

TELECHOICE GENERAL TERMS APRIL 2013

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1 INTRODUCTION

- (a) These are the TeleChoice standard terms for consumers who connect to a service with TeleChoice on or after 1 April 2013.
- (b) *Your Agreement* with TeleChoice consists of these general terms, as well as *your Application*, the service description, the pricing tables and the *appendices*. In order to understand *your* rights and obligations, TeleChoice recommends that *you* read all of the documents that relate to *you* and the service *you* select.
- (c) The service description is a detailed description of the services offered by TeleChoice, including the different features, options and availability of a service.
- (d) The pricing tables set out the fees or charges for *your* use of the service that TeleChoice may charge *you*, as well as other information such as eligibility criteria and specific details of any pricing plans and some specials that TeleChoice may have on offer. TeleChoice recommends that *you* carefully check the pricing tables so *you* know what fees and charges apply to *your* use of the service.
- (e) The *appendices* contain additional information that may apply to *your* use of the service, such as information about other call charges and our usage policies (including our Fair Use Policy). *You* will be referred to an appendix by the pricing tables or these general terms that is relevant to the service *you* have chosen.
- (f) All of the information contained in these General Terms, service descriptions, pricing tables and *appendices* can also be found on our website, which is: www.telechoice.com.au.

2 THE AGREEMENT

2.1 The Agreement

- (a) The *Agreement* is made up of:
 - (i) *Your application*,
 - (ii) These general terms,
 - (iii) The service description,
 - (iv) The pricing tables, and
 - (v) The *appendices*.
- (b) The *Agreement* is either a fixed-length *Agreement* or non fixed-length *Agreement*.

2.2 Priority in the event of inconsistency between the different parts of the Agreement

- (a) Where there is an inconsistency between a provision in these General Terms, and provision in another part of the *Agreement*, then unless otherwise stated these General Terms prevail to the extent of the inconsistency.

- (b) The terms contained in Clause 14 of these General Terms prevail over all other terms

2.3 Commencement

The *Agreement* commences on the service start date. If *you* are a new or existing customer and *you* have not activated *your* service within 5 business days of the *Application* being approved, TeleChoice may then activate the service automatically and without further notice.

2.4 When does TeleChoice commence providing the service to *you* under the *Agreement*?

TeleChoice will commence providing the service to *you* under the *Agreement* from the service start date. As soon as TeleChoice accepts *your application* and *you* give us any valid user information asked for, TeleChoice will connect *you* to the service and TeleChoice will open an *account* in *your* name or add *your* service to an existing *account* held by *you*.

2.5 Term of the *Agreement*

- (a) Where the *Agreement* is a not for a fixed term, TeleChoice will continue to deliver the service to *you* in accordance with the *Agreement* until the service is cancelled in accordance with clause 12, 'Cancelling the service', below.
- (b) Where the *Agreement* is for a fixed term, TeleChoice will deliver the service to *you* in accordance with the *Agreement*:
 - (i) For the minimum term, or
 - (ii) If neither *you* nor TeleChoice *cancel the service* at the end of the minimum term (see clause 2.6 below), until the service is cancelled in accordance with clauses 12.1 to 12.3 below; or
 - (iii) Until the service is cancelled in accordance with clauses 12.1 or 12.3 below.

2.6 What happens at the end of the minimum term if the *Agreement* is a fixed-length *Agreement*?

- (a) Where the *Agreement* is a fixed term *Agreement* and neither *you* nor TeleChoice have not cancelled it at the end of the minimum term, the *Agreement* becomes a non fixed term *Agreement* and TeleChoice will continue to deliver the service to *you* on a month-to-month basis in accordance with the *Agreement*.
- (b) If *you* do not wish to continue to use the service on a month-to-month basis after the end of the minimum term, *you* must inform us (in accordance with clause 12, 'Cancelling the service', below) by giving us 30 days notice before the end of the minimum term that *you* wish to *cancel the service* at the end of the minimum term.
- (c) If TeleChoice decides not to deliver the service to *you* after the end of the minimum term, TeleChoice will give *you* notice of this (in accordance with clause 12, 'Cancelling the service', below) by giving *you* 30 days notice before the end of the minimum term.
- (d) If TeleChoice decides to amend the terms of the *Agreement*, including any fees or charges, at the end of the minimum term, TeleChoice will give *you* notice of this (in accordance with clause 3 below) before the end of the minimum term.

2.7 Responsibility for persons who *you* allow to use the service

You must ensure that any person *you* allow to use the service complies with the *Agreement* as if they were *you*.

3 AMENDING THE AGREEMENT

3.1 Our right to amend the *Agreement*

TeleChoice can make any type of amendment to an *Agreement* if:

- (a) The amendment will benefit or will not adversely affect *you*;
- (b) *You* agree to the amendment; or
- (c) TeleChoice reasonably expects the amendment to adversely affect *you* and gives *you* reasonable notice of the amendment.

3.2 What TeleChoice must do if it amends a fixed length *Agreement*

- (a) Generally, if TeleChoice makes an amendment to an *Agreement* which affects *you* and it is not of the type listed in clauses 3.6 or 3.7 below, TeleChoice must give *you* notice in writing of the amendment on fair terms and the right to *cancel the service*.
- (b) If TeleChoice makes an amendment to a fixed length *Agreement*, then TeleChoice must comply with its obligation set out in clauses 3.6 or 3.7.

3.3 How does TeleChoice determine that an amendment will affect *you*?

TeleChoice considers that an amendment will affect *you* if *you* have used or been billed for the service affected by the amendment during the 6 months before our notice and TeleChoice considers that the amendment will have more than a minor detrimental affect on *you*.

3.4 Notice in writing

When TeleChoice is required to give *you* a notice in writing under clause 3.5 below of an amendment to the *Agreement*, TeleChoice can do so by giving it to *you* in person, sending it to *you* by mail or to *your* email address, by bill message or bill insert, or in the case of prepaid services, by making the information available on our website or at retail outlets and informing *you* (by recorded message, text message or in writing) of how to obtain information about the amendment.

