



# **Indigo Telecom Australia**

## **Standard Form of Agreement**

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Indigo Telecom (Aust) Pty Ltd ACN 125 636 599 (“Indigo”, “us” or “we”)

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

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## INTRODUCTION

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This standard form of agreement (“**this Agreement**”) is a contract which sets out the standard terms and conditions for the supply of Indigo’s satellite and GSM mobile voice and data telecommunications services and your use of those services.

To assist you, we provide a plain-English summary of this Agreement at [www.indigotelecom.com.au](http://www.indigotelecom.com.au) or on request by ringing customer assistance on 1300-463 446 (1300-INDIGO). If you require a copy of the summary of this Agreement in another language, please contact us by email on [customercare@indigotelecom.com.au](mailto:customercare@indigotelecom.com.au) or call our customer assistance number above.

This Agreement is divided into the following sections:-

- **Section 1 – Dictionary** – This section sets out the meaning of certain important words and expressions.
- **Section 2 – General terms and conditions** – This section sets out the terms and conditions generally applicable to the Services.

## SECTION 1 – DICTIONARY AND INTERPRETATION

For clarity, some words and expressions used in this Agreement have a particular meaning. Words with particular meanings start with a capital letter.

### 1.1 Dictionary

In this Agreement the following terms are defined as follows:-

**ACMA** means the Australian Communications and Media Authority.

**Activate** or **Activated** or **Activation** means the activation of the Service and the assignment (or porting) of a Service Number (including where such assignment occurs in connection with a digital transfer from another service provider or a re-activation).

**Administrative Fee** means the administrative fee specified in the Services Booklet.

**Agreement** means this agreement and all annexures, schedules and subsequent amendments, variations or replacements.

**Australian Consumer Law** means the *Competition and Consumer Act 2010 (Cth)*.

**Business Day** means a day on which banking institutions generally are open in Brisbane but excluding Saturdays, Sundays and public holidays.

**Casual Customers** means a Post-Paid Customer who acquires eligible Services on a month-to-month basis, as indicated on that Customer's Services Application.

**Charges** mean the rates and charges applicable to the usage of the Services or Roaming.

**Complaint Handling Policy** means our current complaints handling policy, which is located on our website.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Credit Limit** means the maximum credit, where applicable, provided by us to you for the Service or Roaming.

**Customer** means a person who contracts with us for a Service (including for supply of that Service to another person) or who otherwise acquires a Service, or who seeks to do either of these and includes a Post-Paid Customer and a Pre-Paid Customer.

**Customer Information** includes all information obtained from you as a result of this Agreement.

**Exceptional Circumstance** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not limited to:-

- (a) adverse changes in government regulations;

- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- (d) strikes or industrial disputes;
- (e) materials or labour shortage; and/or
- (f) acts or omissions of the GSM Network Operator or the Satellite Network Operator.

**Fixed-Term Customer** means a Post-Paid Customer who contracts with us to acquire eligible Services for a fixed term, as indicated on that Customer's Services Application.

**GSM** means global system for mobile communications.

**GSM Network** means the GSM telecommunications system operated by the GSM Network Operator.

**GSM Network Operator** means the GSM network operator which Indigo has contracted with from time to time, for the resale by us of GSM services to Casual Customers and others.

**GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.

**GST Law** means, where the context requires or permits, the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly-available rulings.

**Handsets** means each handset specified in the Services Booklet (or in writing by Indigo) for use in connection with the Services (and includes data terminals).

**Indigo Network** means the Satellite Network and/or the GSM Network, as the context requires.

**Post-Paid Customer** means a customer who pays for the Charges arising out of the use of the Service in arrears (subject to clauses 12.1(c) and 12.2) and includes a Casual Customer and a Fixed-Term Customer.

**Pre-Paid Customer** means a customer who pays for the Charges arising out of the use of the Service in advance.

**Related Bodies Corporate** has the same meaning as that ascribed to it in the *Corporations Act 2001* (Cth).

**Roaming** means where a Customer uses a mobile service outside of the Indigo Network (such as on another carrier's network) via their allocated SIM.

**Secure Collect** means the collection, payment and identity verification service provided by Australia Post in connection with Services Applications made through Australia Post Outlets.

**Satellite Network** means the satellite telecommunications system operated by the Satellite Network Operator.

**Satellite Network Operator** means Thuraya.

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**Service Application** means an application by you for Activation, in the form specified by Indigo from time to time.

**Services** means the mobile satellite and/or GSM services offered by Indigo as specified on the Services Application and described in the Services Booklet, and excludes Roaming.

