecommunications Act and are referred to as the Voicetalk Terms and Conditions.
- 1.2 We will provide you with Services in accordance with your entire Agreement with us.
- 1.3 Your entire Agreement with us consists of:
 - a) your signed application form (or a copy thereof) or voice recording (or copy thereof) if you made the application by telephone
 - b) the product brochure(s)
 - c) these Terms and Conditions
- 1.4 If these Terms and Conditions conflict with any item of 1.3 a) or b) then:
 - a) you must advise us of any conflict when you first discover it and we will immediately try to resolve this matter with you.
 - b) if it cannot be resolved then the provisions of these Terms and Conditions shall prevail.
- 1.5 We may vary any term of this Agreement at any time in writing including changes to charges, product specifications, service and carriers.
- 1.6 You must notify us within 14 days if you change your address or other billing details.

2. The Services

- 2.1 We will provide the Services to you using our facilities and those of other suppliers or carriers.
- 2.2 Our Services may be added to or varied at anytime and we may change those suppliers or carriers without reference to you.
- 2.3 We do not warrant that we will be able to supply you with Services, but to the extent that carriers provide services to us we will provide those services to you.
- 2.4 If your Service is disrupted we will do our best to have that Service reinstated as soon as we can.

3. Charges

- 3.1 We will send you an invoice for services based on our current charges. We may vary those charges from time to time subject to any fixed price guarantee we may have given.
- 3.2 Invoices are issued to you monthly in advance for plan charges or line rental (if you have that service) and monthly in arrears for usage charges.
- 3.3 We will only issue an invoice once charges exceed \$10.00, except in the case of a final invoice. If charges are less we will roll them forward for up to six (6) months at which time an invoice will be issued regardless of the amount.
- 3.4 Invoices will include most of our charges relating to that billing period but may also include charges from previous billing periods incurred no more than 190 days before the current billing period.
- 3.5 If applicable, GST will be added to all charges where not already included. Other charges that may appear on your invoices are:
 - (a) interest calculated at a rate of 1.5% per month or part thereof and a late payment fee of \$17.27 if you do not pay your account by its due date;
 - (b) other carriers' and suppliers' charges to us with our margin included for services and add-on services, including fees for connection, initiation, increases, monthly connections or cancellation of any service;
 - (c) \$3.75 per month account processing fee charged to all non-direct debit accounts;

- (d) \$30.00 fee for each service transferred if you require a change of Lessee in your business;
- (e) \$10.00 for reprinting an invoice;
- (f) usage based charges in accordance with our published tariff if connection is made to an Internet Service Provider (ISP);
- (g) surcharge if you pay your bill by credit card;
- (h) plan fees if applicable;
- (i) \$65.00 Temporary Disconnection fee;
- (j) \$15.00 payment declined/dishonoured fee.

4. Payments

- 4.1 You must pay within 14 days of the date of our invoice by way credit card, direct debit, BPay, cheque, or money order as indicated on each invoice.
- 4.2 If you do not pay by the due date we may suspend, temporarily disconnect or discontinue all or part of our services to you after the required notice period is given.

5. Collection of Overdue Monies

- 5.1 We may engage the services of a third party supplier for the purposes of collecting overdue amounts.
- 5.2 We are entitled to recover reasonable costs incurred in recovering any overdue amounts in addition to the overdue amounts and we may charge a \$50.00 debt collection administration charge.
- 5.3 We will notify you in writing prior to taking any debt recovery actions that will result in further charges to you.

6. Credit and Privacy

- 6.1 Subject to the Privacy Act 1988 (Cth) we may use your personal information, including your name, address and other information you give us in your application.
- 6.2 We may disclose personal information you provide to us to a credit reporting agency.
- 6.3 You agree the credit report containing personal information about you can be given to any credit reporting agency to help assess your application for commercial credit, or for collecting overdue payments that are owed by you to us.
- 6.4 We can obtain information about your credit worthiness from any person or body who provides this information to assist in our assessment of your application for commercial credit.
- 6.5 We may at our absolute discretion conduct periodic credit worthiness assessments.
- 6.6 We can provide your personal information to:
 - (a) collection agents to recover overdue amounts you may owe us;
 - (b) carriers or service providers if they need information to provide the service to you;
 - (c) to government or regulatory bodies as may be required by law.
- 6.7 Except for uses stated above we will keep your personal information confidential.

