

## *TransACT Standard Form of Agreement - TransTALK Flex*

### **Terms and conditions**

#### **1. Introduction**

- 1.1 This Agreement (“the Agreement”) comprises:
  - 1.1.1 These terms and conditions;
  - 1.1.2 The First Schedule (which contains the Charges) and any other Schedules that may be added to the Agreement; and
  - 1.1.3 Your Application as accepted by us;
- 1.2 We will provide Services to you under the Agreement. It has been formulated as a Standard Form of Agreement for the purposes of section 479 of the *Telecommunications Act 1997 (Cth)* (“the Act”).
- 1.3 The Agreement commences on the date that we start providing the Service to you and continues unless and until terminated in accordance with this Agreement.
- 1.4 We may vary the Agreement, including the Charges, at any time in accordance with the requirements of the Act.
- 1.5 Some of the words in the Agreement begin with a capital letter (e.g. Your Premises). The meaning of these words are defined in the Dictionary at the end of this Agreement.
- 1.6 You may obtain a copy of the Agreement from our registered office at 470 Northbourne Avenue Dickson ACT or download it from our website at [www.transact.com.au](http://www.transact.com.au)

#### **2. Agency**

- 2.1 You appoint us as your agent to deal with:
  - 2.1.1 Your current Provider; and
  - 2.1.2 Telstra
- 2.2 As your agent, you appoint us to act with full authority on your behalf in relation to any telecommunications services provided over the Access Line, or in relation to the Access Line itself, including without limitation:
  - 2.2.1 to require Preselection to be changed to or from us;
  - 2.2.2 to cancel your existing supply arrangements with a Provider (including Telstra);
  - 2.2.3 to request access to any of your account information held by any Provider or by Telstra; and
  - 2.2.4 to receive from you, and to deal with a Provider or Telstra in respect of, any faults, provisioning and service change requests or maintenance issues concerning the Access Line or telecommunications services provided over it.

- 2.3 You will be responsible for any charges payable by you under your agreement with another Provider in relation to canceling that agreement or transferring services or changing preselection or for any other cause.
- 3. Services provided by us to you**
- 3.1 The Service under this Agreement:
- 3.1.1 Is provided by us to you;
  - 3.1.2 Telstra supplies the Service to us and we resupply the Service to you.
  - 3.1.3 The Products comprising the Service have the same features when supplied by us to you as when Telstra supplies the same service to us and its own customers, except to the extent that particular products, services or features are not made available by Telstra to us for resale.
- 3.2 We will provide the Service to you based upon the provisions of this Agreement, the selection of Products which you have made in your Application, and the provisions of Telstra's Standard Form of Agreement that relate directly to the provision of the Service, to the extent those provisions are not inconsistent with this agreement.
- 3.3 You may purchase the Service from us in one of two ways:
- 3.3.1 As an individual service, in which case the provisions of this Agreement will apply; or
  - 3.3.2 In conjunction with other services, in which case the terms and conditions of another agreement may also apply to your use of the Service or part of the Service not covered by this Agreement.
- 3.4 We will not provide the Service unless and until:
- 3.4.1 Your premises are connected to Telstra's network;
  - 3.4.2 We have approved your Application;
  - 3.4.3 You have Preselected us as your Provider of Long Distance Services;
  - 3.4.4 If applicable, you have obtained the consent of the owner of your Premises; and
  - 3.4.5 If applicable, you satisfy any pre-supply testing required by us or Telstra.
- 3.5 The Service that we will provide you with under this agreement:
- 3.5.1 Will allow you to make calls and receive calls capable of being carried over an Access Line from a telephone located on your premises;
  - 3.5.2 Includes the range of other Products that you have nominated in your application form and that we have agreed to provide to you
- 3.6 The precise features of the Service provided to you will depend upon:
- 3.6.1 The Products selected in your application;
  - 3.6.2 The provisions of this Agreement; and
  - 3.6.3 The provisions of Telstra's Standard Form of Agreement.

- 3.7 Subject to the provisions of Clause 15 (Liability) of this Agreement,
  - 3.7.1 We will use reasonable care and skill in providing the Service; and
  - 3.7.2 We will remedy faults in the Equipment or the Service in a timely manner and, if applicable, in accordance with our obligations under the Customer Service Guarantee.
- 3.8 Neither we nor Telstra warrant that the Service will be provided on an uninterrupted or fault-free basis.

