



# STANDARD TERMS AND CONDITIONS

As of 21 October 2019

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This agreement is made between BKH Enterprises Pty Ltd t/as Flash Fibres (ABN:66 600 357 908) "Flash Fibres" and "the Customer".

By signing the Service Agreement, the Customer acknowledges that they have read and accept the Standard Terms & Conditions as outlined in this document.

The Customer:

- (a) Represents and warrants that they have read and fully understand the nature and effect of the Terms and Conditions;
- (b) Represents and warrants that they have the authority to enter into the Terms and Conditions;
- (c) Payment be made strictly in accordance with the trading terms contained herein; and
- (d) The Agreement is implied to be agreed upon and entered into when the Customer puts through any order after receiving a copy of the Service Agreement and/or Terms and Conditions.

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## 1. Definitions

**Agreement** means this Agreement for the provision of services by us to you including the provisions contained in any Applications, Plans and Service Agreements

**Application Date** means the date indicated on the signed and returned Service Agreement

**Business End User** means a Customer of a Flash Fibres Commercial/Business Customer

**Commercial/Business Customer** means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes

**Casual Contract Customer** means a Customer that acquires the Service on a month by month basis

**Customer** means the person who submits an Application to Flash Fibres and who acquires the uses of the Service

**Customer Supplied Equipment** means equipment that was supplied by the Customer and/or their own engaged contractor

**Fixed Length Contract or Fixed-Term** means an Agreement (other than a month to month Agreement) that has a minimum term

**Fixed Term Contract Customer** means a Customer acquiring Service under a contract that has a fixed term

**Service** means the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by Flash Fibres to the Customer in connection with that service.

**Service Start Date** means the date on which the service becomes active and usable by the Customer

**Subcontractor** means a person or company engaged by Flash Fibres to provide a service on behalf of Flash Fibres

**Supplier** means a person or company which provides goods or services to Flash Fibres

**The Company** means Flash Fibres

**We** means Flash Fibres Pty Ltd, ABN 66 600 357 908, and includes its successors and assigns.

## 2. Term of this Agreement

2.1 This Agreement commences on the Application Date and will continue until Services are terminated by either party.

2.2 Flash Fibres will commence providing the Service to the Customer under the Agreement from the Service Start Date.

2.3 If the Agreement is not a Fixed-Term Agreement, Flash Fibres will provide the Service to the Customer in accordance with the Agreement until the service is cancelled in accordance with the Agreement.

2.4 If the Agreement is a Fixed-Term Agreement, Flash Fibres will provide the Service to the Customer in accordance with the Agreement for the minimum term until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the minimum term, Flash Fibres will continue to supply the Service to the Customer on a month to month basis in accordance with the Agreement until another Fixed Term Agreement is entered into or the Service is cancelled in accordance with the Agreement.

## 3. Using the Service

### Customer Obligations

3.1 The Customer must reasonably co-operate with Flash Fibres to allow us, any Subcontractors or a Supplier to establish and supply the Service to the Customer safely and efficiently.

3.2 The Customer must provide Flash Fibres with accurate and truthful information detailed in the

Service Agreement and keep us informed of any changes to the information.

- 3.3 When using the Service, the Customer must comply with:
- (a) all laws;
  - (b) all directions by a regulator;
  - (c) all notices issued by authorisation of or under law;
  - (d) the Acceptable Use Policy detailed in section 4 of this Agreement;
  - (e) reasonable directions by Flash Fibres

3.4 The Customer acknowledges that any loss and damage arising from a breach and/or failure of the provisions of this Agreement shall be borne by the Customer.

3.5 The Customer and users of the Service under the Customer's control must not use a service to commit an offence or allow anybody else to do so. The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

**Flash Fibres aim to providing continuous and fault free services**

3.6 Flash Fibres will provide the Service to the Customer with reasonable care and skill. In the event of an unexpected fault(s), the Customer acknowledges and understands Flash Fibres require reasonable time to attend to restoring the service.

3.7 Flash Fibres will use reasonable care and skill in providing our services; however, given the complex nature of modern telecommunications systems (including our services' reliance on systems and services that we do not own or control), we cannot promise that our services will be continuous and fault-free.