3.5 Fair terms

- (a) When TeleChoice is required to give *you* notice of an amendment on fair terms TeleChoice will:
 - (i) Give *you* at least 21 days notice in writing of the amendment before the amendment occurs; and
 - (ii) Offer *you* the right to *cancel the service* within 42 days from the date of our notice in writing.
- (b) If *you* choose to *cancel the service* under clause 3.5(a)(ii) above:
 - (i) TeleChoice will *cancel the service* on the date on which *you* notify us that *you* wish to *cancel the service* (which must be within 42 days from the date of our notice in writing); and

- (ii) You will only have to pay:
 - (A) Your usage charges or minimum monthly spend (incurred to the date on which you notify us you wish to *cancel the service*); and
 - (B) Any outstanding amounts that cover installation costs or equipment charges.
- (c) If you have overpaid for the service because:
 - (i) The service is cancelled during a billing cycle; or
 - (ii) The amendment related to a price increase that became effective prior to the date your service was cancelled,

then your account (if you continue to have any account with us) will be credited with the amount you have overpaid, or, if you have stopped obtaining the service, TeleChoice will use reasonable endeavours to notify you that you have overpaid and refund the overpayment.

3.6 Amending a fixed-length Agreement where the amendment is likely to affect you

- (a) If the Agreement is a fixed-length Agreement, TeleChoice can make amendments to the Agreement even if they affect you:
 - (i) Where there is an amendment in relation to the cost of international services or roaming, TeleChoice can amend its charges for these services and does not need to tell you individually beforehand. Before you travel overseas you should contact us on 1300TELECHOICE or see our website www.telechoice.com.au for indicative pricing,
 - (ii) If the amendment is required by law or is in relation to a fee or charge to account for a tax imposed by law and it is fair and reasonable for us to do so. If TeleChoice expects the amendment to adversely affect you, TeleChoice will, whenever possible, try to give you at least 21 days notice in writing of the amendment.
- (b) If the Agreement is a fixed-length Agreement, TeleChoice can make amendments to the Agreement, if the amendment is in relation to a fee or charge for a service ancillary to the supply of the service. If the amendment affects you, TeleChoice will offer you:
 - (i) Use of a reasonable alternative at no fee or charge, or
 - (ii) A right to *cancel the service* without incurring fees or charges other than usage charges and minimum monthly spend (incurred to the date on which the service is cancelled, which is the date on which you notify us you wish to *cancel the service*);
- (c) If the Agreement is a fixed-length Agreement, TeleChoice can make amendments to the Agreement where the amendment is to increase the price of content or premium service (where TeleChoice are passing on an increase in the cost charged to us by the supplier

who supplies that content service or premium service to us). If the amendment affects *you*, TeleChoice will:

- (i) Whenever possible, still try to give *you* at least 21 days notice in writing of the increase in price if *you* have used the content or premium service within the previous six (6) months; and
 - (ii) Allow *you* to elect to not use the content or premium service without attracting any additional charges.
- (d) If the *Agreement* is a fixed-length *Agreement*, TeleChoice can make amendments to the *Agreement*, if the amendment is a result of another *carrier* or service provider varying their *Agreement* with TeleChoice so that TeleChoice needs to make consequential amendments to the *Agreement*. If the amendment affects *you* TeleChoice will:
- (i) Whenever possible, still try to give *you* at least 21 days notice in writing of the amendment; and
 - (ii) Give *you* 42 days from the date of the notice in which *you* may *cancel the service* without incurring fees or charges other than:
 - (A) Usage charges or *your* minimum monthly payment (incurred to the date on which *you* notify us *you* wish to *cancel the service*); and
 - (B) Any outstanding amounts that cover installation costs or equipment charges (where the equipment can be used in connection with services provided by any third party).

3.7 Amendments that are likely to benefit *you* or have a neutral or minor detrimental affect on *you*

- (a) TeleChoice can make amendments to a fixed-length *Agreement* relating to the terms and conditions of the service (including price) if the amendment is likely to benefit *you* or have a neutral or minor detrimental affect on *you*.
- (b) If *you* can demonstrate that such a amendment has had more than a minor detrimental affect on *you* and the amendment is not of a type described in paragraph 3.6 TeleChoice:
 - (i) Will offer *you* the right to *cancel the service* without incurring fees or charges other than:
 - (A) Usage charges or *your* minimum monthly payment (incurred to the date on which the service is cancelled, which is the date on which *you* notify us *you* wish to *cancel the service*); and
 - (B) Any outstanding amounts that cover installation costs or equipment charges (where the equipment can be used in connection with services provided by any third party); and
 - (ii) May offer *you* an alternative remedy to address the affect the amendment has had on *you*.

3.8 How can *you* amend anything in the *Agreement*?

Unless expressly otherwise stated in the *Agreement*, *you* cannot make any amendments to the *Agreement* without first obtaining the prior written consent of TeleChoice.

4 APPLICATION FOR THE SUPPLY OF THE SERVICE

4.1 What is the service?

The service *you* have selected is detailed in the service description.

4.2 Who does TeleChoice connect to the service?

Our services are designed for consumers only. TeleChoice only offers the service to customers who are consumers.

4.3 When may TeleChoice refuse *your application*?

TeleChoice may refuse *your application* if:

- (a) *You* are not a consumer; or
- (b) *You* do not provide satisfactory proof of identification; or
- (c) *You* do not meet the eligibility criteria for the service; or
- (d) The service is not available at the location where *you* wish to connect the service; or
- (e) *You* do not have an appropriate credit rating.

5 DEALING WITH PERSONAL INFORMATION

5.1 Collection, use and disclosure

- (a) TeleChoice may collect, use and disclose *your* personal information to decide whether to start, stop or limit supply to *you* of personal credit, the service or any products and services offered by TeleChoice or its related companies.
- (b) TeleChoice may collect, use and disclose *your* personal information (which may include, for example, numbers called, time of call, location of call) for purposes related to the delivery of the service, or for purposes which would be reasonably expected, including billing and account management, business planning and product development, and to provide *you* with information about promotions, as well as other products and services offered by TeleChoice, its related companies and other organisations.
- (c) TeleChoice may collect, use and disclose *your* personal information (which may include, for example, numbers called, time of call, location of call) for the purposes in paragraphs (a) and (b) above to or from:
 - (i) A credit reporting agency or credit provider;
 - (ii) Another related corporation of TeleChoice;
 - (iii) Third parties who are not related to TeleChoice, including third party suppliers, agents of TeleChoice, affinity partners, dealers, contractors and franchisees;

- (iv) Suppliers who need access to *your* personal information to provide TeleChoice with services to allow delivery of the service to *you*; and
 - (v) Joint venture partners of TeleChoice and its related corporations.
- (d) TeleChoice may be permitted or required by applicable laws to collect, use or disclose *your* personal information (which may include, for example, numbers called, time of call, location of call), including disclosure to:
- (i) The operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data;
 - (ii) Emergency services organisations; and
 - (iii) Law Enforcement Agencies and Government Agencies for purposes relating to the enforcement of criminal and other laws.