7. Limitation of Liability

- 7.1 We will use our best endeavours at all times to provide a fault free service to you but our ability to provide that service depends on the services of other providers and suppliers and we must therefore exclude our liability arising out of matters beyond our reasonable control.
- 7.2 We accept our liability under all applicable consumer protection laws (including Telecommunications Laws) but only to the extent that we cannot exclude those.
- 7.3 To the maximum extent permitted by law we will not be liable in any circumstances to you or any person claiming through you under statute or the common law for:
 - (a) any property or economic loss or damage (including loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings or profits);
 - (b) any direct, indirect or consequential loss, howsoever arising;

- (c) the acts or omissions of the carrier or any of our servants, officers, agents, contractors, subcontractors or of the failure of, or fault or defect in, any telecommunication service, network, facility, equipment or service, used by us in supplying the Services;
 - (d) Any loss of whatever nature caused or contributed to by any delay or default in performance under this agreement, if it is caused by any event reasonably beyond our control including but not limited to:
 - (i) delay or failure of any other supplier or service on whom we rely
 - (ii) any delay in installing any Service;
 - (iii) any delay in correcting any fault in any service;
 - (iv) failure or incorrect operation of any service,
 - (v) industrial action or trade embargo,
 - (vi) Force Majeure such as (but not limited to) war, civil strife, accident, and Act of God.
- 7.4 Any liability that we might otherwise have is always reduced by the extent that your loss or damage has been caused or contributed to by you.
- 7.5 You acknowledge that any liability any carrier has to you or us in relation to telecommunication service is governed by the terms and conditions current from time to time under which the carrier supplies service(s) to its own customers.
- 7.6 You agree to indemnify us and keep us indemnified from and against liability, loss or damage sustained by any third party or any party claiming through you, caused directly or indirectly by any breach of agreement by us, or any claim or action arising directly out of any negligent or wilful act of ours or any of our servants, officers, agents, contractors, or subcontractors
- 7.7 The failure by **Voicetalk** to exercise any right or remedy under this Agreement in a timely manner does not constitute acceptance of the matter which gave rise to the right or remedy, nor our waiver of such right or remedy.

8. Termination

- 8.1 We may terminate this Agreement immediately if:
- (a) you breach or fail to perform satisfactorily or observe the Terms and Conditions of this Agreement;
 - (b) a receiver or receiver-manager is appointed over any of your property or assets, if an administrator and/or liquidator is appointed, if you enter into any scheme of arrangement or other arrangement with your creditors, or you assign or otherwise deal with your rights under this agreement without our prior written consent;
 - (c) other carriers cease to provide necessary services to us.
- 8.2 You may terminate this Agreement immediately if we breach or fail satisfactorily to perform or observe the Terms and Conditions of this Agreement.
- 8.3 You acknowledge that if we terminate this Agreement and another carrier supplies you services other than through us, you will acquire the services from the carrier on the carrier's then current tariffs and terms and conditions.
- 8.4 You may terminate this Agreement by one of the following methods:
- (a) telephone **1300 882 172**
 - (b) email **contact@voicetalk.com.au**
 - (c) fax **1300 733 393**
 - (d) in writing Attention: **Voicetalk** Customer Service
Locked Bag 4000, Fortitude Valley QLD 4006.

9. Transfer of Services

- 9.1 In order for you to use our Services we may need to change your arrangements with your current telecommunications services supplier. In which case:
- (a) you appoint us as your agent to transfer your account for these Services to us and you authorise us to sign, on your behalf and in your name, the authority that will cause your current supplier to transfer your account to us;
 - (b) if we request, you must give written instructions to your account supplier;

- (c) you must pay your current supplier all amounts owed to them;
- (d) if you ask to transfer your account to another supplier, you must pay our charges up to date of transfer of the services, as well as any termination fees applicable.