**Maintenance and Repair**

3.8 The particular sections of our Customer Terms set out our maintenance commitments that apply to our services. Generally, we maintain all of our services for as long as they are offered to customers.

3.9 Where use of our Services involves equipment that does not belong to Flash Fibres and is located at-the Customer's premises, the Customer shall maintain and repair that

equipment at their own cost. This includes carrying out any maintenance or repairs, that Flash Fibres reasonably think is required. When asked to do so by Flash Fibres such repairs shall be completed within a reasonable timeframe. Flash Fibres shall not be liable for any rebate, refund or cost to the Customer as a result of any failure of Customer Supplied Equipment.

3.10 Where the Customer requests Flash Fibres to repair or configure Customer equipment, Flash Fibres may charge the Customer a call-out fee and hourly rate charge for repairing the fault. Flash Fibres will disclose to the Customer the amount of the call-out fee and hourly rates before starting work unless in an event of emergency.

3.11 The Customer is responsible for maintaining all Customer owned equipment. This includes but is not limited to;

- (a) The mounting pole,
- (b) the lead in cable,
- (c) the modem,
- (d) all devices on the LAN side of the modem,
- (e) electricity,
- (f) removal of debris around the antenna,
- (g) trimming of trees on the Customer premises which may degrade the service

3.12 The Customer agrees Flash Fibres may use Third Party Suppliers for the provision of this Service.

3.13 The Customer understands that Flash Fibres will try to connect services within particular timeframes. If such timeframes apply, Flash Fibres will tell the Customer at the time of applying for the relevant service (or in material Flash Fibres provide to the Customer). For other services where no timeframes apply, Flash Fibres will try to connect the service within a reasonable time.

3.14 The Customer acknowledges Flash Fibres decides the route and technical means necessary to provide the service.

3.15 Flash Fibres will provide a detail quote for installations cost; if any, prior to connecting the service. Any such costs must be paid in full by the Customer prior to installation of the service.

**3.16** If Flash Fibres needs to carry out work inside the premises in order to connect the service, the Customer can nominate a person who is at least 18 years old as their 'appointed agent' in which case, the Customer acknowledges and agrees that:

- (a) Flash Fibres may disclose your personal information to your 'appointed agent'; and
- (b) your 'appointed agent' will on behalf of the Customer;
  - I. be present at the location and at a time agreed with us to connect your service;
  - II. make any decisions necessary to connect your service (including the locations of wiring and wall sockets);
  - III. accept or reject quotes from Flash Fibres; and
  - IV. accept all charges for the work undertaken by Flash Fibres at the premises.

#### **Interference with Flash Fibres equipment**

**3.17** All radio equipment remains the property of Flash Fibres even after the termination of the service. It is an offence under Commonwealth law to interfere in any way with the property of an Australian Telecommunications Carrier. The Customer shall take reasonable steps to ensure no-one interferes with Flash Fibres hardware or software configuration.

**3.18** The Customer must refrain from using Radio Frequency equipment which interferes with the operation of the Flash Fibres equipment.

**3.19** The Customer shall ensure no-one attempts to use any part of the Flash Fibres equipment in an unsafe way.

#### **Power Supply**

**3.20** It is the Customer's responsibility to arrange and pay for any electricity supply needed for the service at the premises. Flash Fibres is not responsible for any interruption of service caused by loss of electrical supply at the premises.

#### **Compliant equipment only**

**3.21** The Customer must only connect equipment that complies with relevant technical standards and other relevant requirements. For these standards see the Australian Communications and Media Authority site at <http://www.acma.gov.au/web/>

**3.22** The Customer must immediately upon demand from Flash Fibres remove/disconnect any Customer supplied equipment which Flash Fibres

determine is causing or is likely to cause interference or damage to the Flash Fibres network.

## **4. Acceptable Use Policy**

**4.1** The Customer agrees not to use the Service for illegal purposes and to conduct themselves in a responsible and considerate manner, and acknowledge that cracking, hacking, crashing, spamming, transmission or storage of copyright infringing or an data which would contravene Australian laws relating to the production and distribution of prohibited material or distribution of virus is forbidden, as is unauthorised access to system areas and information on the network and/or any connecting system.

**4.2** The Customer agrees to accept total responsibility for the content of files owned by the Customer and stored on the network and accept responsibility for any data transferred or caused to be transferred across the network.