5.2 **Opting out**

If *you* wish to only receive communications that are *account* related or legally required, *you* may request not to receive other communications (that is, *you* may 'opt out'). *You* will need to contact Customer Service to make a request to opt out. TeleChoice will not charge *you* for processing a request to opt out.

5.3 **Being able to correct *your* personal information**

If *you* are an individual, *you* are entitled to:

- (a) Gain access to *your* personal information held by TeleChoice, unless TeleChoice is permitted or required by any applicable Law to refuse such access; and
- (b) Correct any personal information held by TeleChoice.

5.4 **Supplying *your* personal information**

If *you* do not supply part or all of the personal information that TeleChoice reasonably requests from *you*, then TeleChoice may refuse to provide, or limit the provision of, personal or commercial credit to *you*, or the service.

5.5 **Consent**

By supplying *your* personal information to TeleChoice and obtaining the service, *you* acknowledge and consent to the collection, use and disclosure of *your* personal information as set out in this clause 5 and in accordance with TeleChoice's privacy policy. *You* may view the TeleChoice Privacy Policy on the TeleChoice website:

<http://www.telechoice.com.au/legal/privacy>.

5.6 **Recording of calls**

TeleChoice may record all incoming calls to us. If *you* do not consent to *your* call being recorded, *you* may advise the operator at the start of the call. There are some transactions that TeleChoice is required by law to record. TeleChoice may not be able to assist *you* with these if *you* do not consent to TeleChoice recording *your* call.

5.7 **Keeping *your* password confidential**

You must keep confidential any password, code or personal identification number (or PIN) that *you* choose or TeleChoice gives *you* to use in connection with the service.

5.8 **Secondary contacts**

You consent to TeleChoice:

- (a) Disclosing any information in relation to *your account* to; and
- (b) Changing information in relation to *your account* in response to a request from,

any person who can quote *your* password, code or PIN or any person *you* have authorised to be a secondary contact in relation to *your account*.

You consent to *you* and any person *you* have authorised to be a secondary contact or person who enters *your* password, code or PIN, being able to access *your account* information on the TeleChoice website www.telchoice.com.au/members.

6 **USING THE SERVICE**

6.1 **Connecting the service**

You must reasonably co-operate with TeleChoice to allow us, or a supplier, to establish and deliver the service to *you* safely and efficiently. If *you* do not do so, TeleChoice may be entitled to *cancel the service* under clause 12.3(a)(v) or (vi) or suspend the service under clause 13.1(vii) or (viii).

6.2 **Quality of the service**

TeleChoice will deliver the service to *you* with all due care and skill and will endeavour to make the service available to *you* at all times. However, at times the quality and availability of the service may be affected by factors outside TeleChoice's control, such as weather and faults in phone networks. Also, the network and the service may from time to time need upgrading, maintenance or other work during which the service could be interrupted or unavailable. In the event of unexpected faults TeleChoice will use reasonable endeavours to ensure the service is restored as soon as possible.

6.3 **Blocking Calls**

TeleChoice may block access to a number (other than an emergency service number) if TeleChoice reasonably requires this to be done for technical, operational or commercial reasons.

6.4 **Permitted uses of the service**

- (a) When *you* use the service, *you* must comply with:
 - (i) All applicable Laws;
 - (ii) All directions by a Telecommunications Regulator;
 - (iii) All notices issued by authorisation of or under a relevant Law (for example, under the Copyright Act 1968 (Cth)); and
 - (iv) All reasonable directions given to *you* by TeleChoice.
- (b) *You* must not use, or attempt to use, the service:

- (i) To break any Law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright); or
 - (ii) To transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (iii) To access or send any "prohibited content" (as defined in the Broadcasting Services Act 1992) or for other unlawful purposes or knowingly or negligently allow any other person to do so; or
 - (iv) To expose TeleChoice to liability, or
 - (v) In any way that damages, interferes with or interrupts the service, or the network used to supply the service.
- (c) TeleChoice may ask *you* to stop doing something that TeleChoice reasonably believes is contrary to paragraph (b) above. *You* must immediately comply with any such request. If *you* fail to do so, then TeleChoice may take any steps reasonably necessary to ensure compliance by *you* with paragraph (b) above or the request.
 - (d) *You* acknowledge that, where the service is a carriage service, TeleChoice, or any supplier whose network is used to supply the service, may be required to intercept communications over the service and may also monitor *your* usage of the service and communications sent over it.
 - (e) If *you* do not comply with this clause 6.4, TeleChoice may be entitled to *cancel the service* under clause 12.3(a)(v) or (vi) or suspend the service under clause 13.1(a)(vii) or (viii).

6.5 Unusually high use

TeleChoice may contact *you* if TeleChoice become aware of an unusually high use of the service by *you* (including to verify any costs or charges which *you* may have incurred) however TeleChoice are under no obligation to do so unless the Fair Use Policy applies. For example, if *you* suddenly make an unusually high volume of calls to international destinations using the service TeleChoice may contact *you* to determine whether that use is likely to continue.

If so, TeleChoice may ask *you* to make a pre-payment usage charge under clause 3.5 of the service description. Please note that TeleChoice may also be entitled to bar or suspend the service under clause 13.1(a)(iv) for an unusually high use of the service, or under the Fair Use Policy for a breach of that policy.

6.6 Compliance with third party rules

When *you* use the service it is *your* responsibility to comply with any rules imposed by any third party whose content or services *you* access using the service or whose network *your* data traverses.