**Services Booklet** means the document which describes the various Services available for particular Handsets, and the associated Charges, as current from time to time, and is available on our website.

**Service Number** means any telephone, facsimile or other service number in connection with a Service.

**SIM Card or SIM** means an identity module with a unique serial number used to identify a Customer and which when used with an appropriate Handset, enables access to the Indigo Network.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Term** means, in respect of a Service, the applicable contract term specified in the applicable sub-clause of clause 4.

**Termination Fee** means the applicable fee for your early termination of your Service (where you are a Fixed Term Customer), which is detailed in the Services Booklet and/or Services Application or was disclosed to you when (or prior to) you provided the Services Application.

**Thuraya** means Thuraya Telecommunications Company, a company existing under the laws of the United Arab Emirates.

### 1.2 **Interpretation**

In this Agreement, unless the contrary intention appears, the following rules apply:-

- (a) the expressions "Indigo", "we", "us" and "our" are a reference to Indigo Telecom (Aust) Pty Ltd ACN 125 636 599;
- (b) a reference to:-
  - (1) a person, firm, corporation, association or government body includes any other of them;
  - (2) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns;
  - (3) a time is a reference to Brisbane, Australia time unless otherwise specified;
  - (4) a right includes a benefit, remedy, authority, discretion and power;
- (c) the singular includes the plural and vice versa;
- (d) headings will not affect the construction;
- (e) where two or more persons are defined as a Customer to this Agreement that term means each of the persons jointly, each of them severally and any two or more of them jointly;

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- (f) an agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
- (g) the word "includes" and its synonyms are not to be construed as words of limitation.

## SECTION 2 – GENERAL TERMS AND CONDITIONS

### 1. **Standard Form of Agreement**

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This Agreement constitutes a Standard Form of Agreement within the meaning of the Telecommunications Act.

### 2. **Applications for Services**

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#### 2.1 **Services**

The details of the Service you have selected on the Services Application are set out in the Services Booklet.

#### 2.2 **Service Application and Activation**

- (a) You must provide us with a completed and signed Service Application and all supporting documentation, together with copies of your identification required by Indigo (if any).
- (b) We will process your Service Application within a reasonable time.
- (c) We may refuse your Service Application if:-
  - (1) you do not provide satisfactory proof of identification;
  - (2) you do not meet the eligibility criteria for the Service;
  - (3) the Service is not available at the location where you wish to acquire the Service; or
  - (4) you do not meet our credit requirements.
- (d) If we decide to accept your Service Application, then we will Activate the Service for you within a reasonable time.

#### 2.3 **Your assistance**

You must reasonably co-operate with us to allow us, or our dealers, to establish and supply the Service to you safely and efficiently. If you do not do so, we may be entitled to cancel the service under clause 14.4(d) below or suspend the Service under clause 14.6(i).

### 3. **Commencement**

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This Agreement starts when you provide us with your Service Application.

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### **4. Term**

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#### **4.1 Pre-Paid Customers**

If you are a Pre-Paid Customer, you are acquiring the Service on a pre-paid credit basis and terminates when the Service is cancelled, or if we otherwise refuse to accept your Service Application pursuant to clause 2.2.

#### **4.2 Post-Paid Customers**

##### **(a) Casual Customers**

If you are a Casual Customer, you are acquiring the Service on a month to month basis and the term is also month-to-month and terminates when the Service is cancelled, or if we otherwise refuse to accept your Service Application pursuant to clause 2.2.

##### **(b) Fixed-Term Customers**

If you are a Fixed Term Customer, the term is as indicated on the Services Booklet and/or Services Application or was disclosed to you when you provided the Services Application, or automatically terminates if we otherwise refuse to accept your Service Application pursuant to clause 2.2. When that term expires and you have not agreed to enter into another fixed-term agreement for the Service, you will become a Casual Customer for that Service.

### **5. Credit limits**

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5.1 If we decide to accept your Service Application, then we may impose a Credit Limit applicable to your use of the Service or Roaming.

5.2 To enable us to determine an appropriate Credit Limit, you consent to us accessing your credit history.

5.3 If the Charges incurred for the Service or Roaming during any billing period exceed your Credit Limit, then we will notify you (either by email, SMS or telephone) and the Service and/or your ability to engage in Roaming will be suspended until you pay us the Charges incurred (even if we have not yet formally invoiced you for such Charges).

5.4 We reserve the right to increase or decrease the Credit Limit, depending on the usage patterns of your Services and/or Roaming. We will inform you if we increase or decrease your Credit Limit.