## **5. The Service**

**5.1** The actual speed for the service can vary substantially due to many factors. These include distance from local exchange, Electromagnetic Interferences, the number and type of other services using the network, the capacity of the uplink, the customer's modem/router and the quality of the Customer's network devices.

**5.2** The Customer accepts that any transmission speeds referred to by us is referred to the maximum theoretical speed achievable with the Service under ideal conditions.

**5.3** The Service is provided on an "as is" basis and we cannot guarantee the provision of the Service to you where the service is reliant on a Third-Party Supplier.

**5.4** The Customer accepts that no Service level is guaranteed. Flash Fibres will use its best endeavours to provide timely installation and/or restoration however reasonable time measures are required.

**5.5** Flash Fibres is entitled (without liability to the Customer) to delay, vary or cancel the

performance of any of its obligations if and to the extent that it is prevented from, hindered in or delayed in the performance of any of its obligations through any circumstances beyond its control including acts of God, governmental actions, strikes or other labour disputes, lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, power outages, epidemic, fire, natural disasters, extreme adverse weather, reduction in or unavailability of energy sources, restrictions or delays affecting installation and/or Service.

5.6 Flash Fibres is responsible for providing an internet Service to the WAN port of the router only, anything beyond this is the responsibility of the Customer and this is including but not limited to WIFI, switches, internal cabling and end-user equipment.

## 6. Network maintenance, fault reporting and rectifications

6.1 After the Service is installed, the Customer has fourteen-(14) days from the date of Installation to raise any dispute with respect to the Service, any damage as part of the Installation

6.2 Subject to clause 6.1 above, the Customer accepts that Flash Fibres will not be liable for any loss and damage after that date.

6.3 Before a Customer reports a fault to Flash Fibres, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that was not provided by Flash Fibres.

6.4 The Customer must provide all reasonable assistance to enable Flash Fibres and its personnel to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises.

6.5 All faults must be reported by email to [faults@flashfibres.com.au](mailto:faults@flashfibres.com.au) and/or by telephone as soon as the fault is identified. Flash Fibres will then forward the report to the Faults team who will endeavour to restore the service by remote access initially. Then:

(a) If the Service is still not restored within 24 hours, the Customer will contact the Faults team and schedule in a time for a Technician to access the premises to attend to the matter.

(b) The Customer understands that Flash Fibres will require reasonable time to organise for a Technician(s) to attend the premises.

(c) If the investigations carried out shows that the Service can be restored, you agree for Flash Fibres and/or its personnel to attend to repairs for the restoration of the Service.

(d) If the fault was not caused by Flash Fibres then the customer is responsible for any applicable costs of repair.

6.6 Current fees and service charges at the time of this agreement are shown in the appendix attached to this agreement. Flash Fibres reserves the right to alter these fees and charges as it sees fit. Fee and service schedules shall be published on the Flash Fibres website [www.flashfibres.com.au](http://www.flashfibres.com.au)

In respect to section 6.5 (d) the Customer is to pay the callout fee of any service provided for a reported fault not caused by Flash Fibres. The Service call out fees are to be billed in 15 minutes intervals and to be billed at the discretion of Flash Fibres.

6.7 Flash Fibres is not liable for and shall not accept any costs caused by interruption of service where;

(a) the fault arises in or is caused by a supplier's network;

(b) items described in clause 5.5

(c) the fault was caused by the Customer or Customer's equipment.

6.8 Flash Fibres will take the necessary action to promptly repair faults identified in clause 6.7 but will not bear any further liability or responsibility.

6.9 If Flash Fibres investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs of

the Service and the costs incurred by Flash Fibres as part of the investigation.

for that other service, you must also pay us for that other service.

## 7. Accessing Your Premises

- 7.1 The Customer agrees to provide safe access to their premises for Flash Fibres staff to;
- (a) Install equipment for a service to be provided;
  - (b) Inspect, test, maintain, repair or replace equipment; and
  - (c) Recover Flash Fibres owned equipment after your service is cancelled-in accordance with our rights under the provisions for the suspension and/or cancellation of the Service as contained in these Terms and Conditions.

7.2 The Customer accepts to pay Flash Fibres the value of our equipment as a debt due if we cannot access your premises to attend to the installation and/or any Service.