#### **4. Installation, maintenance and use of the service**

- 4.1 You acknowledge there may be a delay between when you preselect us to supply the service and when we are able to provide the service, depending on:
  - 4.1.1 The date on which Telstra has completed all steps necessary to enable you to acquire the service from us including to facilitate transfer and/or to install, test and activate the Access Line; and
  - 4.1.2 Any other relevant circumstance, including without limitation any cooling-off period under applicable legislation.
- 4.2 You must:
  - 4.2.1 Provide us and Telstra with safe, sufficient and timely access to your premises:
    - 4.2.1.1 To inspect, test, or modify a Service, the Equipment or Your Equipment, which may be causing interference or danger; and
    - 4.2.1.2 In connection with the installation, provision, maintenance and repair of the Service, the Equipment, or Your Equipment or of any utility (such as electricity or air conditioning).
  - 4.2.2 Promptly report any fault in the Service to our Contact Centre.
  - 4.2.3 Make modifications to Your Equipment, if so required by us or by Telstra;
  - 4.2.4 Provide all reasonable assistance to enable us or Telstra to investigate a fault;
  - 4.2.5 If you do not own the premises, obtain the owner's permission for us or Telstra to enter, and indemnify us and Telstra against a claim by the owner or occupier of the premises in relation to our or Telstra's entry onto those premises;
  - 4.2.6 If inadequate capacity in the service or your use of the service interferes or threatens to interfere with the efficiency of Telstra's network, follow our or Telstra's directions on how to end or avoid that interference.
- 4.3 You must not use the Service in a manner which may:
  - 4.3.1 Menace or harass any person or intentionally cause damage or injury to, any person or property or incite hatred against any person;
  - 4.3.2 Expose us or Telstra to the risk of any legal or administrative action including prosecution under any law, or which would bring us or Telstra into disrepute.

- 4.3.3 Involve the publication of material that is illegal, or defamatory, or which may promote others to engage in such acts;
- 4.3.4 Infringe any person's intellectual property or rights;
- 4.3.5 Be unlawful; or
- 4.3.6 Send excessive unsolicited data to third parties.
- 4.4 You must not:
  - 4.4.1 Interfere with the normal operation of or make unsafe the Service or any Equipment;
  - 4.4.2 Have unauthorised access to, or interfere with any Equipment;
- 4.5 You acknowledge that we or Telstra may from time to time close down any Service to perform planned maintenance or repair work on Telstra's Network. We will provide you with as much notice as is practicable in the circumstances of any such planned maintenance or repair work.
- 4.6 If you move premises:
  - 4.6.1 You must give us 30 days notice in writing to cancel supply of the Service or to request that responsibility for the Service be transferred to another person (being an incoming tenant or owner) on the same Access Line.
  - 4.6.2 You will cease to have access to the Service on the following date:
    - 4.6.2.1 If we agree to transfer responsibility for the Service to another person on the same Access Line, the date on which we accept that person as a customer; and
    - 4.6.2.2 If we are to cease supplying the Service, the date on which Telstra ceases to regard us as being contractually responsible to Telstra for the Access Line.
- 4.7 The following provisions apply to use of Override Codes:
  - 4.7.1 If you are Preselected to us and you use an Override Code (including calls made using a Telstra Override Code) to access a service of another Carrier or Carriage Service Provider to make a call, this Agreement does not apply to that call;
  - 4.7.2 You may be billed by us for calls using an Override Code. We will bill you at the same rate as we are billed by the Carrier or Carriage Service Provider whose override code you have used.

## **5. Your Equipment**

- 5.1 You are responsible for the provision of telephone handsets in order to receive the Telephone Service. You may be required to provide other equipment in order to utilise a particular Product.
- 5.2 You must not use or connect anything to the Equipment which is prohibited or not authorised by ACMA, or which does not meet the requirements of any technical or interconnection standards of ACMA, or which does not otherwise comply with any law or regulation, and you must not authorise or consent to such use or connection.

- 5.3 Clause 5.2 above does not apply to a connection made in accordance with:
- 5.3.1 a connection permit issued under the *Telecommunications Act*; or
  - 5.3.2 connection rules made under the *Telecommunications Act* where the party establishing, maintaining or permitting the connection (as the case may be) is subject to such connection rules.
- 5.4 You acknowledge that the *Telecommunications Act* entitles Telstra to disconnect Your Equipment or cabling in certain circumstances.
- 6. Ownership, use and care of our/Telstra's equipment**
- 6.1 We own the Equipment, except for Telstra's equipment and facilities, which are owned by Telstra.
- 6.2 You must:
- 6.2.1 Comply with our or Telstra's instructions regarding the use and care of the Equipment;
  - 6.2.2 Promptly report faults in the Equipment to our Contact Centre;
  - 6.2.3 Take all due care of the Equipment, and protect the Equipment from any loss, damage (excluding reasonable wear and tear), theft or detention;
  - 6.2.4 Not create or allow the creation of, a mortgage, charge, lien or encumbrance over the Equipment;
  - 6.2.5 Not use or permit the use of the Equipment for any improper, illegal or unauthorised purpose; and
  - 6.2.6 Not use the Equipment at any location other than your Premises.
- 6.3 If the Equipment is lost, damaged, stolen or detained:
- 6.3.1 You must promptly notify us; and
  - 6.3.2 We may charge you a fee for any lost damaged, stolen or detained Equipment
- 6.4 You are responsible for obtaining insurance cover for the Equipment
- 7. Your Obligations**
- 7.1 You must ensure that any other person who uses the Service or the Equipment complies with your obligations under this Agreement.
- 8. Phone Numbers**
- 8.1 If you do not already have a phone number for use with the Service we will allocate you a Service Number, in accordance with the Telecommunications Numbering Plan.
- 8.2 You acknowledge that we may be required by the Telecommunications Numbering Plan to change, withdraw or suspend your Service Number from time to time.