10. Information

10.1 You hereby consent to:

- (a) the carrier and us and related bodies corporate exchanging information about you;
- (b) provide us with any information we request in connection with our providing the Services to you under this Agreement;
- (c) our conducting a physical audit of the Services and any equipment supplied in respect of the Services;
- (d) the carrier disclosing to us all records and in particular exchange line details, telephone accounts information, call charge records and call event records, data usage records, ADSL service details.
- (e) receiving marketing materials from us or our associated companies unless you request otherwise.

10.2 We retain all intellectual property rights in any information relating to the Services, the design or operation of our network and other technical information relating to the provision of the Services.

11. Commencement and Term of the Agreement

11.1 This Agreement commences when you sign the application or when you complete a voice recorded agreement with us to take the Service(s) and continues until terminated or expires.

11.2 The provision of Service(s) commence when your account is created. Provisioning of your Service(s) can take up to 90 days.

12. Our Equipment

12.1 Risk in any equipment provided by us or any third party to you for purchase or hire ("Equipment") passes to you upon delivery. You accept any Equipment on the basis of these Terms and Conditions and any additional terms and conditions notified at the time of delivery.

12.2 Title to any Equipment provided for purchase does not pass to you until all amounts owing to us under this Agreement and the cost of such Equipment have been paid in full. You hold the Equipment as bailee for us.

12.3 If Equipment is installed at premises occupied by you, you must not interfere with the Equipment or its installation.

12.4 You irrevocably grant to us, our agents and servants, leave and license without the necessity of giving any notice to enter at any time on and into premises occupied by you using reasonable force if necessary to inspect, search for and retake possession of any Equipment in respect to which payment is overdue. You shall indemnify us and hold us harmless against any loss or damage suffered by any person or company arising from such possession.

12.5 On the termination of this Agreement, you must immediately return to us all Equipment owned by us or make it available for our collection.

13. Other Equipment

13.1 Where you have equipment which another supplier uses to provide you with services, we will disconnect that equipment when you transfer the services to us and we connect our Equipment (if any). You must immediately notify that supplier that you have transferred your services to us and arrange for them to remove their equipment from the premises.

14. Cooling Off Period

14.1 There is a ten (10) business day cooling off period starting from date of application which may be either in writing or a voice recording if you made the agreement by telephone.

14.2 If you receive hardware, before opening the box please look at the photo and description of the hardware and ensure that such hardware meets your requirement.

- 14.3 If you cancel your contract, you are required to return to us within two days of cancellation, all hardware we have supplied to you.
- 14.4 If the hardware box is returned opened charges may apply.
- 14.5 To exercise your right to cancel within the 10 day cooling off period you must notify us by one of the following:
- (a) telephone **1300 882 172**
 - (b) email **contact@voicetalk.com.au**
 - (c) fax **1300 733 393**
 - (d) In writing Attention: **Voicetalk** Customer Service
Locked Bag 4000, Fortitude Valley QLD 4006

15. Hardware Delivery

- 15.1 Freight charge is up to \$15.95 per parcel sent (inclusive GST)
- 15.2 Delivery timeframes are between 5 – 10 business days.

16. Contracted Term or Minimum Spend

- 16.1 If your Service is under contract, and your Service is terminated for whatever reason (other than cooling off or our default), you agree to pay any applicable Contract Payout fee or Cancellation fees.
- 16.2 If your Service is subject to a minimum spend requirement, you agree to pay such minimum amount.
- 16.3 We reserve the right to change the terms and rates without notice should they offend the Fair Use Policy (FUP) (refer clause 22).

17. GST

- 17.1 Unless expressly stated otherwise, the charges payable for the Services under this Agreement are exclusive of GST. You must pay to **Voicetalk** in addition to the charges for the Services, an amount equal to any GST payable on the supply of the Services.

18. Notices

- 18.1 Any notice, demand, consent or other communication required to be given to either party must be delivered personally, sent by ordinary mail to the last notified address of the other party, email communication or via the telephone, where a voice record of the communication can be given by us.

19. Governing Law

- 19.1 This agreement shall be governed and construed in accordance with the laws of Queensland. Any legal proceedings arising out of this agreement shall be brought in Brisbane in the State of Queensland.