### **6. Roaming**

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#### **6.1 Roaming generally**

Roaming is dependant on other carrier's networks, which are outside of the Indigo Network. We therefore disclaim all responsibility for the charges, quality and reliability of such services when you are Roaming. We may in our absolute discretion and for any reason limit or exclude your ability to use Roaming at any time. Where we permit you to use Roaming, you must comply with all of our directions in relation to such Roaming. Additional terms may apply to Roaming, which will be provided by other carriers on whose networks you are Roaming.

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### 6.2 **Outgoing calls**

- (a) For outgoing calls (other than to Australia) while Roaming in GSM mode you will be charged the call charge levied by the overseas network operator you are using (including any surcharges or taxes collected by it) plus an Indigo surcharge of 60% of the call charge levied by the overseas network operator you are using (including any surcharges or taxes collected by it).
- (b) For outgoing calls to Australia while Roaming overseas in GSM mode you will be charged the weighted average cost calculated by Indigo for the country in which the call is made (including any surcharges or taxes) plus an Indigo surcharge of 60% of the applicable charge (including any surcharges or taxes).

### 6.3 **Incoming calls**

Incoming call charges (for calls received while Roaming in GSM) are charges for the call to be directed from Australia to the country you are in. This charge is the "GST excl." per minute rate set out in the International Direct Dial (IDD) rates plus any charges (including surcharges and taxes) which may be levied by the overseas network operator on whose network you are Roaming. If the caller calling you while you are Roaming in GSM mode is outside Australia, there will be no charge levied by Indigo as the caller pays the applicable rates to call Australia from the country they are in.

### 6.4 **Other Roaming**

- (a) For outgoing and incoming calls when Roaming in GSM mode overseas in an area where country specific pricing does not apply, you will pay the charge levied by the overseas network operator on whose network you are Roaming (including any surcharges or taxes) plus an Indigo surcharge of 60% of the applicable charge (including any surcharges or taxes).
- (b) When you are Roaming in GSM mode in another country, the charges payable by a caller to call you (if the caller is in Australia) are the charges as if they are calling a mobile number in Australia.
- (c) If you are Roaming overseas in GSM mode and transfer packet data using GPRS, 3G/UNTS and HSDPA network access you will be charged 75 cents for each separate data session plus a data usage charge of 3 cents per Kb charged in 10 Kb blocks. You will be charged for upload and download of data.

## **7. Use of the Services**

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### 7.1 **Australian Consumer Law**

- (a) Application
  - (1) This clause 7.1 only applies if the Australian Consumer Law applies to this Agreement.
  - (2) The Australian Consumer Law will apply to this Agreement if the Services or goods acquired from us:-
    - (A) cost less than \$40,000; or

- (B) are normally acquired for personal, domestic or household use.
- (3) The Australian Consumer Law will not apply to this Agreement if the Services or goods acquired from us are used for resale purposes or to be used up in the process of manufacturing other goods or providing other services.
- (b) Consumer guarantees
  - (1) The Australian Consumer Law provides that certain non-excludable consumer guarantees are implied into this Agreement. Those consumer guarantees apply in addition to any other express warranties which we provide under this Agreement.
  - (2) The consumer guarantees require that:-
    - (A) services are provided with due care and skill;
    - (B) services and/or goods are fit for the purpose(s) made known to us;
    - (C) unless a specific time has been agreed, that services will be provided within a reasonable time.
    - (D) the supplier has the right to sell the goods;
    - (E) the goods are unencumbered;
    - (F) the consumer will have undisturbed use and enjoyment of the goods;
    - (G) the goods are of "acceptable quality";
    - (H) the goods are fit for a purpose the consumer makes known to the supplier;
    - (I) the goods will match their description or a sample;
    - (J) spare parts and repair facilities will be available for a reasonable period; and
    - (K) any express warranty will be honoured.
  - (c) Remedy
    - (1) When the problem with the goods or service is minor, we can choose between providing a repair or offering you a replacement or refund.
    - (2) If there is a major failure, you can:-
      - (A) reject the goods and services and either choose a refund or a replacement; or
      - (B) ask for compensation for any drop in value of the goods or services.
    - (3) However, you may not be entitled to a refund or replacement under the Australian Consumer Law if the good is not rejected within a reasonable period;

you have lost, destroyed or disposed of the good; or the good has been damaged after delivery.

## 7.2 **Our warranty**

In addition, to any applicable consumer guarantees under Australian Consumer Law we will provide the Service to you with due care and skill.