- 8.3 You do not own and cannot claim goodwill in your Service Number. Your right to use the Service Number ends if you no longer obtain the Service from us (unless you transfer the Service Number);
- 8.4 If you stop using the Service and do not transfer your Service Number, we may re-allocate your Service Number to another customer in accordance with the Telecommunications Numbering Plan.
- 8.5 We are not liable to you for any expense or loss incurred by you or your business due to:
  - 8.5.1 Any change, withdrawal or suspension of your Service Number under clause 8.3 above;
  - 8.5.2 Any re-allocation of your Service Number under clause 8.5 above;
  - 8.5.3 The ending of your right to use the Service Number under Clause 8.4 above.

## **9. Customer Service**

- 9.1 We are supplying the Service to you. All enquiries, complaints and requests should be made to us and not to Telstra.
- 9.2 If you contact Telstra directly, Telstra may refuse to respond to your enquiry, complaint or request and may:
  - 9.2.1 Redirect you to us, and/or
  - 9.2.2 Charge us a fee. You acknowledge and agree that we are entitled to pass that fee on to you.
- 9.3 All enquiries, complaints and requests may be directed to our Contact Centre on 13 30 61 between the hours of 8 am to 6 pm Monday to Friday or otherwise at the phone number shown on our website [www.transact.com.au](http://www.transact.com.au)
- 9.4 All technical support enquiries may be directed to our Technical Contact Centre on 13 30 61 between the hours of 8 am to 9 pm Monday to Friday and 11 am to 7 pm on weekends and public holidays.

## **10. Third Party Services**

- 10.1 If applicable, you acknowledge and agree that you will enter into separate contracts for Third Party Services.
- 10.2 We are not liable to you or any other person for any loss or damage suffered by you in respect of the delivery of Third Party Services, including without limitation:
  - 10.2.1 Delay or interruption in the Third Party Service;
  - 10.2.2 Inability of us or Telstra to provide you with any Third Party Service over our respective Networks;
  - 10.2.3 Failure to show an advertised program;
  - 10.2.4 Supply of Third Party Services in error;

10.2.5 Failure to provide Third Party Services; and

10.2.6 Any distress or offence suffered by you or any other person through the exposure to pornographic images or defamatory or any otherwise offensive or distasteful material.

## **11. Charges and Payment**

11.1 All Charges applicable to the Service are specified in the First Schedule to the Agreement, or as otherwise notified to you (including as stated in your Application). If charges are not shown in the First Schedule, then they are as set out in Telstra's Standard Form of Agreement.

11.2 We may vary the Charges, or introduce new Charges, in accordance with Clause 12.

11.2 We will issue tax invoices to you on a regular basis (monthly, or as otherwise provided in your Application) for the Charges you have incurred for the Services we have supplied to you. We may send tax invoices to you electronically if you have indicated in your Application or otherwise that you are capable of receiving online bills, or we may send you paper bills through the post.

11.3 You must pay the Charges in accordance with the tax invoices issued by us.

11.4 Our records are sufficient evidence of the existence and amount of any Charge owed by you to us.

11.5 If you do not pay the full amount owing by the due date shown on the tax invoice, we may:

11.5.1 Charge administrative fees, which may include late fees, non-payment fees, dishonour charges, suspension fees, cancellation fees and bundle cancellation fees;

11.5.2 Employ a commercial agent to recover any amount owing. You expressly authorize us to disclose your personal information to a commercial agent for this purpose and for any related purpose;

11.5.3 Recover debt collection costs and commission;

11.5.4 Suspend the Service and impose a reconnection fee;

11.5.5 Suspend Network Access and impose a reconnection fee; and

11.5.6 You remain liable for any applicable charges (for example, the line rental fee, throughout any period of suspension pursuant to clause 12.5). We are not obliged to reconnect the service until such applicable charges and any reconnection fee are paid.

11.6 You must pay the Charges without any set off, counter claim or deduction.

11.7 We may set off any amount payable by us to you against any amount payable by you to us.

11.8 We may impose an additional charge to install the Service if we need to perform work beyond the usual scope of work required for similar installations.

11.9 You are responsible for all Charges incurred in the use of the Service, even if someone other than you incurs those Charges without your knowledge or consent.

11.10 All charges are GST inclusive unless otherwise stated.

- 11.11 You acknowledge that the Schedule to this agreement may provide for a higher rate to be charged in the event that you do not Preselect us to provide Long Distance Services to you.
- 11.12 Clause 4.7 provides for the charging of calls made using an Override Code.