20. General

- 20.1 If any part of this Agreement is found to be invalid or of no force or effect this Agreement shall be construed as though such part had not been inserted and the remainder of this Agreement shall retain its full force and effect.
- 20.2 We may assign the benefit of this Agreement at any time to a person or corporation nominated by us, including a carrier and in this event such assigned or nominated carrier shall deal directly with you for the purpose associated with the provision of Services under this Agreement.
- 20.3 Any and all legal costs incurred by us in enforcing our rights pursuant to this Agreement including but not limited to the recovery of monies payable by you, are payable by you to us on a full indemnity basis.

21. Direct Debit Agreement

- 21.1 We will advise you, in writing, the details of our invoice at least 14 calendar days prior to the first drawing.

- 21.2 Where the due date falls on a non-business day, we will draw the amount on the next business day.
- 21.3 We will not change the frequency of drawing arrangements without your prior approval.
- 21.4 We reserve the right to cancel the drawing arrangements if three or more drawings are returned unpaid by your nominated Financial Institution and to arrange with you an alternative payment method.
- 21.5 We will keep all information pertaining to your nominated account at your financial institution, private and confidential.
- 21.6 You may terminate the drawing arrangements at any time by giving written notice to us. Such notice should be received by us at least 14 business days prior to the due date.
- 21.7 You may stop payment of a drawing by giving written notice to us. Such notice should be received by us at least 14 days prior to the due date.
- 21.8 You may request change to the drawing amount and/or frequency of drawings by contacting us and advising your requirements no less than 14 business days prior to the due date.
- 21.9 Where you consider that a drawing has been initiated incorrectly (outside our arrangements) you should take the matter up directly with us.
- 21.10 We reserve the right to charge a dishonour fee where funds are not available when drawing takes place.
- 21.11 You must:
 - (a) ensure that sufficient funds are available in the nominated account to meet a drawing on its due date
 - (b) ensure that the authorisation given to draw on the nominated account is identical to the account signing instruction held by the financial institution where the account is based
 - (c) advise us if the account nominated by you to receive the drawings is transferred or closed.

22. Fair Use Policy (FUP)

- 22.1 Our FUP is to ensure that you do not use our Services in an excessive or unreasonable manner. The **Voicetalk** services Fair Use Policy is intended to ensure all active customers have access to Services that are continuously of high quality. It also includes any plan based on special conditions in favour of the customer.
- 22.2 Excessive Use: If your usage of Voicetalk services is deemed excessive, we may contact you and request that you decrease your usage.
- 22.3 **Voicetalk** considers excessive use thresholds to be any one of:
 - (a) Landline Local calls - more than 500 calls in any one calendar month
 - (b) Landline National calls – 1000 minutes per month
 - (c) Landline Calls to Mobile – 1000 minutes per month
 - (d) Mobile Service – 1000 minutes per month
 - (e) Inbound Service – 1000 minutes per month
- 22.4 After contact from Voicetalk, should your usage continue to be excessive, **Voicetalk** may, without further notice to you:
 - (a) Suspend or limit your Service, or service feature, for a length of time **Voicetalk** deems necessary.
 - (b) Terminate your Agreement.
 - (c) Charge your account for usage over and above the excessive use threshold at the ex GST rates below:
 - (i) Calls to mobile 40 c per minute
 - (ii) National calls 20 c per minute
 - (iii) Local calls 17 c per call
 - (iv) 13/1300 calls 33 c per call
 - (v) Mobile to mobile 80c per min 35 c flag fall

- 22.5 **Voicetalk** reserves the right to review or amend this policy from time to time.
- 22.6 Please refer to the **Voicetalk** website for the most recently updated Terms and Conditions

23. Compliance

- 23.1 You will ensure that you comply at all times with all laws and obligations, including license conditions, applicable to the Services and their use.
- 23.2 You will not use the Service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us for any loss or expense we suffer as a result of you doing so.

24. Broadband Service Acceptable Use Policy

- 24.1 All Broadband ADSL services are subject to "OPTUSNET ACCEPTABLE USE POLICY".
- 24.2 By using this service you agree to the terms laid out in the policy below.

25. OPTUSNET ACCEPTABLE USE POLICY

25.1 About this policy

This policy is set out below - please read it carefully. *Your* use of the *service* is subject to the following rules and guidelines contained in this policy.