7.3 If the Customer does not own the premises, the Customer hereby undertakes to have obtained the owner's, body corporate's, managing strata's permission for Flash Fibres to access the premises and install any equipment.

7.4 Subject to clause 7.3 above, once the Installation and/or Service has been scheduled, the Customer guarantees Flash Fibres permission to access the premises and install any equipment that has been approved.

7.5 Flash Fibres and/or any agent will not be liable for any claims and/or actions arising out of the Customer's breach of the clauses 7.3 and 7.4 above.

## 8. Equipment

- 8.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:
- (a) all laws;
  - (b) all directions by a regulator.

## 9. Fees and Charges

### Charges

- 9.1 The Customer Terms set out the charges payable to Flash Fibres for the supply of services and which of these charges are payable in advance.
- 9.2 If you use your service to access a service provided by someone else, and we are charged

- 9.3 The Customer must pay:
- (a) the fees and charges for the Service, which are set out in the Agreement;
  - (b) any additional fees and charges noted in the Agreement or notified by Flash Fibres in accordance with the Agreement from time to time;
  - (c) All fees and charges which are incurred for the Service even if the Customer did not authorise its use;
  - (d) the fees and charges for the Service if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as state in the Agreement or under the law;
  - (e) In addition to the fees and charges the Customer incurs in the normal use of the Service, Flash Fibres may charge the Customer administration fees and other similar charges including but not limited to suspension fees, cancellation fees, late payment fees, payment dishonour fees, credit card fees, service fees, call out fees, payment dishonour fees or reconnection or reactivation fees;
  - (f) Some fees are subject to variation such as charges relating to:
    - I. international services or roaming; and
    - II. content or premium services.
  - (g) In the event where the Customer's overdue account is referred to a collection agency and/or law firm for recovery of any outstanding monies, the Customer will be liable for payment of all costs which would be incurred as if the debt is collected in full, including legal demand costs, mercantile agency fees, commission, disbursements, court fees, service fees, professional costs and statutory awarded interest. The Customer acknowledges this is reasonable given costs incurred as a result of any overdue account.

### Bills

- 9.4 Flash Fibres issues invoices on a monthly basis.
- 9.5 Flash Fibres try to include all charges relating to a billing period in that bill; whoever, bills may include charges from previous billing periods if that complies with the billing requirements in the Communications Alliance Code – Telecommunications Consumer Protections (C628).

9.6 Flash Fibres is required by various industry codes to ensure that our bills are accurate, verifiable and we are committed to complying with these requirements. Our records are sufficient proof that a charge is payable unless they are shown to be incorrect.

#### Credit Card Payments

9.7 If the Customer pays the bill via a credit card, Flash Fibres may charge a credit card payment processing fee.

#### Late and Dishonour Fee

9.8 If you the Customer does not pay a bill by its due date; Flash Fibres can charge an administrative fee of:

(a) \$15.00 if the amount outstanding on your bill is \$100.00 or more.

9.9 Flash Fibres may restrict, suspend or cancel your service for non-payment of account, provided the company complies with its rights and obligations under clauses 13 and 14 of this Agreement.

9.10 If you pay a bill by direct debit and there are insufficient funds in the account, you must pay us a fee of \$10.00. These fees do not attract GST.

#### Adjustments

9.11 Flash Fibres may round charges up or down to the nearest whole cent (0.5 cent is rounded up). If the Customer pays a bill by cash, the amount payable will be rounded to the nearest multiple of five cents.

9.12 Flash Fibres may pay any amounts owned by the company to the Customer by reducing the Customer's account balance in accordance with the amount owed to the company.

9.13 If Flash Fibres require the Customer to pay any charges in advance (e.g. monthly access fees) and they are varied or the service is cancelled, Flash Fibres will refund the Customer any overpayment and the Customer must pay Flash Fibres any underpayment.

9.14 In order to provide certain services to the Customer, Flash Fibres enter into arrangements

with other providers and may be charged by them. If the other providers charge Flash Fibres more than Flash Fibres charges the Customer, and Flash Fibres deems the use of these services by the Customer to be excessive then Flash Fibres can charge the difference to the Customer.