## **12. Changing the Agreement**

- 12.1 From time to time we may need to vary certain Charges, or introduce new Charges, without your consent. Any changes to this Agreement will be made in accordance with this clause 12.
- 12.2 Subject to the exceptions contained in clause 12.3 and 12.4 below, if we consider that the change will have an impact on you, we will give you:
  - 12.2.1 notice of the proposed change at least 21 days before it takes effect; and
  - 12.2.2 the option to terminate this Agreement within 42 days without incurring any additional fees or penalties (other than any outstanding Charges owed for the provision and use of the Service).
- 12.3 Clause 12.2 does not apply where the change made is:
  - 12.3.1 likely to benefit you, or have a neutral or minor detrimental impact on you (however if you can demonstrate that the change will have more than a detrimental impact on you, you will have the right terminate in accordance with clause 12.2.2);
  - 12.3.2 to the price of International Call Rates, International Roaming, Calls to Satellite Services;
  - 12.3.3 to ancillary Charges, including but not limited to administration fees and callout charges;
  - 12.3.4 to the fee or charge for the Service where the fee or charge is a tax imposed by law;
  - 12.3.5 as a result of a third party increasing the amount charged to us for premium or content services (if this occurs we will give you reasonable notice if you have used the service in the past 6 months, and allow you to cease getting the service without incurring any fees or penalties); or
  - 12.3.6 in accordance with any tax or law.

## **13. Security Bond**

- 13.1 We may impose a credit limit or require you to provide a Security Bond.
- 13.2 You authorize us to make deductions from any Security Bond for any Charges that are owing to us.
- 13.3 We agree to refund your Security Bond in full when we stop providing the Services, except to the extent that we have made deductions for charges that are owing to us by you.

#### **14. Priority Services**

TransACT does not offer a special priority assistance service to customers with life threatening medical conditions. TransACT will act on a best efforts basis but cannot guarantee priority connections and fault resolution given the reliance on third party suppliers. Customers with life threatening medical conditions should contact TransACT on 13 30 61 to discuss the options available

#### **15. Security and Privacy**

- 15.1 We may collect, use and disclose Personal Information in accordance with the Privacy Act 1988 (Cth), the TransACT Privacy Policy and the TransACT Privacy Statement. It is your responsibility to read the TransACT Privacy Policy and the TransACT Privacy Statement, which are located at [www.transact.com.au](http://www.transact.com.au). Alternatively, a hard copy may be obtained by contacting us.
- 15.2 We may use your Personal Information to tell you about other products (including bundled offers) provided by us or by third parties. You may choose to opt out of such direct marketing by contacting us at [customercare@transact.com.au](mailto:customercare@transact.com.au) or by phoning us on 13 30 61.
- 15.3 You acknowledge and agree that we and Telstra may exchange information (including Personal Information) and co-operate in relation to:
- 14.3.1 The prevention, minimisation and investigation of, fraudulent use of or misuse of any service;
  - 14.3.2 Theft of our or Telstra's equipment;
  - 14.3.3 Network or telecommunications fraud.
- 15.4 You acknowledge and agree that we may disclose information (including Personal Information) to a commercial agent for any purpose related to recovering outstanding Charges from you under Clause 12.5.
- 15.5 You acknowledge that if you do not ask us to block the Caller Number Display Service or request a Silent Number, your Service Number may be displayed to other users that you call.
- 15.6 You acknowledge and agree that we do not guarantee the security of information conveyed over the TransACT Network or the Telstra Network, and that we are not liable to you for any loss or damage resulting from the diversion, publication, corruption or inappropriate or unlawful use of any information provided over either network to or from any third party.
- 15.7 You acknowledge and agree that you are responsible for the security of any user identification or passwords created for the secure transmission of your information, and agree to take all appropriate measures to prevent others having unauthorised access to your user-identification or passwords. We will not be liable for any loss or damage suffered by you due to the unauthorised use of your user-identification or passwords.

## **16. Limitation of Liability**

- 16.1 This clause limits our liability to you. **Please read this clause carefully.**
- 16.2 Subject to clauses 15.3, 15.4 and 15.6, we are not liable for any loss or damage, however caused, suffered by you in connection with this Agreement
- 16.3 If the Trade Practices Act 1974 (Cth) ("the TPA") or any other legislation implies a condition or warranty into this Agreement in respect of goods or services supplied, and our liability for breach of that condition or warranty may not be excluded but may be limited, clause 15.2 does not apply to that liability and instead our liability for any breach of that condition or warranty is limited to:
- 16.3.1 in the case of a supply of goods, doing any one or more of the following (at our election):
- 16.3.1.1 replacing the goods or supplying equivalent goods;
  - 16.3.1.2 repairing the goods;
  - 16.3.1.3 paying the cost of replacing the goods or of acquiring equivalent goods;
  - 16.3.1.4 paying the cost of having the goods repaired; or
- 16.3.2 in the case of a supply of services, doing either or both of the following (at our election):
- 15.3.2.1 resupplying the services;
  - 15.3.2.2 paying the cost of resupplying the services.
- 16.4 Nothing in this Agreement excludes, restricts or modifies rights that you may have under law if such exclusion, restriction or modification is contrary to law or would make any part of this Agreement void.
- 16.5 Without limiting the above, we have no liability to you:
- 16.5.1 For or in respect of any consequential, special or indirect liability, loss, damage, cost, charge or expense, including without limitation loss of profits or data; or
- 16.5.1 For or in relation to any act or omission of, or any matter arising from or consequential upon any act or omission of any customer of ours or any third person not under our direct control.
- 16.6 You may have certain rights in respect of the Service under the Customer Service Guarantee (the CSG). If we fail to provide the Service according to our obligations under the CSG, you may be entitled to damages.