7 EQUIPMENT

7.1 *Your* responsibilities in relation to equipment

- (a) *You* must ensure that all equipment *you* use in connection with the service and the way *you* use that equipment complies with:

- (i) All applicable Laws;
 - (ii) All directions by a Telecommunications Regulator;
 - (iii) All notices issued by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)); and
 - (iv) All reasonable directions given to *you* by TeleChoice.
- (b) If *you* breach paragraph (a) above, TeleChoice may:
- (i) Disconnect the equipment from the service;
 - (ii) Suspend the service in accordance with clause 12.3(a)(v) or 12.3(a)(vi); or
 - (iii) *Cancel the service* in accordance with clause 13.1(a)(vii) or 13.1(a)(viii).
- (c) TeleChoice will try to give *you* reasonable notice before TeleChoice disconnects the equipment under paragraph (b)(i) above, but TeleChoice may disconnect the equipment, suspend the service or *cancel the service* immediately if there is an emergency.

7.2 Ownership of the Equipment

- (a) Equipment owned by TeleChoice.
- (i) Any equipment owned by TeleChoice remains the property of TeleChoice at all times.
 - (ii) Subject to *your* statutory rights as a consumer, *you* are responsible for any equipment owned by TeleChoice as and from the date on which *you* receive it.
 - (iii) *You* must not mortgage or grant a charge, lien or encumbrance over any equipment owned by TeleChoice.
- (b) *You* may, but are not obliged to, purchase equipment from TeleChoice or any of our personnel to use in connection with the service.
- (c) *You* may purchase equipment from a third party to use in connection with the service.
- (d) *You* can purchase equipment from TeleChoice or any of our personnel to use in connection with the service:
- (i) By paying for the equipment in one payment at the point of sale, or
 - (ii) By any other means advised by TeleChoice from time to time.
- (e) All equipment used in connection with the service, must be of a kind, make and model approved by TeleChoice.

7.3 Installation of the equipment

You must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the service and located on the premises where the equipment is to be used.

7.4 **Maintenance and repair of any equipment owned by TeleChoice**

Unless both parties agree otherwise, *you* must only allow our personnel or a third party supplier referred by TeleChoice to service, modify, repair or replace any equipment owned by TeleChoice.

7.5 **Lost, stolen and damaged equipment**

- (a) *You* are responsible for any lost, stolen or damaged equipment owned by TeleChoice, unless TeleChoice or our personnel cause it.
- (b) *You* will be responsible for any outstanding payments for equipment that *you* have purchased from TeleChoice or our personnel, even when that equipment is lost, stolen or damaged, unless TeleChoice or our personnel cause it.

8 **NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION**

8.1 **Maintenance on the network used to deliver the service**

Maintenance may be conducted on a network used to deliver the service.

8.2 **Reporting faults**

- (a) TeleChoice will provide a fault reporting service for *you* to report faults.
- (b) Before *you* report a fault to TeleChoice, *you* must take all reasonable steps to ensure that any equipment that is not equipment owned by TeleChoice does not cause the fault.

8.3 **Assisting TeleChoice in investigating and repairing a fault**

You must provide all reasonable assistance to enable TeleChoice or our personnel, or where necessary a third party supplier referred by TeleChoice, to investigate and repair a fault.

8.4 **TeleChoice's responsibility for repairing faults in the service**

- (a) Unless the service description expressly provides otherwise, TeleChoice is not responsible for repairing any fault in the service where the fault arises in or is caused by:
 - (i) A network fault; or
 - (ii) Equipment that is not owned by TeleChoice; or
 - (iii) Facilities outside the TeleChoice network.
- (b) Where:
 - (i) The fault arises in or is caused by a supplier's network;
 - (ii) TeleChoice becomes aware of the fault; and
 - (iii) TeleChoice is not responsible for the repair of that fault,

TeleChoice will notify the supplier of the fault and request that the fault be corrected promptly, but TeleChoice will not bear any further liability or responsibility arising from the fault.

- (c) Where the fault arises in or is caused by equipment that is not owned by TeleChoice, TeleChoice is not responsible for the repair of that fault. If *you* ask TeleChoice to investigate and repair such a fault:
 - (i) TeleChoice will give *you* an estimate of the probable cost of investigating the fault and, if *you* agree to pay those costs, TeleChoice will undertake an investigation and TeleChoice will then charge *you* for the cost of investigation;
 - (ii) If TeleChoice has investigated the fault, TeleChoice will use reasonable endeavours to inform *you* of the fault's probable cause; and
 - (iii) If *you* request TeleChoice to repair the fault and TeleChoice agrees to repair the fault, TeleChoice will give *you* an estimate of the probable cost of repairing the fault and TeleChoice will then charge *you* for the actual cost of repairing the fault, which *you* hereby agree to pay.
- (d) If TeleChoice investigates a fault and determines that the fault is attributable to an excluded event, then TeleChoice may still charge *you* for any costs that TeleChoice has incurred in investigating and, if applicable, repairing the fault.

8.5 Loss of access

If the fault results in a significant and sustained loss of access to, or use of, the service, *you* should check if *you* are entitled to a refund or rebate under clause 11.4 below. *You* may also be entitled to *cancel the service* under clause 12.1(a)(ii)(A) below.

9 SPECIALS

- (a) TeleChoice may offer *you* a special offer from time to time (including a special offer in relation to a particular pricing plan).
- (b) TeleChoice will notify *you* of any specials offered to *you* either through general advertising or by specifically advising *you*. The terms of each special offer will be set out in the pricing table for the relevant service, in an appendix, in advertising material, or *you* will be advised separately in writing.
- (c) A special offer may be an offer to vary the price or the terms of delivery (including the minimum term) and it may be subject to certain conditions.
- (d) If *you* accept a special offer, the terms of the special offer, subject to the Fair Use Policy, will prevail to the extent that the terms of the special offer are inconsistent with the terms of this *Agreement*. Otherwise, the terms and conditions of this *Agreement* will continue to apply to the special offer.
- (e) After the special offer expires, TeleChoice may end the special offer and the full terms and conditions of this *Agreement* will once again apply.
- (f) Where TeleChoice provides *you* with discounted calls, text and photo messaging rates for text and photo messages sent to another

TeleChoice customer ("TC 2 TC") those rates are not available for bulk commercial use.