## 7.3 **Exclusions**

You acknowledge that:

- (a) the Service is not free from faults or interruptions;
- (b) you may not be able to use the Service in some areas, or in some buildings, or at certain times;
- (c) the Service can only be used where the Indigo Network is present;
- (d) in the event of unexpected faults of which we become aware, we will use commercially reasonable endeavours to ensure the Service is restored as soon as possible, including by notifying our relevant suppliers (if applicable) of the fault and requesting that the fault be corrected promptly; and
- (e) we have no control over, and are not responsible for, any faults caused by the use of products or services not supplied by us for your use in connection with the Service, or for faults caused by equipment or facilities outside of the Indigo Network.

## 7.4 **You are responsible for the usage of the Service**

- (a) You are responsible for the usage of the Service and the payment of all Charges, regardless of whether or not you authorised such use. We therefore recommend that you take measures to protect yourself from the loss you may incur as a result of unauthorised use of the Service.
- (b) Furthermore, you must ensure that any person you allow to use the Service complies with this Agreement as if they were you.

## 7.5 **Intended purpose**

Some Services may specify an intended purpose. If so, then you must not use that Service for any purpose other than its intended specified purpose.

## 7.6 **No resale**

You must not on-sell any of the Services to any person.

## 7.7 **Excessive use**

- (a) We may in some instances monitor your Service for excessive or unusual usage, but we do not promise to do so.
- (b) Please note that in instances of excessive or unusual usage we may (but are not bound to):

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- (1) Contact you to verify such excessive or unusual usage;
- (2) Require that you make a pre-payment; or
- (3) suspend the Service pursuant to clause 14.6(i).

### **7.8 Lost or stolen Handsets and SIMS**

In order for us to suspend your service and prevent you from incurring Charges from unauthorised use of the Service, you should contact us as soon as you become aware that your Handset and/or SIM Card has been lost or stolen.

### **7.9 No misrepresentations**

You must not make any misrepresentations on the Services Application and must ensure that all information provided by you to us is complete and truthful.

### **7.10 Compliance with law**

You agree that you must comply with all laws, regulations, standards and codes applicable to your use of the Service and, where permitted, Roaming.

### **7.11 Authorised products, services and software**

You must obtain our specific written consent to use products, services or software (including firmware) which are not supplied (or expressly authorised) by us for use with the Service and Handset.

### **7.12 Informing us about changes**

You must inform us if there are any changes to the information provided by you in your Service Application.

### **7.13 Blacklist**

If you do not comply with the requirements of this clause 7, then we may place you on a blacklist which will suspend you access to the Indigo Network (with the exception of emergency calls and calls to our customer service line).

## **8. Telecommunications Consumer Protections Code**

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If you are a “consumer” within the meaning of the Telecommunications Consumer Protections Code (**Code**), then we will comply with that Code. You can obtain a copy of the Code from the website of the ACMA.

## **9. Changes to this Agreement – Pre-Paid Customers**

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### **9.1 Application**

This clause 9 only applies to Pre-Paid Customers.

### **9.2 Indigo may change the terms of this Agreement**

We may vary any of the terms of this Agreement, including (but not limited to) the Charges or Services Booklet. If we reasonably believe any variation would cause detriment to you, we will give you reasonable notice before the proposed variation takes effect in accordance with the requirements of any applicable legislation in force at the time (other than in respect of changes required by law or necessary for any technical, emergency or security reasons). Such notice will be given as set out under clause 20 of this Agreement.

## **10. Changes to this Agreement - Casual Customers**

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### **10.1 Application**

This clause 10 only applies to Casual Customers.

### **10.2 Indigo may change the terms of this Agreement**

We are permitted to change the terms of this Agreement if:

- (a) We obtain your consent; or
- (b) The circumstances in clauses 10.3 to 10.7 below apply.

### **10.3 Beneficial or neutral changes**

If we change the terms of this Agreement and we reasonably believe that such changes will benefit you or be of neutral impact on you, then we may immediately implement that change without notice to you.

### **10.4 Minor detrimental changes**

Subject to clause 10.5 below, if we change the terms of this Agreement and we reasonably believe that such changes will have only a minor detrimental impact, then we may make that change without personally notifying you of such a change. Notice will be given as set out under clause 20 of this Agreement, within 30 days before that change takes effect.

### **10.5 Urgent changes**

- (a) Urgent changes are those which are:
  - (1) required by law; or
  - (2) necessary, in our reasonable view, for technical, emergency or security reasons.
- (b) If we need to make urgent changes to the terms of this Agreement, then we may immediately implement that change without notice to you.