The meaning of the words printed *like this* is set out at the end of this policy.

25.2 General

This policy is designed to ensure that *your* use of the *service* does not break any laws, hinder the efficient operation of *our network*, interfere with the rights of *OptusNet customers*, or interfere more generally with the rights of Internet users.

Some **Voicetalk** Wireless Connect customers do not receive an *OptusNet account* as part of the *service*. Those parts of this policy that relate specifically to the *OptusNet account* do not apply to those **Voicetalk** Wireless Connect customers.

You are responsible for ensuring that use of the *service* and *your OptusNet account* (if any) complies with this policy. *You* are also responsible for any use of the *service* even if, for example, it was used, with or without *your* consent, by a friend, family member, guest or employee who gains access to the *service* or *your OptusNet account* (if any).

If *we* amend this policy, *we* may notify *you*, and *you* hereby consent to *us* sending *you* notices in such a way, by using one or more of the following methods:- mail (to the last address *you* have given *us*), email (to *your primary email address*), or notice on *our* OptusNet web site at www.optus.com.au/optusnet (if the *service* is a pre-paid service).

You should consult this policy regularly to ensure that *your* activities conform to the most recent version. If there is an inconsistency between any other part of *your agreement* and this policy, this policy will apply.

If *you* become aware of any violations of this policy by other OptusNet users you should contact *us*.

25.3 Illegal Activity

You must not use the *service* for any activity that breaches any law or violates any local, state, federal or international law, order or regulation.

Prohibited activities include (but are not limited to): posting, disseminating, or in some cases accessing, *content* which is unlawful, including: *content* that is or would be classified by the *Classification Board* as *RC rated* or *X rated* and that is or would be classified by the *Classification Board* as *R rated* where a *restricted access system* is not in place, *content* which violates the copyright or other *intellectual property rights* of others.

You assume all risks regarding the determination of whether material is in the public domain, or *content* that defames, harasses or abuses anyone or violates their privacy, pyramid or other illegal soliciting schemes, or any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

25.4 Security

You are responsible for any misuse of the service.

You must take reasonable steps to ensure that others do not gain unauthorised access to the service and your OptusNet account (if any).

The *service* must not be used to obtain or attempt to obtain unauthorised access to any computer, system or *network*. If *you* do not have authorisation, prohibited activities include (but are not limited to): accessing, monitoring or using any data, systems or *networks*, probing, scanning or testing the vulnerability of a system or *network*, breaching any security or authentication measures for a system or *network*, accessing the account or private information of any other person or entity, accessing any server in violation of any acceptable use policy of that server.

You must not: use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools, knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature, use (or attempt to use) the service in a manner that may interfere with the technical operation of the service or any other computer, system, network or telecommunications services, including (but not limited to) denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to 'crash' a host, or interfere (or attempt to interfere) with the regular workings of our systems or network connections.

You are solely responsible for the security of any device you choose to connect to the service, including any data stored on that device.

We recommend against enabling file or printer sharing of any sort. We recommend that any files or services you do choose to make available for remote access be protected with a password or other appropriate measures to prevent unauthorised access.

You must notify us immediately of any unauthorised or attempted unauthorised use of your service and any other breach or attempted breach of security.

25.5 Risks of the Internet

Some activities that you can perform when accessing the Internet may be harmful or cause loss to you, other people that may access your service, or your equipment. Typical activities include (but are not limited to): downloading *content* (including receiving emails) from the Internet which may introduce viruses or other harmful features to your computer, purchasing goods or services using the Internet, transmitting confidential information over the Internet (such as your credit card number or other personal information), or accessing and viewing content on the Internet or otherwise available through the service that may be offensive to some individuals, or inappropriate for children (for example, it is possible to obtain access to content that is pornographic, offensive and/or unsuitable for children).

You bear all risk associated with the activities referred to in paragraph (a) above, and we do not have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.

You may minimise the risk of accessing illegal or offensive content as well as managing use of the Internet by using a filtering solution. We will provide access to one or more of these filtering solutions at a reasonable cost to you as part of the service. You have the right to make complaints to the Australian Communications and Media Authority about Internet content which is or would be classified by the Classification Board as X rated, RC rated, or R rated and does not have a restricted access system in place.