## **17. Indemnity**

- 17.1 You indemnify us against any damage, expense, loss or liability that we suffer or incur directly or indirectly due to:
- 17.1.1 your failure to comply with your obligations under this Agreement

- 17.1.2 any loss of, or damage (excluding fair wear and tear) to any Equipment we provide to you;
  - 17.1.3 the use or attempted use by any person (including you) of the Service;
  - 17.1.4 the actions of any person with an interest in Your Premises in connection with the installation, maintenance or removal of the Service.
  - 17.1.5 All loss arising out of the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) to or by you connected with the Service;
  - 17.1.6 All loss arising out of any breach of a person's rights or defamation of a person (or allegation of such breach or defamation) involving use of the Service.
- 17.2 You are not required to indemnify us under this clause 16 to the extent that the Liability the subject of the indemnity claim is the direct result of a breach of this Agreement, or a negligent act or omission by us.

## **18. Terminating this agreement**

- 18.1 If you terminate the Agreement prior to the term specified in your Application, we may impose the early termination payment specified in the Schedule. The amount of any early termination payment is a genuine pre-estimate of the loss we will incur as a result of your termination under this clause and includes our costs of installing and provisioning the Service
- 18.2 Subject to clauses 17.1 and 17.3, you may request the termination of any part of the Service at any time by giving us 30 days' notice.
- 18.3 In addition to any other rights we may have, we may immediately terminate, limit or suspend any part of the Service if:
- 18.3.1 We consider such action necessary for the purpose of maintaining or restoring any part of the TransACT Network
  - 18.3.2 We are required to do so by a court, government or regulatory agency
  - 18.3.3 There is an emergency;
  - 18.3.4 You are declared bankrupt;
  - 18.3.5 Your Access Line ceases to be preselected to us;
  - 18.3.6 You commit a material breach of this Agreement, including the following without limitation;
  - 18.3.7 You fail to provide access as required under clause 4.2.1 hereof;
  - 18.3.8 You (or another person) interferes with the operation of the service or a facility owned by Telstra (except where so required under clause 4.2.3 above) or makes either unsafe;
  - 18.3.9 We or Telstra are unable to enter the premises to inspect, repair or maintain a facility that is necessary for the supply of that service to you;

- 18.3.10 You fail to make any modifications required under clause 4.2.3 above;
- 18.3.11 You fail to rectify any defect or inadequacy in a facility not owned or maintained by us or Telstra after being requested to do so by us or Telstra.
- 18.3.12 You breach clause 4.3 above.
- 18.3.13 Your use of the Service interferes with the efficiency of Telstra's Network or our network and you fail to rectify the situation after notification from us or Telstra.
- 18.3.14 You fail to comply with any payment obligation (including without limitation an obligation to pay by a due date) under Clause 13.
- 18.4 Upon termination or expiration of the Agreement, you must:
  - 18.4.1 Immediately pay all amounts due and payable to us, and;
  - 18.4.2 Promptly return the Equipment;
  - 18.4.3 Allow us and Telstra to enter Your Premises to recover our Equipment; or
  - 18.4.4 Pay to us an amount, as determined by us, which represents the value of the Equipment, except, at our option, where the Equipment consists solely of cabling from the network distribution box to the relevant wall socket.
- 18.5 Upon termination of the Agreement, we are not responsible for connecting or reconnecting any appliance to any telephone network or other communication network, cable or system.
- 18.6 We are not obliged to remove any Equipment from Your Premises, or carry out any repairs to Your Premises in connection with the installation or removal of the Equipment.

## **19 Miscellaneous**

- 19.1 You acknowledge and agree that the obligations set out in clauses 4 – 7, 10, and 14 - 16 of this Agreement are for the benefit of both us and Telstra.
- 19.2 Our failure to exercise, a delay in exercising, or the partial exercise, of our rights under the Agreement does not operate as a waiver of those rights in the future.
- 19.3 We will not be liable for failing to comply with our obligations under this Agreement if an event occurs that is beyond our control, including without limitation explosion, natural disaster, earthquake, war (declared or undeclared), terrorist act, civil disturbance or act of God.
- 19.4 The Agreement is governed by the applicable laws of the Commonwealth of Australia and the laws of the State or Territory in which you receive the Service as set out in your Application. You and we submit to the exclusive jurisdiction of the courts of Australia and of the governing State or Territory.
- 19.5 The Agreement constitutes the whole understanding between you and us to the exclusion of any prior or collateral agreement or understanding of any kind relating to the subject matter of this Agreement.
- 19.6 If any term (or part of a term) in the Agreement is void or unenforceable, that term or part will be taken to be removed and cease to form part of the Agreement, however the remaining terms will continue to have full force and effect.