We will however endeavour to notify you (as set out under clause 20 of this Agreement) of urgent changes within 30 days before that change takes effect, although we cannot always promise to do so due to the nature of urgent changes. If we cannot notify you of such urgent changes prior to them taking effect, we will notify you as soon as we reasonably can after they take effect (however, any failure to do so on our behalf will not invalidate the change or breach our obligations under this Agreement).

### **10.6 Changes required by the Satellite Network Provider or the GSM Network Provider**

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Subject to clause 10.5 above, if we change the terms of this Agreement (including the Charges) because of changes made by the Satellite Network Provider or the GSM Network Provider, we will provide you with:-

- (a) Prior notice to such changes coming into effect (such notice will be given as set out under clause 20 of this Agreement); and
- (b) Offer you the right to terminate the Agreement within 42 days of the date of the notice, without incurring Charges, other than:-
  - (1) Usage or network access Charges to the date the Agreement ends; and
  - (2) Outstanding amounts for equipment.

### 10.7 **Changes to Roaming Charges**

We may vary the Charges associated with Roaming without any prior notice.

### 10.8 **All other changes**

For all other changes to the terms of this Agreement, we will provide you with 30 days' notice prior to such changes coming into effect. Such notice will be given as set out under clause 20 of this Agreement.

## 11. **Changes to this Agreement - Fixed Term Customers**

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### 11.1 **Application**

This clause 11 only applies to Fixed Term Customers

### 11.2 **Terms we cannot change**

There are certain terms of this Agreement which we cannot change during the Term. These are the minimum monthly Charges, the Term and the Termination Fee.

### 11.3 **Indigo may change the terms of this Agreement**

We are permitted to change the terms of this Agreement if:

- (a) We obtain your consent; or
- (b) The circumstances in clauses 11.4 to 11.8 below apply.

### 11.4 **Beneficial or neutral changes**

If we change the terms of this Agreement and we reasonably believe that such changes will benefit you or be of neutral impact on you, then we may immediately implement that change without notice to you.

### 11.5 **Minor detrimental changes**

Subject to clause 11.6, if we change the terms of this Agreement and we reasonably believe that such changes will have only a minor detrimental impact, then we may make that change

without personally notifying you of such a change. Notice will be given as set out under clause 20 of this Agreement, within 30 days before that change takes effect.

If you consider, acting reasonably, that such a change has more than a minor detriment impact on you, and it does not fall within clauses 11.6 to 11.8 below, then you may apply to cancel the Service in accordance with our Complaint Handling Policy.

### **11.6 Urgent changes**

- (a) Urgent changes are those which are:
  - (1) required by law; or
  - (2) necessary, in our reasonable view, for technical, emergency or security reasons.
- (b) If we need to make urgent changes to the terms of this Agreement, then we may immediately implement that change without notice to you.
- (c) We will however endeavour to notify you (as set out under clause 20 of this Agreement) of urgent changes within 30 days before that change takes effect, although we cannot always promise to do so due to the nature of urgent changes. If we cannot notify you of such urgent changes prior to them taking effect, we will notify you as soon as we reasonably can after they take effect (however, any failure to do so on our behalf will not invalidate the change or breach our obligations under this Agreement).

### **11.7 Changes required by the Satellite Network Provider or the GSM Network Provider**

Subject to clause 11.6, if we change the terms of this Agreement (including the Charges) because of changes made by the Satellite Network Provider or the GSM Network Provider, we will provide you with:-

- (a) Prior notice to such changes coming into effect (such notice will be given as set out under clause 20 of this Agreement); and
- (b) Offer you the right to terminate the Agreement within 42 days of the date of the notice, without incurring Charges, other than:-
  - (1) Usage or network access Charges to the date the Agreement ends; and
  - (2) Outstanding amounts for equipment.

### **11.8 Changes to Roaming Charges**

We may vary the Charges associated with Roaming without any prior notice.

### **11.9 All other changes**

For all other changes to the terms of this Agreement, we will provide you with 30 days' notice prior to such changes coming into effect. Such notice will be given as set out under clause 20 of this Agreement.

If you consider, acting reasonably, that such a change has more than a minor detrimental impact on you, then you may apply to cancel the Service in accordance with our Complaint Handling Policy.

## **12. Charges and payment**

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### **12.1 Charges**

- (a) The Charges are the rates and fees that you must pay for the use of the Service and Roaming. The Charges are detailed in the Service Booklet, except for certain Roaming Charges which are outside of our control.
- (b) You acknowledge and agree that, before entering into this Agreement, you have read a copy of the Service Booklet and are aware of the Charges applicable to the use of the Service and Roaming.
- (c) We reserve the right to require that you pay a proportion of Charges in advance of being invoiced for those Charges. If we require you to pay any Charges in advance, we will refund you any overpayment.
- (d) We are able to round the Charges you owe to us up or down to the nearest cent.