9.15 Current fees and service charges at the time of this agreement are shown in the appendix attached to this agreement. Flash Fibres reserves the right to alter these fees and charges as it sees fit. Fee and service schedules shall be published on the Flash Fibres website [www.flashfibres.com.au](http://www.flashfibres.com.au)

## 10. Payments

10.1 The Customer understands that Flash Fibres will not undertake any Installation and/or Service unless payment is made.

10.2 Flash Fibres will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Invoice(s) are available in the following format:

(a) **Paper Bill** – Receive a summary or detailed paper bill in the mail. This will incur a postage fee outlined in the fee and service schedule.

(b) **Email Bill** – Receive a summary bill, standard bill or detailed bill by email in PDF format. Email bill is available to all customers.

10.3 The following terms apply to **Email Bill**:

(a) Flash Fibres will send the Customer a confirmation by email to the address nominated by the Customer once you have been registered for Email Bill.

(b) If the Customer registers for an Email Bill:

I. subject to clause (e) below, the Customer may no longer receive a Paper bill;

II. if the Customer is also registered for Online Billing, their bill will be available for viewing online when they receive their Email Bill, but they will not receive a separate email notification advising them that their bill is available Online Billing.

(c) Flash Fibres will endeavour to deliver the Customer's Email Bill to the email address nominated by the Customer. If Flash Fibres cannot deliver the Email Bill to that email address, the company may, in its discretion:

I. send the Customer a Paper Bill

- II. change their billing delivery method to a Paper bill for future bills; and
- III. contact the Customer to request that they update their email address.

If Flash Fibres needs to send the Customer a Paper Bill, it will be sent to the billing address specified on the account and it is the Customer's responsibility to ensure these details are kept up to date.

- (d) Once the Bill is issued Flash Fibres will assume the Customer has received and read the Email Bill unless the company is informed by the Customer that the Bill was not received. Under such circumstances a replacement bill will be issued to either a supplementary email address or mailed in paper form.
- (e) To help ensure the Customer receives their Email Bill, it is the Customer's responsibility to:
  - I. notify Flash Fibres if the Email Bill email address changes;
  - II. ensure that enough space is available in the email mailbox to receive the Email Bill;
  - III. check the junk email folder to see if the Email Bill has been delivered there instead of the inbox;
  - IV. contact Flash Fibres if the Email Bill is not received; and
  - V. keep the email account secure to protect the privacy of any personal and credit information contained in the Email Bill.
- (f) If the Customer wishes Flash Fibres to send their Email Bill to a third party's email address, they must nominate that person as their agent for the purpose of receiving billing payment information.
- (g) If the Customer no longer wants to receive an Email Bill, they can change their bill delivery method by contacting Flash Fibres
- (h) If the Customer chooses to receive a Paper Bill, they will need to notify Flash Fibres if their mailing address changes. It may take up to one billing cycle for requests to update your bill delivery method, or the change your Email Bill email address, to take effect.

#### 10.4 Security

- (a) At any time, Flash Fibres can require the Customer to provide some form of security (e.g. a security deposit, a charge or bank guarantee) or pay some or all the charges for their service in advance. Flash Fibres may only do so if the company has reasonable concerns about the credit worthiness of the Customer or have reasonable grounds for believing that the

Customer may not be able to pay for this service. In the case of new services, Flash Fibres may refuse to provide the Customer services until the company receives the security. In the case of existing services, if the Customer does not provide the security within 14 days of the request, Flash Fibres may restrict, suspend or cancel the service – this is in addition to any other rights that the company may have.

- (b) If the Customer cancels all their services, Flash Fibres will return the security deposit or advance payment to the Customer less any outstanding charges within a reasonable time.
- (c) Flash Fibres acceptance of any form of security or advance payment does not affect any other terms contained in this Agreement.

### 11. Minimum Contract Period

- 11.1 If the Customer is on a Fixed Term Contract Plan there is a minimum contract period listed on the Application. The Minimum Contract Period is the minimum period during which the Customer must acquire the service.
- 11.2 The Minimum Contract Period commences when the Service is activated.
- 11.3 If, during the Minimum Contract Period, the Customer cancels the Service or Flash Fibres cancel the Service because of Customer default, the Customer must pay an early termination charge.
- 11.4 The Minimum Contract Period varies from plan to plan and will be advised to the Customer during their application for the Service.