- 19.7 We may assign our rights under the Agreement without your consent. You may not assign your rights under the Agreement without our prior written consent, which we may give or withhold at our absolute discretion.
- 19.8 We may pay commissions to any person who introduces you to us.
- 19.9 You acknowledge that the relationship between us and Telstra is strictly that of wholesale purchaser of products from Telstra for the purposes of resale to our customers. We are not otherwise approved by, or an agent or dealer of, or affiliated with, nor have a “favoured relationship” with Telstra.
- 19.10 In the event of any inconsistency between the three documents listed in clause 1.1 above, their order of preference shall be 1.1.3, 1.1.2 and then 1.1.1 to the extent of that inconsistency.
- 19.11 Clauses 2.3, 4.6, 6, 7.1, 11, 13, 14, 15, 16, 17, and this clause 19.11 (and any clause relevant to the interpretation of these clauses or that, by its nature, survives this Agreement) continue to apply following the termination or expiration of the Agreement.
- 19.12 In this Agreement, references to the singular are references to the plural (and vice versa).

## **20. Dictionary**

*Access Line* means a line or link and ancillary facilities, over which a service is delivered and which connects your premises to a local exchange of a Carrier or Carriage Service Provider.

*ACMA* means the Australian Communications and Media Authority.

*Act* means the Telecommunications Act 1997 (Cth), including any regulations or other subordinate rules made under the Act.

*Agreement* has the meaning set out in clause 1.1.

*Application* means any form or other documentation which we may require you to complete, prior to us supplying the Service to you.

*Caller Number Display Service* means the function which enables the display of the calling number to the recipient of the call.

*Carriage Service Provider* means a Carriage Service Provider as defined in section 87 of the Act.

*Carrier* means a carrier as defined in section 7 of the Act.

*Charges* means the charges, fees and rates set out in the Schedule, including any alterations to those Charges notified by us from time to time and payable by you.

*Contact Centre* means our customer contact centre used to receive and respond to your enquiries and concerns. The contact phone number and hours of operating for our Contact Centre are as shown at clauses 9.3 and 9.4 above.

*Customer Service Guarantee* or *CSG* means any current performance standard of that name made pursuant to the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).

*Equipment* includes any equipment or software provided by us to you, or by Telstra to you, any facility owned by Telstra, and may include telephone handsets leased by you from Telstra (note that “Your Equipment” is defined separately below).

*Legislation* means any Act or Regulation enacted by the Parliament of the Commonwealth of Australia or by the Parliament of any Territory or State of Australia.

*Long Distance Services* includes calls to mobiles, national and international calls.

*Network Access* means the use of the TransACT Network and the Telstra Network by you

*Network Boundary Point* means the first point that the lead-in cable terminates in the building. In the case of a Telephone Service, the first phone socket for a residential premises and the Main Distribution Frame for a business premises.

*Network Connection* means the Equipment linking the TransACT or Telstra Network to Your Premises and terminating at the Network Boundary Point.

*Override Code* means a code which can be used to access a service of a Carrier or Carriage Service Provider from an Access Line that is not Preselected to that Carrier or Carriage Service Provider.

*Personal Information* means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

*Preselect* means to designate a particular carrier or carriage service provider to provide services to an Access Line.

*Product* means a product, package or plan set out in the Schedule to this Agreement or in a separate promotion, and chosen by you and accepted by us as part of the Service.

*Provider* means a provider of telecommunications services

*Related Body Corporate* has the same meaning as in section 50 of the Corporations Act 2001 (Cth).

*Schedule* means a schedule to this Agreement containing the specific terms, conditions and charges for a Service.

*Security Bond* means the security bond in an amount nominated by us that you provide under clause 13.

*Service* means any and all telecommunications services and products provided to you by TransACT or its Related Bodies Corporate under this Agreement, and includes without limitation any products that you choose from the Schedule to this agreement, or from a separate Promotion, or from those products which Telstra has agreed to make available for resale by us, to the extent that we have agreed to provide such products and services to you.

*Service Number* means any telephone number used in connection with the Service

*Technical Contact Centre* means our technical customer contact centre used to receive and respond to your technical enquiries, faults and concerns.

*Telecommunications Numbering Plan* means the Telecommunications Numbering Plan 1997 and any other declarations, plans or documents which may be issued from time to time by ACMA to establish a framework for the numbering of carriage services in Australia, as set out at [www.acma.gov.au](http://www.acma.gov.au)

*Telephone Service* means the telephone service provided by us to you.

*Telstra* means Telstra Corporation Limited (ACN 051 775 556)

*Telstra's Network* means Telstra's PSTN network (as defined in Telstra's Standard Form of Agreement) which is the network used to supply the Service to you.

*Telstra's Standard Form of Agreement* means Telstra's Standard Form of Agreement formulated for the purpose of section 479 of the Act, as amended from time to time. It may be found at [www.telstra.com.au](http://www.telstra.com.au).

*Third Party Services* means the services provided by third parties to you under one or more separate contracts.

*TransACT Network* means the telecommunications system comprising all links, cables, radio, microwave and other transmission media and equipment, switches, software and related items owned and operated by us to make available and provide the Services.

*Transfer* means to move your phone number from one Carrier or Carriage Service Provider to another.

*UNFT* means the Utilities Network Facilities Tax, as defined in the *Utilities (Network Facilities Tax) Act 2006*, introduced by the Australian Capital Territory Government.