### **12.2 Validation Payment**

- (a) Indigo may within 5 days of accepting your Services Application, or shortly after, charge you a validation payment, which is a relatively small sum in the vicinity of \$2.
- (b) The purpose of the validation payment is to ensure that the bank / credit card details provided to us by you in your Services Application are correct.
- (c) If the conduct of the validation payment determines that bank / credit card details provided to us by you in your Services Application are incorrect, then we may immediately cancel or suspend the Service.
- (d) We will credit the validation payment to you against the Charges in the first invoice rendered to you pursuant to clause 12.3 below.

### **12.3 Invoices**

- (a) This clause 12.3 applies only to Post-Paid Customers.
- (b) During each calendar month, we will issue you an invoice for the Charges relating to your Services rendered and your Roaming usage:
  - (1) During that month; and
  - (2) Earlier than that month where:-
    - (A) No Charges have previously been invoiced;
    - (B) An incorrect invoice has been previously rendered; or
    - (C) We require pre-payment pursuant to clause 12.1(c) above.
- (c) The invoice can be sent to you either via post or email.
- (d) If you believe that the Charges detailed in an invoice are incorrect, please let us know prior to the date by which that invoice is due.

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- (e) The procedure for dealing with disputed invoices is as follows:-
  - (1) We will attempt to respond to you in writing within thirty (30) days of receipt of the notice of dispute referred to in clause (d), and advise you of the action being taken to resolve the dispute.
  - (2) Notwithstanding the foregoing, failure to respond within thirty (30) days from receipt shall not breach our obligations under this Agreement;
  - (3) If we accept your claim that an invoice is incorrect, then we will issue a credit note within sixty (60) days from acceptance.

### 12.4 **Single invoice service**

- (a) If you receive two or more separate Services from Indigo, we can send a single invoice to you if you request it or if you do not opt out of that invoice service in instances where it applies by default.
- (b) You can contact Indigo's customer service number in order to set-up or cancel a single invoice service.

### 12.5 **Payment**

- (a) This clause 12.4 applies only to Post-Paid Customers.
- (b) You must pay to us the total Charges for a month by the due date specified on the invoice.
- (c) If you pay an invoice by credit card, Secure Collect, B-pay or cheque, we may charge you a processing fee, but only where we are charged by a third party for such a payment mechanism. You should refer to your invoice for the amount of that fee.

### 12.6 **Late or non payment of invoices**

- (a) This clause 12.6 applies only to Post-Paid Customers.
- (b) If you fail to pay an invoice within the time period referred in clause 12.4 above, then we may do any one or more of the following:
  - (1) Charge you interest at a rate of 1% a month on the amount owing in the invoice;
  - (2) charge you an Administrative Fee, in order to compensate us for the loss we will suffer as a result of the late payment; and/or
  - (3) restrict, suspend or cancel your Service in accordance with clause 14 below.

### 12.7 **Refund of credit**

If we overcharge you for the provision of the Services, we will refund those monies to you within 30 days of us being made aware of such overcharge.

### 12.8 **Reconnection Fee**

If you are a Casual Customer, we reserve the right to charge you a Reconnection Fee in circumstances where the Service needs to be re-Activated other than as a result of our error or an error in the Indigo Network.

### **13. Your rights to rights to cancel the Service**

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#### **13.1 Cancellation by choice**

- (a) You can cancel the Service at any time, provided that you give us notice. We can ask you to put your request in writing, in accordance with the procedures specified by us from time to time.
- (b) If you cancel the Service before we have provided it to you, we can charge you reasonable costs we incurred as a result of the administrative time and effort required to process your Services Application.
- (c) If you are a Fixed-Term Customer and you cancel the Service before the end of any fixed term for your Service, we can charge you the applicable Termination Fee.

#### **13.2 Cancellation for our breach**

You can cancel the Service at any time if:

- (a) we are in material breach of this Agreement;
- (b) you provide us with notice of that breach; and
- (c) we fail to remedy that breach with 14 days of us being notified or alternatively, the breach cannot be remedied.

#### **13.3 Effect of cancellation**

Cancellation of the Service will not affect any right which accrues prior to cancellation.

### **14. Our rights to rights to cancel or suspend the Service**

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#### **14.1 Cancellation by choice – Casual Customers and Pre-Paid Customers**

- (a) If you are a Casual Customer or a Pre-Paid Customer, we can cancel the Service at any time, if we provide you with a reasonable amount of notice (usually, this will be 30 days prior notice). Such notice will be given pursuant to clause 20.
- (b) If we cancel the Service in accordance with this clause 14.1(a), then we will refund you your pre-paid credit within 30 days of such cancellation.