- (g) Where TeleChoice provides *you* with a special call rate to another TeleChoice mobile phone number and that number ceases to be a TeleChoice mobile phone number for any reason, the special call rate will no longer apply to calls to that number.

10 TAXES (INCLUDING GST)

- (a) Unless otherwise indicated, the fees and charges set out in this *Agreement* include any amount on account of tax.
- (b) Where the fees and charges do not include an amount on account of tax, if any tax is payable by TeleChoice in relation to, or on any, supply under or in connection with this *Agreement*, TeleChoice will increase the tax exclusive fees and charges by an additional amount on account of the tax. *You* must pay the additional amount at the same time *you* pay the fees and charges. This applies where the tax, such as GST, is directed at, and imposed on, *you*, the end-user.

11 COMPLAINTS AND DISPUTES

11.1 How to make a complaint

- (a) If *you* have any complaints in connection with the service, *you* may complain in writing (including by sending an email to feedback@telechoice.com.au) or by calling TeleChoice on 1300TELECHOICE.
- (b) TeleChoice will handle *your* complaint in accordance with TeleChoice's Complaints Handling Policy. *You* may view this Policy on TeleChoice's website: www.telechoice.com.au/legal/feedback
- (c) TeleChoice will use its best endeavours to resolve *your* complaint. However, if TeleChoice is not able to resolve *your* complaint to *your* satisfaction, *you* can refer *your* complaint to the Telecommunications Industry Ombudsman, the Department of Fair Trading or The Department of Consumer Affairs in *your* State or Territory, or to the Office of the Federal Privacy Commissioner.

11.2 Suspending payment obligations

- (a) Where *your* complaint is about a fee or charge for the use of the service, provided TeleChoice reasonably believes *your* complaint is bona fide, TeleChoice will:
 - (i) In most cases, suspend *your* payment obligation for that fee or charge only, until the complaint has been investigated and resolved; or
 - (ii) If *you* pay by direct debit, reverse any incorrect fees or charges that have been applied to *your* account, once the complaint has been investigated and resolved.

- (b) All other fees and charges that are not in dispute remain due and payable in accordance with this *Agreement*.

11.3 Financial hardship policy

The TeleChoice Financial Hardship Policy contains information about how TeleChoice can assist customers who are experiencing financial hardship. You can view the Policy at www.telechoice.com.au/legal or have a copy sent to you by calling TeleChoice on 1300TELECHOICE.

11.4 Complaints about loss of access to the service

- (a) Where *your* complaint is about a significant loss of access to, or use of, the service and the loss was not as a result of circumstances reasonably attributable to *you* or equipment that TeleChoice is not responsible for, *you*:
 - (i) Will be entitled on request to a refund or a rebate of any minimum monthly payment for the period in which *your* access or use was interrupted (including when an intervening event occurs); and
 - (ii) May be entitled to *cancel the service* under clause 12.1(a)(ii)(A) below.
- (b) *You* should contact Customer Service to lodge *your* complaint.

12 CANCELLING THE SERVICE

12.1 *Your right to cancel the service*

- (a) *You may cancel the service* at any time by:
 - (i) Giving TeleChoice 30 days notice in writing (please note that *you* are required to give us this notice if *you* do not wish to continue to use the service after the end of the minimum term of a fixed-length *Agreement*, otherwise TeleChoice will continue to supply the service to *you* – see clause 2.6(b) above), or
 - (ii) Giving TeleChoice notice in writing, if:
 - (A) TeleChoice breaches a material term of this *Agreement* and TeleChoice cannot remedy that breach, including where there is a significant and sustained loss of access to, or use of, the service and the loss was not as a result of circumstances reasonably attributable to *you* or equipment not owned by TeleChoice; or
 - (B) TeleChoice breaches a material term of this *Agreement* and TeleChoice can remedy that breach, but TeleChoice does not remedy that breach within 30 days after *you* give TeleChoice notice in writing requiring TeleChoice to do so; or
 - (C) Any intervening event prevents the supply of the service in accordance with this *Agreement* for more than 14 days.

- (b) If this *Agreement* is an unsolicited consumer *Agreement* regulated by the unsolicited consumer *Agreement* provisions of the *Australian Consumer Law*, you may also *cancel the service*:
- (i) Before the end of the cooling-off period which is:
- (A) If the *Agreement* was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after you signed your *application*; or
- (B) If the *Agreement* was negotiated by telephone – the period of 10 business days from and including the first business day after you received written confirmation from TeleChoice of the details of your *application*;
- (ii) In accordance with any additional termination rights you may have relating to unsolicited consumer *Agreements* under the *Australian Consumer Law*. Details about these additional rights to cancel the *Agreement* are set out in the information provided to you at the time that you complete your *Application*.
- (c) If the *Agreement* is a fixed-length *Agreement*, you may also *cancel the service* in accordance with clause 3 above. Clause 3 sets out the circumstances that give you the right to *cancel the service* if TeleChoice has amended the *Agreement*.

12.2 **TeleChoice's right to *cancel the service* - non fixed-length *Agreement***

If the *Agreement* is a non fixed-length *Agreement*, TeleChoice may *cancel the service* at any time by giving you at least 30 days notice.