*us / we / our* means TransACT Capital Communications Pty Limited (ABN 23 093 966 888) and includes our Related Bodies Corporate, employees, agents and contractors.

*you / your* means jointly and severally the person or persons named in the Application who request the Services or who otherwise acquire the Services.

*Your Equipment* means any equipment owned by you and used by you in connection with the Service.

*Your Premises* means the premises specified by you in your Application as the location for the provision of the Services.

## First Schedule – Pricing

### 1. General

- (a) The charges for the Service will be as set out in:
- (i) this Pricing Schedule, and
  - (ii) for all charges not set out in this Pricing Schedule, Telstra's Standard Form of Agreement.
- (b) If there is an inconsistency between the prices set out in this Pricing Schedule and Telstra's Standard Form of Agreement, the charges set out in this Pricing Schedule prevail.

### 2. Call Plans

#### 2.1 What Call Plans are available?

- (a) The following plans are available from TransACT:
- (i) TransTALK Flex;
  - (ii) TransTALK Flex Limited;
  - (iii) TransBIZ Flex;
  - (iv) TransBIZ Limited;
  - (v) TransBIZ Flex ISDN 2; and
  - (vi) TransBIZ Flex ISDN 2 Limited.

#### 2.2 TransTALK Flex Call Rating Plan

The TransTALK Flex call rating plan is available for residential customers and is not available in all areas.

<b>TransTALK Flex</b>	
<b>Monthly Phone Line Rental</b>	<p>\$34.95</p> <p>UNFT is included in the monthly price as of July 9 2009</p> <p>Includes Call Forward, Call Waiting, 3 Way Chat and Call Return features.</p> <p>12 or 24-month contract applies.</p>
<b>Local Call Rates</b>	<p>22 cents per call</p> <p>Free On Net Calls</p>
<b>National Calls</b>	<p>18 cents per minute plus a 39-cent connection fee.</p> <p>Call costs capped at \$1.75 for up to a one hour call</p>

	<p>and \$2.50 for up to a 2 hour call. Normal rates apply up until each capped amount is reached and after the second hour. Cap includes the 39-cent connection fee.</p> <p>Capped calls are available 24 hours, everyday.</p> <p>Calls exclude calls to mobile phones, special services (for example 190 and 13 numbers), operator assisted services, telecard calls, data calls and calls made to the Christmas Islands, Norfolk Island or the Cocos Islands.</p> <p>Calls are billed at 1-second increments, 1-second minimum with a 39-cent connection fee.</p>
<b>Calls to Mobile</b>	<p>37 cents per minute</p> <p>Calls are billed at 1-second increments, 1-second minimum with a 39-cent connection fee.</p>
<b>International Calls</b>	<a href="#">International Call Rates</a>
<b>Calls to Satellite Services</b>	<a href="#">Satellite Services Call Rates</a>

### 2.3 TransBIZ Flex

The TransBIZ Flex call rating plan is only available to business or home business customers in selected areas.

<b>TransBIZ Flex and TransBIZ Flex Fax</b>	
<b>Monthly Phone Line Rental</b>	<p>\$39.95</p> <p>UNFT is included in the monthly price as of July 9 2009</p> <p>Includes Call Forward, Call Waiting, 3 Way Chat and Call Return features.</p> <p>24-month contract applies.</p>
<b>Local Call Rates</b>	<p>\$0.16 per call.</p> <p>Free On Net Calls</p>
<b>National Calls</b>	<p>National Calls rate/ minute at \$0.12 per minute with a 10-cent connection fee.</p>
<b>Calls to Mobile</b>	<p>27 cents per minute</p> <p>Calls are billed at 1-second increments, 1-second minimum with a 25-cent connection fee.</p>
<b>International Calls</b>	<p><a href="#">International Call Rates</a></p> <p>Calls are billed at 1-second increments, 1-second</p>

	minimum with a 25-cent connection fee.
<b>Calls to Satellite Services</b>	<a href="#">Satellite Services Call Rates</a> Calls are billed at 1-second increments, 1-second minimum with a 25-cent connection fee.
<b>Telstra FaxStream® Enhanced Features</b>	All calls made using Telstra <b>FaxStream®</b> Enhanced features are charged at the prices advertised in the Telstra Standard Form of Agreement.

## 2.4 TransBIZ Flex ISDN 2

The TransBIZ Flex ISDN 2 call rating plan is only available to business customers in selected areas.

TransBIZ Flex ISDN 2	
<b>Monthly Phone Line Rental</b>	\$73.50 Includes Caller Number Display, Call Waiting, Call Forward and Call Barring. 3-month contract applies.
<b>Local Call Rates</b>	Local Call rate per minute is \$0.04 per minute with a 6-cent connection fee. Free On Net Calls
<b>National Calls</b>	National Calls rate/minute is \$0.12 per minute. Calls are billed at 1-second increments, 1-second minimum with a 10 cent connection fee.
<b>Calls to Mobile</b>	Call to mobile rate/minute is \$0.27 per minute Calls are billed at 1-second increments, 1-second minimum with a 25-cent connection fee.
<b>International Calls</b>	<a href="#">International Call Rates</a> Calls are billed at 1-second increments, 1-second minimum with a 25-cent connection fee.
<b>Calls to Satellite Services</b>	<a href="#">Satellite Services Call Rates</a> Calls are billed at 1-second increments, 1-second minimum with a 25-cent connection fee.