#### **14.2 Cancellation by choice – Fixed-Term Customers**

If you are a Fixed-Term Customer, we can cancel the Service at any time, if we:-

- (a) obtain your consent;
- (b) transfer you to a comparable alternative service for the remainder of the Term; or

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- (c) take reasonable steps to reduce any detrimental effects that cancellation may have on you (such as reimbursing you a reasonable portion of the Charges invoiced).

### 14.3 **Cancellation for your breach**

We can cancel the Services at any time if you breach your obligations to us under this Agreement and if:-

- (a) we provide you with notice of that breach and you fail to remedy that breach with 14 days of such notice; or
- (b) the breach cannot be remedied (for example, but not limited to, if you do not comply with law or if you are fraudulent or make any misrepresentations on the Services Application)

### 14.4 **Other cancellation rights**

We may cancel the Service at any time if:

- (a) you become bankrupt or insolvent or appear likely to do so;
- (b) there is excessive or unusual use of the Service;
- (c) we reasonably consider that you pose an unacceptably high credit risk to us;
- (d) such cancellation is pursuant to clauses 2.3 (failure to provide assistance), 12.2(c) (Validation Payment) or 12.6(b)(3) (late payment of invoice);
- (e) your SIM is lost, damaged or stolen;
- (f) if you port out a Service Number; or
- (g) it is required by law.

### 14.5 **Effect of cancelation**

Cancellation of the Service will not affect any right which accrues prior to cancellation.

### 14.6 **Suspension**

We may temporarily suspend our provision of the Service to you if:

- (a) We are required by law to do so;
- (b) There is an emergency, which affects, or may affect, our ability to provide the Services;
- (c) An event of Exceptional Circumstance occurs, which affects, or may affect, our ability to provide the Services;
- (d) It is reasonably required for Indigo Network maintenance reasons;
- (e) there is excessive or unusual use of the Service;
- (f) your SIM is lost, damaged or stolen;

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- (g) if we reasonably suspect that the Service is being used in connection with fraud or other illegal activity;
- (h) we reasonably consider that you pose an unacceptably high credit risk to us (by, for example, the late payment of invoices); or
- (i) such suspension is pursuant to clauses 2.3 (failure to provide assistance), 5.3 (credit limits), 7.7(b)(3) (excessive use), 7.13 (blacklist), 12.2(c) (Validation Payment) or 12.6(b)(3) (late payment of invoice).

### 14.7 **Effect of suspension**

Suspension of the Service will not affect any right which accrues prior to, or after, suspension, nor does it discharge our obligations or your obligations under this Agreement.

## 15. **Liability**

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### 15.1 **Our liability to You**

- (a) Except as provided for in this clauses 15.1(b) -15.1(h), we will accept liability to you for our breach of this Agreement or where we have been negligent.
- (b) The Handset and the Services under this Agreement are not intended to be used for financial gain or as part of a business and we will not be liable for any damage you suffer in connection with such usage.
- (c) We will not be liable for any loss, to the extent that such loss is caused by your negligence.
- (d) We will not be liable for any loss, to the extent that it results from your failure to take reasonable steps to avoid that loss.
- (e) To the fullest extent permitted by law (including Australian Consumer Law), we, the Satellite Network Operator and/or the GSM Network Operator will not be liable for any loss of profits, business, revenue, goodwill, anticipated savings, personal injury or death, indirect or consequential loss or damage or third party fraud arising in connection with this Agreement.
- (f) We are not liable for any loss caused by events of Exceptional Circumstance.
- (g) To the extent we are found liable in connection with this Agreement (subject to Australian Consumer Law) our liability shall be limited to resupplying, repairing or replacing the relevant goods or services for you or paying you the costs of such resupply, repair or replacement, but only if it is fair and reasonable for us to do so.
- (h) To the extent that clause 15.1(g) does not apply, and we are found liable in connection with this Agreement our cumulative liability in the aggregate shall in no event exceed the sum of Charges paid to us in respect of your Service.

### 15.2 **Your Liability to Us**

- (a) If you and one or more others are the customer for the Service, then each of you are jointly and individually liable for all Charges under this Agreement.

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- (b) If you are liable to us, you will not be liable to the extent that any loss is caused by our negligence.

### 15.3 **Effect of termination or suspension**

These provisions relating to liability will continue unaffected by cancellation or suspension of the Service.