### 12. Variations to the Agreement

- 12.1 Flash Fibres may change any other term of Our Customer Terms by:
  - (a) getting Customer consent;
  - (b) complying with this clause; and
  - (c) complying with all relevant laws and regulations.

*The steps Flash Fibres take depend on the type of change.*

- 12.2 If Flash Fibres reasonably consider that a change to any term of Our Customer Terms is likely to:
  - (a) benefit the Customer; or
  - (b) have a neutral impact on the Customer,
 Flash Fibres may make the change immediately and do not need to tell the Customer. *Some examples of changes that will benefit the Customer are:*



- offering additional bonus options or free services;
- reducing monthly access fees or other charges; or
- changes that increase our obligations or introduce new rights for you.

*Some examples of a change that will have a neutral impact on the Customer are;*

- Flash Fibres changes the name of a service or the way the company provides a service to the Customer including changes in the technology used to provide the service. Such-changes would not detrimentally affect the functionality, features or use of that service.

**12.3** If Flash Fibres reasonably consider that a change to any term of Our Customer Terms is likely to have a minor detrimental impact on the Customer, Flash Fibres does not need to tell the Customer individually beforehand. Flash Fibres will publish a notice on its website, at least three business days beforehand and provide the Customer individual notice within 16 weeks of the change being implemented by bill message, text message or email.

**12.4** If the Customer can demonstrate that such a change has more than a minor detrimental impact on their Service, Flash Fibres will allow the Customer to cancel the contract for that service on Fair Terms if the Customer is on a Fixed Term Agreement.

*Some examples of changes that we consider have minor detrimental impact on the Customer;  
Withdrawing a minor feature of the service*

**12.5** Flash Fibres may change any term of these Standard Terms and Conditions that applies to the Customer's service to either increase an existing charge or to introduce a new charge where that charge is tax imposed by law. Flash Fibres are not required to inform the Customer individually beforehand. Flash Fibres will public a notice on their website at least three business days before the change takes place, and by email within 16 weeks of the change.

**12.6** Flash Fibres may-increase an existing charge or introduce a new charge for ancillary services (for example a billing fee or credit card transaction fee) provided Flash Fibres offers affected customers use of a reasonable alternative at no additional charge and notify affected customers of the change.

**12.7** If Flash Fibres increase or introduce charges for an ancillary service, and it is a type of ancillary service for which Flash Fibres did not offer a reasonable alternative at the same or reduced cost, Flash Fibres does not need to tell the Customer individually beforehand, but will allow affected customers to cancel any service to which that ancillary service relates on Fair terms. Flash Fibres will publish a notice on its website, at least three business days before the change takes place, and give the Customer individual notice within 16 weeks of the change being implemented by bill message, text message or email.

**12.8** Flash Fibres may change the charges for content and premium services provided by Flash Fibres to the Customer where those content and premium services:

- (a) are acquired by Flash Fibres from a third party for resale; or
- (b) incorporate or rely upon content and premium services provided to Flash Fibres by third parties.

And the change is a direct result of an increase in the price from our third party supplier. If Flash Fibres increase these charges, Flash Fibres will tell affected customers at least 10 days beforehand via email. You will be able to elect not to use the content or premium service without attracting additional charges.

*Note: Some services provided to customers are provided under a "credit provider" model, where the third party content provider actually supplies the content directly to customers and Flash Fibres bills the customer. In these cases, the content provider sets the charges for the content.*

**12.9** Flash Fibres consider changes that are:

- (a) required by law; or
- (b) necessary for security reasons, to prevent fraud or for technical reasons to be urgent changes.

**12.10** Flash Fibres will try to tell affected customers three days before an urgent change to our customer Terms by any method Flash Fibres consider reasonable in the circumstances, including text message, voice recordings or public notice. Sometimes, due to the nature of the change, Flash Fibres may not be able to tell affected customers three days beforehand, but Flash Fibres will give as much warning as Flash Fibres reasonably can.

- 12.11** Flash Fibres may change the term(s) of the Service Agreement by:
- (a) giving affected customers notice of the change at least 30 days beforehand; and
  - (b) allowing affected customers to cancel the contract for that service on Fair Terms within 42 days (from the date of the notice given).