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## 2.5 TransTALK Limited Plans

TransTALK Flex Limited, TransBIZ Flex Limited and TransBIZ Flex ISDN 2 Limited are available to customers who cancel or transfer their Long Distance Service preselection from us to another carriage service provider. Rates for these products are as follows:

<b>TransTALK Flex Limited</b>	
<b>Monthly Phone Line Rental</b>	\$41.95 Includes Call Forward, Call Waiting, 3 Way Chat and Call Return features. 12 or 24-month contract applies. Not available in Phase 1 areas
<b>Local Call Rates</b>	\$0.22 No Free On Net Calls

<b>TransBIZ Limited</b>	
<b>Monthly Phone Line Rental</b>	\$45.00 Includes Call Forward, Call Waiting, 3 Way Chat and Call Return features. 24-month contract applies. Not available in Phase 1 areas
<b>Local Call Rates</b>	\$0.30 No Free On Net Calls

<b>TransBIZ Flex ISDN 2 Limited</b>	
<b>Monthly Phone Line Rental</b>	\$100.00 Includes Caller Number Display, Call Waiting, Call Forward and Call Barring. 3-month contract applies.
<b>Local Call Rates</b>	Local Call rate per minute is \$0.15 per minute with a \$0.15 connection fee. No Free On Net Calls

When a customer cancels or transfers their Long Distance Preselection to another carrier, TransACT will immediately change the call rating plan to the relevant TransTALK Flex Limited product (TransTALK Flex Limited, TransBIZ Limited or TransBIZ Flex ISDN 2 Limited).

Free On Net Calls are not available to TransTALK Flex Limited, TransBIZ Limited or TransBIZ Flex ISDN 2 Limited customers.

## **2.5 Local Calls**

- (a) Local Calls using the above plans include Local Calls from standard access lines, Centel, Centel Plus and Faxstream services. Please note some Local Calls are excluded, for example operator assisted local calls, QuickCall Local Calls and calls to 13 and 1300 numbers.
- (b) Local Neighbourhood Calls will be charged the same as for a Local Call.

## **2.6 Free On Net Local Calls**

Local calls to other TransTALK and TransBIZ customers by TransTALK Flex, TransBIZ Flex and TransBIZ Flex ISDN 2 customers are provided free of charge. This includes Local Calls to customers with the following TransACT products:

- (a) TransTALK Premium
- (b) TransTALK Standard
- (c) TransTALK AllTime
- (d) TransTALK Flex
- (e) TransBIZ Flex
- (f) TransBIZ Flex Fax
- (g) TransBIZ Flex ISDN 2
- (h) TransTALK Flex Limited
- (i) TransBIZ Limited
- (j) TransBIZ Flex ISDN 2 Limited
- (k) TransBIZ 1
- (l) TransBIZ 2
- (m) TransBIZ 10, 20,30.

The following Local Calls made by TransTALK Flex, TransBIZ Flex and TransBIZ Flex ISDN 2 customers are excluded and will be charged at the Local Call rate:

- (a) Calls to any TransSELECT customer including TransSELECT, TransSELECT Gold and commercial TransSELECT products.
- (b) Calls to the Grapevine dial up number (02 6162 8611); and
- (c) Calls to TransGov customers.

### **3. Other charges**

#### **3.1 Late Or Non-Payment Fees And Charges**

- (a) If you do not pay all amounts you owe us by the date the payment is due, we may charge you a late fee of \$5.50 per month.
- (b) This late fee is payable on each invoice that is overdue for payment.

#### **3.2 Payment Dishonour Charges**

- (a) If you elect to pay your bills by direct debit or credit card we may charge you a rejection fee of \$8 if the payment is rejected by your nominated financial institution or credit provider.
- (b) We may also charge you a dishonour fee of \$25 if you pay us by cheque and the payment is dishonoured by your financial institution.
- (c) This fee is in addition to any fees that your financial institution or credit provider may charge you.

#### **3.3 Suspension Fee**

- (a) If we suspend the service because you have not paid all amounts you owe us, we may charge you a fee of \$55.
- (b) Suspension of services at customers request for a reduced monthly access fee is not available from these services.

#### **3.4 Cancellation Fee**

If the service is cancelled before the end of the minimum term, you must pay us \$200.00.

#### **3.5 Bundle cancellation Fee**

If you have entered into an agreement with us as part of a residential bundled service agreement, then a \$50 bundle administration fee applies for cancellation of the TransACT component of the bundled services.

### **4. Definitions**

**Local Calls** means a local call as defined in Telstra's Standard Form of Agreement

**Local Neighbourhood Calls** means a neighbourhood call as defined in Telstra's Standard Form of Agreement.

**SOHO customers** are small or medium enterprise customers who are classed by Telstra as residential customers and operate a business from their home.

**Residential Customers** means a residential customer as defined in Telstra's Standard Form of Agreement.