12.3 **TeleChoice's right to *cancel the service* - non fixed-length *Agreement* and fixed-length *Agreement***

- (a) TeleChoice may *cancel the service* at any time, if:
- (i) There is an emergency;
- (ii) TeleChoice reasonably suspects fraud by you or any other person in connection with the use of the service;
- (iii) Any amount owing to TeleChoice in respect of the service (which is not the subject of a valid dispute under clause 11.2 above) is not paid by its due date and TeleChoice gives you notice in writing requiring payment of that amount to be made, and you fail to pay that amount in full within ten (10) business days after TeleChoice gives you that notice;
- (iv) TeleChoice reasonably considers you a credit risk because you have not paid amounts owing to TeleChoice or any related corporation, which is not the subject of a valid dispute under clause 11.2 above, in respect of any service by its due date and you are given notice in writing requiring payment of that amount to be made to that related corporation and you fail to pay that amount in full within the required period;
- (v) You breach a material term of this *Agreement* (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.3 above or your obligations relating to the use of the service set

out in the service description or otherwise the service) and *you* cannot remedy that breach;

- (vi) *You* breach a material term of this *Agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.4 above or *your* obligations relating to the use of the service set out in the service description or otherwise misuse the service) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after TeleChoice gives *you* notice in writing requiring *you* to do so;
 - (vii) TeleChoice are required to comply with an order, instruction, request or notice of a Telecommunications Regulator (for example under the numbering regulations), an emergency services organisation, any other competent authority, by authorisation of or under any applicable Law or under any applicable industry code,
 - (viii) *You* suffer an insolvency event and TeleChoice reasonably believes that TeleChoice is unlikely to receive payment for amounts due from *you*;
 - (ix) *You* die, or if *you* are a partnership and the partnership is dissolved, or an Application is made to dissolve the partnership, or *you* are a corporation and the corporation is wound up, or an Application is made to wind up the corporation, and TeleChoice reasonably believes that TeleChoice is unlikely to receive payment for amounts due from *you*;
 - (x) The service is suspended for more than 14 days, unless otherwise set out in this *Agreement*;
 - (xi) Any intervening event prevents the delivery of the service in accordance with this *Agreement* for more than 14 days;
 - (xii) The Telstra Wholesale network is no longer made available to TeleChoice; or
 - (xiii) TeleChoice is otherwise entitled to do so under this *Agreement*.
- (b) TeleChoice may *cancel the service* under paragraph (a) above as soon as TeleChoice give *you* notice in writing of its intention to do so, unless otherwise set out in this *Agreement*. TeleChoice will give *you* as much prior written notice as TeleChoice reasonably can before TeleChoice cancels the service. However, TeleChoice may *cancel the service* immediately if there is an emergency.

12.4 Multiple services

If *you* have more than one service with TeleChoice and *you* are in breach of *your Agreement* under any service, TeleChoice has the right to cancel all of *your* services if the breach is not rectified and if there are reasonable grounds for TeleChoice to believe *your* continued use of that service represents a credit risk to TeleChoice.

12.5 How can you cancel the service?

- (a) You can ask TeleChoice to *cancel the service* by calling us. Your call will be deemed as *your notice to cancel the service*.
- (b) You may also be able to *cancel the service* by electing to have an equivalent service to the current service delivered by another *carrier or carriage service provider* (including, by transferring or porting). That *carrier or carriage service provider* will inform TeleChoice that *you* have elected to have the relevant service delivered by them or have it transferred to them and TeleChoice will then *cancel the service* immediately.

12.6 When will the service be cancelled?

The service will be cancelled on the *cancellation date*. You will not be able to use the service after the *cancellation date*.

12.7 What happens when the service is cancelled?

- (a) This *Agreement* terminates when the service is cancelled.
- (b) If the service is cancelled:
 - (i) You are liable for any charges incurred up to, and including on, the *cancellation date* and any *cancellation fee* or early termination fee. You should check the service description and pricing tables for *your* service (and relevant advertising material) for details of any applicable *cancellation fee*. You will not be liable for any such charges under this subsection if *you cancel the service* in accordance with clause 12.1(b)(i) above.
 - (ii) Because an intervening event prevents the delivery of the service in accordance with this *Agreement* for more than 14 days (under clause 12.1(a)(ii)(C) or 12.3(a)(xi) above). You are liable for any charges incurred up to the *cancellation date*. However, unless it is fair and reasonable for us to do so, TeleChoice will not charge *you* any *cancellation fee* in these circumstances.
 - (iii) You authorise TeleChoice to apply any over payment on *your account* and/or money that *you* have paid in advance for the service which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any).
 - (iv) Subject to paragraph (ii) above and unless otherwise set out in the service description (for example TeleChoice may not refund or redeem for cash any included call credits on a postpaid service), TeleChoice will on request refund any over payment on *your account* and any money that *you* have paid in advance for the service which is being cancelled on a pro-rata basis to *you* by cheque, unless *you* have paid by credit card in which case the refund will be processed back to that credit card.
 - (v) If *you* are required under the service description to pay for the service by direct debit payment (either from *your* credit card or from *your* nominated bank account), *you* authorise TeleChoice to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from *your* credit card or bank account.

- (c) If *you* wish to reinstate the service *you* should contact TeleChoice. If the service is cancelled as a result of circumstances reasonably attributable to *you* and TeleChoice reinstates the service, then *you* may be required to pay to TeleChoice a reconnection or reactivation fee.
- (d) If *you* are able to use the service after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 12.7.

13 SUSPENDING THE SERVICE

13.1 TeleChoice's right to suspend the service

- (a) TeleChoice may suspend the service at any time, if:
 - (i) There is an emergency; or
 - (ii) Doing so is necessary to allow TeleChoice or a supplier to repair, maintain or service any part of TeleChoice's network or a supplier's network used to deliver the service; or
 - (iii) TeleChoice reasonably suspects fraud by *you* or any other person in connection with the use of the service; or
 - (iv) TeleChoice reasonably believes there has been an unusually high use of the service or otherwise in accordance with the Fair Use Policy; or
 - (v) Any amount owing to TeleChoice in respect of the service (which is not the subject of a valid dispute under clause 12.2 above) is not paid by its due date and TeleChoice gives *you* notice in writing requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after TeleChoice gives *you* that notice in writing, unless otherwise set out in this *Agreement*; or
 - (vi) TeleChoice reasonably considers *you* a credit risk because *you* have not paid amounts owing to TeleChoice or any TeleChoice group company (which is not the subject of a valid dispute under clause 12.2 above) in respect of any service by its due date and *you* are given notice in writing requiring payment of that amount by that TeleChoice group company and *you* fail to pay that amount in full within the required period; or
 - (vii) *You* breach a material term of this *Agreement* (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.3 above or *your* obligations relating to the use of the service set out in the service description) or otherwise misuse the service or breach clause 7.1 above, and *you* cannot remedy that breach; or
 - (viii) *You* breach a material term of this *Agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 6.1 and 6.3 above) or *your* obligations relating to the use of the service set out in the service description or otherwise misuse either the service or breach

clause 7.1 above, and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after TeleChoice gives *you* notice in writing requiring *you* to do so; or