## 16. **SIM Cards**

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- 16.1 The only interest you acquire in any SIM Card is a licence to use the SIM Card.
- 16.2 You must not remove from the SIM Cards any markings specifying that the SIM Cards are owned by us or any third party.
- 16.3 You must immediately notify us if a SIM Card in its possession, custody or control is lost, stolen or damaged, and comply with any instructions given by us in relation to that SIM Card.

## 17. **Indemnity**

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- 17.1 To the extent permitted by law you agree to indemnify and hold Indigo harmless against all claims, actions, damages, losses, liabilities, costs, charges, expenses or outgoings which Indigo pays, suffers or incurs, or is liable for in respect of the your use of the Service or the Indigo Network.
- 17.2 Clause 17.1 does not apply to any claims, actions, damages, losses, liabilities, costs, charges, expenses or outgoings which Indigo pays, suffers or incurs, or is liable for as a result of Indigo's negligence or wilful breach of this Agreement.
- 17.3 The obligations in this clause 17 will survive cancellation or suspension of the Service (or termination of this Agreement, generally).

## 18. **Telephone numbers and PINs**

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- 18.1 The ACMA manages the Telecommunications Numbering Plan (**Plan**), which sets out a number of rules for issuing, transferring and changing telephone numbers. We are required by law to comply with the Plan.
- 18.2 In using your Service, you must not do anything that breaches, or affects our ability to comply with, the Plan.
- 18.3 The only interest you acquire in any Service Number is a licence to use the Service Number, and there may be circumstances in which the Plan enables us, or requires us to, recover a Service Number from you.
- 18.4 Subject to clause 18.3, you can transfer a Service Number to another person if you get our consent first.
- 18.5 Because you have to pay for any use of your Service (whether you authorise it or not), we recommend you protect the security of any PIN used with your Service.

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### **19. Transfer of the Service**

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- 19.1 You can transfer legal responsibility for your Service only if you obtain our written consent first.
- 19.2 The obligations to you under this Agreement are personal to you and cannot be assigned to a third party without our prior written consent.
- 19.3 We can assign or sub-contract any or all of our rights granted under the Agreement without your consent.

### **20. Notices**

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Where this Agreement requires us to give you any notice, we will do so, and will send you any additional information, by the most appropriate of the following methods:

- (a) directly communicating it to you over the phone or in person;
- (b) by mail using your most recent contact details given to us;
- (c) by email if you have provided us with your email address;
- (d) by message sent to your Handset or other device; or
- (e) By notices displayed on our website.

### **21. Privacy**

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We will comply with the terms of our privacy policy which appears on our web site at [www.indigotelecom.com.au](http://www.indigotelecom.com.au) and you consent to the terms of that privacy policy.

### **22. Exceptional Circumstance**

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- 22.1 We will not be liable for any delay or failure to perform our obligations pursuant to this Agreement if that delay is due to an Exceptional Circumstance.
- 22.2 If a delay or failure by us to perform our obligations is caused or anticipated due to an Exceptional Circumstance, the performance of that Party's obligations will be suspended.
- 22.3 If a delay or failure by a Party to perform its obligations due to an Exceptional Circumstance exceeds thirty (30) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

### **23. GST**

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- 23.1 Unless expressly stated to the contrary :
- (a) all amounts expressed in this Agreement are exclusive of GST; and
  - (b) all terms in this clause 23, unless otherwise defined, have the same meaning as those terms have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or

associated Commonwealth legislation, regulations and publicly-available rulings ("the GST Law").

- 23.2 If a party to this Agreement ("the Supplier") is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by the Supplier to the other party ("the Recipient") pursuant to the provisions of this Agreement, the Recipient shall pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice by the Supplier in addition to the moneys otherwise payable by the Recipient to the Supplier on account of that Taxable Supply.

## **24. Miscellaneous**

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### **24.1 Remedies cumulative**

The rights provided under this Agreement are cumulative and not exclusive of any rights provided by law.

### **24.2 Whole Agreement**

- (a) This Agreement supersedes all prior representations, arrangements, understandings and Agreements between the parties and represents the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of this agreement; and
- (b) The parties acknowledge and agree that they have not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in this agreement.

### **24.3 Severance**

If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this agreement will not be affected and will continue in full force and effect.

### **24.4 Governing Law**

- (a) This Agreement shall be governed by and construed in accordance with the laws of Queensland.
- (b) The parties each irrevocably and unconditionally submit to the non exclusive jurisdiction of the courts of Queensland whether State or Federal and each waives any immunity or any objection it may have to any action in those courts and to a claim that any action has been brought in an inconvenient forum or to those courts not having jurisdiction.