*Examples of a type of change that may not be already described elsewhere in this clause:*

*withdrawing a key advertised feature of the service, or a key pricing offer associated with the service without providing a reasonably comparable alternative feature or pricing offer;*  
*or*

*changes that significantly increase the obligations or significantly limit the rights of most customers.*

- 12.12** Flash Fibres consider a Customer to be affected by a change of term in Our Customer Terms if that customer has used or has been billed for the service affected by the change during the six months before our notice and Flash Fibres reasonably consider that the change will have more than a minor detrimental impact on the customer.

- 12.13** A service can be cancelled on "Fair Terms" if Flash Fibres have offered the Customer the right to terminate the contract without incurring fees or charges other than:

- (a) usage and network and call charges incurred up to the date of termination; and
- (b) installation fees and costs of equipment Flash Fibres have provided to the Customer that the Customer have not paid for (if the equipment can be used in connection with services supplied by another provider).

- 12.14** When Flash Fibres tell the Customer about changes to the Standard Terms and Conditions under this clause, unless specified otherwise in the clause, Flash Fibres can do so by: bill message, text message, direct mail or email (if the Customer have an email address and have agreed for Flash Fibres to tell the Customer about changes to their Standard Terms and Conditions by email). In addition to this notice, Flash Fibres may also publish a notice on their website.

- 12.15** Flash Fibres may vary an Agreement with a Casual Contract Customer by getting consent; or by complying with this Clause.

### **13. Suspending the Service**

- 13.1** Flash Fibres may suspend or restrict the Service at any time without liability:

- (a) if it is to allow Flash Fibres and/or a Supplier to repair, maintain or service any part of the network or a supplier's network used to supply the Service.
- (b) if Flash Fibres reasonably believes there has been an unusually high use of the Service; or
- (c) problems are experienced interconnecting the network with any supplier's network used to supply the Service.

- 13.2** Flash Fibres may suspend or restrict the Service as soon as Flash Fibres gives the Customer notice, unless otherwise set out in the Agreement. In the case of an emergency Flash Fibres may suspend or restrict any service immediately.

- 13.3** Flash Fibres may suspend the Service if any amount owing to Flash Fibres is not paid by its due date. Flash Fibres gives the Customer notice requiring payment of that amount and the Customer fails to pay the amount in full within seven-(7) days, or otherwise stated on the invoice, after Flash Fibres gives the Customer that notice.

- 13.4** If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non-Flash Fibres owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.

- 13.5** If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Flash Fibres a suspension fee.

- 13.6** If the Customer wishes to reactivate the Service at any time after the suspension the Customer may make a request to Flash Fibres provided that if the Service is suspended as a result of circumstances attributable to the Customer and Flash Fibres reactivate the Service, the Customer

may have to pay a reconnection or reactivation fee.

#### **14. Cancelling the Installation and/or Service**

**14.1** If the Customer cancels an installation which has already been scheduled, the Customer are liable to pay the following fees:

- (a) if the technician has been booked, 25% of the installation fee is payable to Flash Fibres.
- (b) within 24 hours, the Customer will pay 50% of the installation fee or a minimum of \$100.00 whichever is greater to Flash Fibres

The Customer accepts that these fees are reasonable given the administrative costs and efforts involved with organising the scheduled installation.

**14.2** The Customer may cancel their Service at any time by giving Flash Fibres at least 30 days notice in writing. If the Customer cancels their service before the end of any fixed length contract, Flash Fibres may charge the Customer any applicable early termination charges as set out in the table in the attached appendix;

**14.3** If the Customer cancels a service before Flash Fibres have provided it to the Customer, Flash Fibres can charge the Customer any reasonable costs Flash Fibres incurred as a result of preparing to provide it to the Customer.

**14.4** The Customer may cancel the Service by:

- (a) Giving Flash Fibres thirty (30) days' notice (including if the Customer does not wish to continue to use the Service after the end of the minimum term of a Fixed-Term Contract); or
- (b) by giving Flash Fibres notice, if Flash Fibres breach a material term of the Agreement and either:
  - I. cannot remedy the breach; or
  - II. fails to remedy that breach within thirty-(30) days after the Customer gives Flash Fibre notice requiring restoration.