- (ix) TeleChoice is required to do so to comply with an order, instruction, request or notice of a Telecommunications Regulator, an emergency services organisation, any other competent authority or by authorisation of or under any relevant Law, or any relevant Industry Code; or
 - (x) Problems are experienced interconnecting TeleChoice's network with any supplier's network; or
 - (xi) *You* suffer an insolvency event and TeleChoice reasonably believe TeleChoice is unlikely to receive payment for amounts due; or
 - (xii) *You* die or if *you* are a partnership and the partnership is dissolved or an Application is made to dissolve the partnership, or *you* are a corporation and the corporation is wound up or an Application is made to wind up the Corporation, and TeleChoice reasonably believe TeleChoice are unlikely to receive payment for amounts due; or
 - (xiii) TeleChoice are otherwise entitled to do so under this *Agreement*.
- (b) TeleChoice may suspend the service under paragraph (a) above as soon as TeleChoice give *you* notice in writing of its intention to do so, unless otherwise set out in this *Agreement*. TeleChoice will give *you* as much prior written notice as TeleChoice reasonably can before TeleChoice suspends the service. However, TeleChoice may suspend the service immediately if there is an emergency.
- (c) If TeleChoice suspends the service, TeleChoice may later *cancel the service* for the same or a different reason.

13.2 Multiple services

If *you* have more than one service with TeleChoice and *you* are in breach of *your Agreement* under any service, TeleChoice has the right to suspend all of *your services* if the breach is not rectified and if there are reasonable grounds for TeleChoice to believe *your* continued use of that service represents a credit risk to TeleChoice.

13.3 What happens when the service is suspended

- (a) If *you* have a fixed-length *Agreement* and:
- (i) TeleChoice agrees to suspend the service, at *your* request; or
 - (ii) TeleChoice suspends the service in accordance with clause 13.1 (a)(ii) – (viii) or as TeleChoice is otherwise permitted to do under the Communications Alliance Telecommunications Consumer Protection Industry Code,
- the period for which *your* service remains suspended will not count towards the minimum term; and
- (iii) The calculation of the minimum term will recommence when *your* service is reactivated. The first bill *you* receive after *your* service is reactivated will include any applicable equipment

charges (such as phone instalments) for that month and *your* minimum monthly payment on a pro-rata basis for the period *your* service was suspended.

- (b) *You* remain liable for all charges due under this *Agreement* throughout any period of suspension.
- (c) *You* can still make calls to emergency services during any period of suspension.
- (d) If the service is suspended, *your* minimum monthly payment and equipment charges will also be suspended for the period of the service suspension.
- (e) If the service is suspended and the suspension was not as a result of circumstances reasonably attributable to *you* or equipment not owned by TeleChoice, *you* will be entitled upon receipt of a written request to a refund or a rebate of any monthly service charges for the period of suspension. *You* should contact Customer Service for *your* refund or rebate.
- (f) If the service is suspended as a result of circumstances reasonably attributable to *you*, *you* may have to pay TeleChoice a suspension fee. *You* should check the relevant pricing table for the service concerned to see if a suspension fee applies.
- (g) If the service is suspended under clause 13.1(a)(v) TeleChoice will reactivate the service on receipt of payment of the full amount owing.
- (h) If *you* wish to lift the suspension *you* should contact TeleChoice. If the service is suspended as a result of circumstances reasonably attributable to *you* and TeleChoice reactivates the service, *you* may have to pay TeleChoice a reconnection or reactivation fee.
- (i) If *you* ask TeleChoice to suspend *your* use of the service and TeleChoice does not agree to do so, *you* must still pay any remaining equipment charges by their due date for payment.

14 WHAT ARE YOU AND TELECHOICE LIABLE FOR

14.1 *Your* liability to TeleChoice

- (a) *You* are liable to TeleChoice for any breach of this *Agreement* by *you* that causes foreseeable substantial loss to TeleChoice.
- (b) *You* are not liable to TeleChoice for any *consequential losses* TeleChoice suffers or for any costs, expenses, loss or charges that TeleChoice incurs, which are not a direct result of something *you* have done.
- (c) If *you* did not purchase the service from TeleChoice for personal use, TeleChoice excludes all liability to *your* end users (in contract, tort (including negligence), statute or otherwise so far as the law permits). If an end user makes a claim against TeleChoice in relation to:
 - (i) The use (or the attempted use) of *your* service; or
 - (ii) Equipment used in connection with *your* service,

you indemnify TeleChoice against (and must pay TeleChoice for) any loss or damage TeleChoice suffers in connection with that claim, including legal costs on a solicitor and client basis.

14.2 TeleChoice's liability to *you*

- (a) TeleChoice has responsibilities and obligations under the law, including under:
- (i) The Telecommunications Legislation;
 - (ii) The *Competition and Consumer Act*, including the *Australian Consumer Law*; and
 - (iii) Applicable Laws, Regulations and Codes.

Nothing in this *Agreement* removes or limits any rights that *you* have under existing Laws or Regulations.

Your statutory rights as a consumer

Under the *Australian Consumer Law*, if *you* enter into an *Agreement* to purchase goods or services from us which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by *you*, certain consumer guarantees apply to those goods and services in relation to acts or omissions that occur on or after 1 January 2011 (**consumer guarantees**).

Consumer guarantees apply regardless of any express warranties to which *you* may be entitled under this *Agreement*.

TeleChoice guarantees that:

- Goods are of acceptable quality (unless TeleChoice specifically drew to *your* attention the reasons why the goods are not of acceptable quality);
- Any express warranties will be honoured;
- *You* are buying goods that have clear title, that do not have undisclosed securities and with a right to undisturbed possession;
- *You* are buying goods that are fit for any disclosed purpose;
- *You* are buying goods that match the description, sample or demonstration model; and
- The services TeleChoice supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the services) and are provided within a reasonable time, if no time is fixed for supply of the services.