25.6 Content Publishing

You are solely responsible for any *content* that *you* publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the *service*.

You must not publish material that is or would be classified by the *Classification Board* as *RC rated* or *X rated* via websites, email, newsgroups or other publishing mediums accessible via the *service*.

You must take appropriate precautions to prevent minors from accessing or receiving any *content* *you* have published that may be inappropriate for them. This includes implementing a *restricted access system* on *content* that is or would be classified by the *Classification Board* as *R rated*.

We also encourage *you* to use appropriate warnings and / or labelling systems in respect of content which is likely to be considered unsuitable for children. *We* reserve the right to block access to, to remove, or to refuse to post any *content*, in whole or in part, that *we*, in our sole discretion, deem to be offensive, indecent, or otherwise inappropriate regardless of whether such *content* or its dissemination is unlawful. This includes (but is not limited to) obscene material, fraudulent or deceptive statements, threatening, intimidating or harassing statements, or material which violates privacy rights or *intellectual property rights* of others, or is likely to be defamatory of another person. Commonwealth legislation allows the Australian Communications and Media Authority to direct *us* to remove certain prohibited or potentially prohibited *content* from our servers or to prevent users from accessing certain Internet *content*.

We may take any steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from the Australian Communications and Media Authority, including removing any *content* (including part or all of a website) from our servers, blocking access to newsgroups, closing or suspending *your OptusNet account*, filtering the Internet *content* made available to *you* or restricting access to a particular website.

We may take these steps at any time and without notice to *you*. Commonwealth legislation allows copyright owners or their agents to direct *us* to remove copyright materials from our servers or to prevent users from accessing copyright materials.

We may take any steps necessary in order to ensure compliance with a notification from a copyright owner or their agent, including removing any *content* (including part or all of a website) from our servers, closing or suspending *your OptusNet account*, filtering the Internet *content* made available to *you* or restricting access to a particular website.

We may take these steps at any time and without notice to *you*.

We are under no obligation to monitor transmissions or published *content* on the *service*.

However, *we* (or *our* agents) have the right to monitor such transmissions or published *content* from time to time and to disclose that content. By using the *service* to reproduce, publish, display, transmit or distribute *content*, *you* warrant that the *content* complies with this policy and authorises *us* (or *our* agents) to reproduce, publish, display, transmit and distribute such *content* as necessary for *us* to deliver the *content* in a timely manner.

25.7 Electronic Messaging

You must not use the *service* to send bulk and/or unsolicited messages. This includes, but is not limited to commercial advertising, informational announcements, charity requests, and petitions for signatures, chain letters and political or religious messages.

You must only send such a message to those individuals who have explicitly requested it. The *service* must not be used to: send messages to any individual or entity who has indicated that he/she/it does not wish to receive messages from *you*, collect or redirect responses from unsolicited messages sent from accounts on other Internet hosts or messaging services which violates this policy, or the equivalent policy or any other policy of any other Internet service provider or web site. Moreover, unsolicited messages sent from accounts on other Internet hosts or messaging services may not direct the recipient to any web site or other resource that uses *our network*. *You* must not: obscure, alter or delete the source of messages that *you* send

or forge message headers, send numerous copies of the same or substantially similar messages, or send very large messages or files, to a recipient with the intent to disrupt a server or account (for example, 'mail bombing'), send chain letters, whether or not the recipient wishes to receive such mailings.

We are not responsible for forwarding or storing messages sent to any *OptusNet account* that has been suspended or cancelled. Such messages may be returned to sender, ignored, deleted, or stored temporarily at *our* sole discretion.

25.8 Online Forums

This clause applies to *online forums*, in addition to clause 26.6. Messages posted to an *online forum* must comply with the written charters for that forum.

You are responsible for determining the policies of a given forum before posting a message to it. Data files may only be posted to *online forums* that specifically permit this. Posting or cross-posting the same or substantially similar messages to more than eight *online forums* is prohibited.

You must not disrupt or attempt to disrupt *online forums* by posting a large number of messages that contain no substantive *content*. Disruption occurs when normal discussion in the group is significantly hindered.

You must not use the *service* to connect to an *online forum* from which you have been previously banned.