**14.5** If the Customer are a Casual Contract Customer, the Customer may cancel the Service at any time by giving at least thirty-(30) days' notice.

**14.6** If the Service is cancelled:

- (a) the Customer is liable for any charges incurred (including the cancellation fee, early termination fee and outstanding Equipment Charges, if any as

set out in the Agreement) up to and including, the Cancellation Date.

- (b) the Customer authorises Flash Fibres to apply any over payment on the Customer's account and/or money that the Customer has paid in advance for the Installation and/or Service which is being cancelled to pay for any undisputed outstanding charges.

- (c) If the Customer is required under the Service Description to pay for the Service by direct debit payment, the Customer authorises Flash Fibres to debit any undisputed outstanding charges from the Customer's nominated bank or credit card account.

**14.7** No cancellation fee shall be payable by the Customer:

- (a) if the Agreement is not a Fixed-Term Agreement; or
- (b) if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the minimum term.

**14.8** If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises, or elects to churn their service to another carriage service provider):

- (a) before the Service Start Date, the Customer must pay Flash Fibres all infrastructure and installation costs incurred by us in connection with preparations for supplying the Service to the Customer;
- (b) during the minimum term, the Customer must pay Flash Fibres a cancellation fee or the balance of the fixed term contract, whichever amount is higher; and
- (c) the Customer must pay Flash Fibres all costs incurred to rectify the Customer's breach of the Agreement.

**14.9** If the Customer wishes to reinstate the Service at any time after cancellation the Customer may make a request to Flash Fibre provided that if the Service is cancelled as a result of circumstances attributable to the Customer and Flash Fibres reinstates the Service, then the Customer may have to pay Flash Fibres a reconnection fee.

**14.10** Flash Fibres may cancel the Service at any time including prior to the Service Start Date, without liability, if:

- (a) There is an emergency;

- (b) Flash Fibres reasonably suspect fraud or other illegal activity by the Customer or any other person in connection with the Service;
- (c) any amount owing to Flash Fibres in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten-(10) business days after notice is given by Flash Fibres.
- (d) the Customer breaches a material term of the Agreement
- (e) any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen-(14) days;
- (f) the Service is suspended for more than fourteen-(14) days, unless otherwise set out in the Agreement.

**14.11** If the Customer moves to an address that Flash Fibres is unable to provide Service then the Customer is released from their contract with no penalty providing 30 days' notice has been given.

## **15. Liability**

**15.1** Flash Fibres has responsibilities and obligations under the law, including under:

- (a) the Telecommunications Legislation;
- (b) the Competition and Consumer Act; and
- (c) applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

**15.2** Flash Fibres is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Flash Fibres fully indemnified against any loss or damage incurred in connection with any claim by a Business End User.

**15.3** Flash Fibres is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something Flash Fibres has done.

**15.4** The Customer is liable to Flash Fibres for any breach of the Agreement that causes foreseeable loss to Flash Fibres.

**15.5** If the Customer and one or more others are the Customer for a service, each of the Customer is jointly and individually responsible for all charges and other obligations.

**15.6** Flash Fibres exclude all other liability whether to the Customer or a third party for breach of contract, negligence or breach of any other law. For any liability which cannot lawfully be excluded as it is under this clause 15, Flash Fibres' liability is limited to resupplying or paying the cost of resupplying services and repairing, replacing or paying the cost of repairing or replacing goods.

**15.7** Flash Fibres will not be responsible for any loss or damage arising from circumstances outside our reasonable control.

**15.8** These provisions relating to liability will continue unaffected by cancellation or suspension of the Customer's service.

## **16. Assignment and Transfer**

**16.1** The Customer can transfer legal responsibility for their service if the Customer gets written consent from Flash Fibres first.

**16.2** Flash Fibres may:

- (a) assign some or all its rights under the Agreement to any person;
- (b) perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier, subcontractor provided Flash Fibres remains responsible for the performance of the obligation, and the Customer irrevocably authorises Flash Fibres to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

## **17. Privacy**

**17.1** Flash Fibres collect, use and disclose personal information as set in our "Protecting Your Privacy" Statement a copy of which is available on the company website.

**Signature confirming acceptance of these terms and conditions**

**Name:** \_\_\_\_\_

**Title/Position:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