If the goods or services TeleChoice supplies fail to meet a consumer guarantee, *you* may have rights against TeleChoice. This may include the right to a repair, replacement or refund. In certain circumstances TeleChoice may choose how TeleChoice remedies its failure. In other circumstances, *you* may choose how the failure should be remedied.

You may not be entitled to a refund or replacement under the *Australian Consumer Law* if the goods are not rejected within a reasonable period; *you* have lost, destroyed or disposed of the goods; or the goods have been damaged after delivery. *You* may be entitled to recover reasonably foreseeable loss or damage suffered for TeleChoice's failure to meet a consumer guarantee.

- (b) TeleChoice is liable to *you* for:
- (i) Any damage to *your* property which has been caused by the fault, negligence or fraud by TeleChoice or TeleChoice's personnel during installation, repair or maintenance;
 - (ii) Interruptions in *your* use of the service as a result of a fault or negligence of TeleChoice, or TeleChoice's personnel, to the extent of a refund or rebate for the period of the interruption

and, where required by Law, for compensation for any reasonable loss incurred by *you*;

- (iii) Death or personal injury caused by TeleChoice or TeleChoice's personnel.
- (c) If *you* have contributed to any loss or damage *you* are claiming against TeleChoice, the liability of TeleChoice is reduced to the extent of *your* contribution.
- (d) Subject to *your* statutory rights as a consumer, TeleChoice is not liable to *you* for any *consequential losses* *you* suffer or for any costs, expenses, loss or charges that *you* incur.
- (e) To the extent permitted by Law, TeleChoice's total liability for loss that is not covered by or excluded or limited by clauses 14.2(a) to 14.2(e) is limited in aggregate for any claim or series of connected claims to \$5 million.

15 ASSIGNING THE AGREEMENT TO A THIRD PARTY

15.1 How can TeleChoice assign its responsibilities to a third party

- (a) TeleChoice may assign some or all of its rights under this *Agreement* (where those rights are assignable) to any person.
- (b) TeleChoice may transfer some or all of its obligations under this *Agreement* to any TeleChoice related body corporate that is able to perform those obligations.
- (c) TeleChoice may perform any of its obligations under this *Agreement* by arranging for them to be performed by another person, including a supplier or another TeleChoice related body corporate. TeleChoice will still be responsible for the performance of the obligations.

15.2 How can *you* assign *your* responsibilities to a third party

- (a) *You* may assign *your* rights under this *Agreement* (where those rights are assignable), so long as *you* have TeleChoice's prior written consent to do so.
- (b) *You* may transfer *your* obligations under this *Agreement* if:
 - (i) The person to whom *you* are transferring the obligations:
 - (A) Is a consumer;
 - (B) Provides satisfactory proof of identification;
 - (C) Meets the eligibility criteria for the service;
 - (D) Has an appropriate credit rating; and
 - (ii) The service is available at the location where they wish to acquire the service.

16 GENERAL

16.1 Which laws and courts govern this *Agreement*?

- (a) This *Agreement* is governed by the Laws of the State of Victoria.
- (a) *You* and TeleChoice submit to the exclusive jurisdiction of the Courts of the Victoria, and any Appellate Courts.

16.2 Intellectual Property Protections

- (a) TeleChoice owns all material (including Intellectual Property Rights) developed by TeleChoice or TeleChoice's personnel, or at TeleChoice's direction.
- (b) TeleChoice may permit *you* to use this material, or other material licensed by TeleChoice, as part of the service. This permission is subject to any conditions which TeleChoice may impose from time to time and will cease when the service is cancelled.
- (c) *You* must not infringe any person's Intellectual Property Rights (such as by using, copying or distributing data or software without the permission of the owner) in using the service. If *you* breach this paragraph, TeleChoice may suspend the service under clause 13.1(a)(vii) or (viii) or *cancel the service* under clause 12.3(a)(v) or (vi).

16.3 Events outside *your* or TeleChoice's control

- (a) If an intervening event occurs which prevents *you* (or any of *your* personnel) from performing any of *your* obligations under this *Agreement* (other than an obligation to pay money), then *you* will not be liable for failing to perform that obligation. *You* must notify TeleChoice of the intervening event and use *your* best efforts to resume performance in accordance with this *Agreement* as soon as reasonably possible. TeleChoice's obligations continue during the intervening event, except if TeleChoice is not able to perform its obligations because *you* are unable to perform *your* obligations due to the intervening event.
- (b) If an intervening event occurs which prevents TeleChoice (or any of TeleChoice's personnel) from performing any of TeleChoice's obligations under this *Agreement* (other than an obligation to pay money), then TeleChoice will not be liable for failing to perform that obligation. TeleChoice must notify *you* of the intervening event and use its best endeavours to resume performance in accordance with this *Agreement* as soon as reasonably possible. *Your* obligations continue during the intervening event, except if *you* are not able to perform *your* obligations because TeleChoice is unable to perform its obligations due to the intervening event.

16.4 What happens if *you* become a *carrier* or *carriage service provider*?

- (a) *You* represent that *you* are not a *carrier* or *carriage service provider*.
- (b) If *you* are or become a *carrier* or *carriage service provider*, TeleChoice may immediately *cancel the service* by giving *you* notice.

16.5 When does TeleChoice waive a right TeleChoice has under this Agreement?

If *you* breach this *Agreement* and TeleChoice does not exercise a right that TeleChoice has because of *your* breach, TeleChoice does not necessarily waive its entitlement to exercise that right because of *your* breach at any later time.

16.6 Payment of commission by TeleChoice

TeleChoice may pay a commission to any of its personnel in connection with this *Agreement*.

16.7 Directory Assistance

Directory Assistance is available by calling 1223. Please refer to the pricing tables for further details and pricing for the 1223 service.

16.8 Information about *your* rights

Information and advice about *your* rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

16.9 Contacting TeleChoice

Customer Service:

By phone:	1300TELECHOICE
On the internet:	www.telchoice.com.au
By mail:	PO Box 5161 South Melbourne Victoria 3205

National relay service: 133 677
If *you* are deaf or have a hearing or speech impairment *you* can use the services of the national relay service [http://relayservice.gov.au/](http://relayservice.gov.au) to contact us

Translating and interpreting service 131 450
If English is not *your* first language *you* can use the services of the national translating and interpreting service.