25.9 Automated Applications

The *service* is provided for interactive use. However, if automated programs or programs that maintain a persistent connection to a remote service are used, they must only be used when you are physically present at the computer. These activities include (but are not limited to) automated file *downloading*, IRC 'bots', continuous streaming media and peer-topper file sharing applications.

25.10 Violation of Acceptable Use Policy

If you, or someone with access to the *service*, use the *service* in a way that we, in *our* sole discretion, believe violates this policy or any other term of *your agreement*, we may take any responsive action we deem appropriate. Such actions may include (but are not limited to) temporary or permanent removal of *content* and content publishing capabilities, filtering of Internet transmissions and the immediate suspension or cancellation of all or any portion of the *service*.

We have no liability for any such responsive actions and may take any other legal or technical action we deem appropriate, including taking action against offenders to recover the costs and expenses of identifying them.

If *your* use of the *service* causes a loss to third parties and we are required to pay compensation, we may require you to reimburse us.

We are not obligated to regularly monitor *your* usage of the *service* (including any *content* posted, disseminated or accessed by you); however we reserve the right to monitor *your* use of the *service* to identify violations of this policy, and to protect *our network*, the other users of this *service*, and other Internet users.

We reserve the right to investigate suspected violations of this policy, including the gathering of information from the user(s) involved and the complaining party, if any, and examination of transmissions and material on *our* servers and *network*. During an investigation, we may suspend the *OptusNet account(s)* involved, interrupt transmissions and/or remove material that potentially violates this policy.

In order to enforce this policy, you authorise us (or *our* agents) to cooperate with: law enforcement authorities in the investigation of suspected criminal violations, and system administrators at other Internet service providers or other *network* or computing facilities. Such cooperation may include us providing, for example, the username, IP address or other identifying information about a user. Upon cancellation of an *OptusNet account*, we are authorised to delete any files, programs, data and email messages associated with the

OptusNet account. Any failure by *us* to enforce this policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time. *You* agree that, if any portion of this policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. This policy is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which *you* normally reside. *You* and *we* submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

25.11 **What Do Words In This OptusNet Acceptable Use Policy Mean?**

<i>Classification Board</i>	is the Classification Board established under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> (Cth).
<i>electronic messaging</i>	includes all forms of electronic communications to other individuals including email, instant messaging, web to SMS, Internet chat and online forums.
<i>filtering solutions</i>	means Internet filtering software or system approved for use under the Internet Industry Association Content Codes of Practice registered under the <i>Broadcasting Service Act 1992</i> (Cth). The Internet Industry Association provides a list of approved filtering solutions on its website – www.iaa.net.au
<i>online forum</i>	mean a forum accessible on the Internet that is generally devoted to the discussion of a specific topic area and includes (but is not limited to) newsgroups, message boards, chat rooms or mailing lists.
<i>OptusNet account</i>	means the email account (if any) where you are billed (or <i>you</i> have prepaid) for one or more <i>services</i> and through which you can monitor and request changes to the <i>service</i> .
<i>OptusNet customers</i>	means customers who are connected to one of the <i>services</i> .
<i>our network</i>	means the network(s) used to supply the <i>service</i> to <i>you</i> as set out in the relevant <i>service description</i> .
<i>R rated</i>	includes (but is not limited to) material containing excessive and/ or sexual violence, implied or simulated sexual activity, or materials which deal with issues or contains depictions that requires an adult perspective.
<i>RC rated</i>	includes (but is not limited to) material containing detailed instruction in crime, violence or drug use, child pornography, bestiality, excessive violence or sexual violence, real depictions of actual sexual activity or obscene material.
<i>restricted access system</i>	means a „restricted access system“ as referred to on the Australian Communications and Media Authority website at www.acma.gov.au .
<i>service</i>	means each of the OptusNet Dial-Up Internet Service, OptusNet Cable Internet Service or OptusNet DSL Internet Service, as applicable to the individual user.
<i>services</i>	means the OptusNet Dial-Up Internet Service, OptusNet Cable Internet Service and OptusNet DSL Internet Service.
<i>SMB</i>	small to medium business
<i>X rated</i>	includes (but is not limited to) material containing real depictions of actual sexual acts.