

**OPTUS MOBILE PTY LIMITED
OPTUS NETWORKS PTY LIMITED**

**ORDINARY ACCESS UNDERTAKING TO THE
AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION
UNDER
DIVISION 5 OF PART XIC OF
THE TRADE PRACTICES ACT 1974 (CTH)**

ORDINARY ACCESS UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION UNDER DIVISION 5 OF PART XIC OF THE TRADE PRACTICES ACT 1974 (CTH)

DATED 23 DECEMBER 2004

PARTIES

1. **OPTUS MOBILE PTY LIMITED (ABN 054 365 696)** of 101 Miller Street, North Sydney NSW 2060
2. **OPTUS NETWORKS PTY LIMITED (ABN 008 570 330)** of 101 Miller Street, North Sydney NSW 2060 (together **Optus**)

in favour of:

3. **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** being a body corporate established under section 6A of the Trade Practices Act (Cth) (**ACCC**)

BACKGROUND

- A. Optus holds a carrier licence and is a carriage service provider under the Telecommunications Act 1997 (Cth).
- B. Optus gives this ordinary access undertaking pursuant to Division 5 of Part XIC of the Trade Practices Act 1974 (Cth) in relation to a subset of the Domestic Mobile Terminating Access Service which was declared by the ACCC under section 152AL of the TPA with effect from 1 July 2004.
- C. This Undertaking specifies certain terms and conditions on which Optus undertakes to comply with the Applicable Standard Access Obligations in respect of the Optus DGTA Service. Additional terms and conditions relating to the supply of, and interconnection with, the Optus DGTA Service are to be negotiated and agreed between Optus and individual Access Seekers prior to the supply of the Optus DGTA Service.

1. **INTERPRETATION**

- 1.1 The following words have these meanings in this Undertaking unless the contrary intention appears:

Access Seeker means a carrier or carriage service provider seeking the supply of the Optus DGTA Service by Optus.

Applicable Standard Access Obligations means the standard access obligations set out in Schedule 4.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney.

Declared Service has the same meaning given to that term in section 152AL of the TPA.

Optus DGTA Service means Optus' domestic GSM terminating access service described in Schedule 1.

TPA means the *Trade Practices Act 1974 (Cth)*.

Undertaking means this ordinary access undertaking given by Optus to the ACCC under Division 5 of Part XIC of the TPA.

1.2 In this Undertaking the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Undertaking.
- (b) The singular includes the plural and vice versa.
- (c) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Undertaking;
 - (iv) this Undertaking includes all schedules and attachments to it;

(v) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and

(vi) a monetary amount is in Australian dollars.

(e) An agreement on the part of two or more persons binds them jointly and severally.

2. COMMENCEMENT AND DURATION

2.1 This Undertaking takes legal effect, subject to clauses 2.3 and 2.4, immediately after this Undertaking is accepted by the ACCC under Division 5 of Part XIC of the TPA and continues until the earlier to occur of:

(a) 31 December 2007; or

(b) termination, withdrawal or replacement of this Undertaking in accordance with the TPA.

2.2 For the avoidance of doubt, this Undertaking (including, without limitation, any prices in this Undertaking) has no effect in respect of the supply of the Optus DGTA Service by Optus to an Access Seeker under an existing agreement on the date on which the Undertaking is accepted by the ACCC, for as long as that agreement remains on foot.

2.3 If an agreement under which the Optus DGTA Service is being supplied by Optus expires on or before 31 December 2004 and Optus continues to supply the Optus DGTA Service, the prices set out in Schedule 2 will apply in respect of the continued supply of the Optus DGTA Service supplied on and from 1 January 2005.

2.4 If an agreement under which the Optus DGTA Service is being supplied by Optus expires after 31 December 2004, the prices set out in Schedule 2 will apply in respect of the supply of the Optus DGTA Service from the date of expiry of that agreement.

3. UNDERTAKING TERMS AND CONDITIONS

3.1 Optus undertakes to the ACCC that during the period this Undertaking is in effect pursuant to clause 2.1, it will, in relation to the Applicable Standard Access Obligations, supply the Optus DGTA Service:

(a) specified in Schedule 1;

(b) at the prices specified in Schedule 2; and

(c) on the terms set out in Schedule 3.

3.2 For clarification, this Undertaking:

(a) does not specify all the terms and conditions on which Optus will comply with the Applicable Standard Access Obligations and additional terms and conditions must be negotiated and agreed between Optus and an Access Seeker or failing agreement, determined in accordance with section 152CP or 152CPA of the TPA; and

(b) does not apply to the Optus DGTA Service to the extent that there are no standard access obligations applicable to Optus in respect of the Optus DGTA Service for reasons including:

(i) the granting of an exemption by the ACCC under section 152AT of the TPA in respect of the Optus DGTA Service; or

(ii) revocation of a declaration by the ACCC under section 152AO of the TPA in respect of the Optus DGTA Service.

3.3 Except as provided for in section 152CQ(5) of the TPA, nothing in this clause 3 is to be taken as limiting Optus' or the Access Seeker's rights under Division 8 of Part XIC of the TPA.

4. VARIATION OF DECLARATION

If the ACCC varies a declaration in respect of the Optus DGTA Service, Optus may choose to vary, replace or withdraw this Undertaking pursuant to the TPA by providing notice in accordance with the TPA and with effect from the date given in the relevant notice.

5. VARIATION, REPLACEMENT OR WITHDRAWAL OF UNDERTAKING

5.1 Optus may at any time during the period of this Undertaking:

(a) give the ACCC notice seeking approval of a variation or replacement of this Undertaking; or

(b) by written notice to the ACCC withdraw this Undertaking.

5.2 Nothing in this clause 5 is to be taken as limiting Optus' rights in relation to this Undertaking under Division 5 of Part XIC of the TPA.

6. **NOTICES**

Any communication in respect of this Undertaking should be made in writing to:

Attention: Director, Corporate and Regulatory Affairs

Address: 101 Miller Street, North Sydney NSW 2060

Facsimile: 02 9342 9155

EXECUTION PAGE

SIGNED by **PAUL FLETCHER** as authorised signatory for **OPTUS MOBILE PTY LIMITED** in the presence of:

Signature of witness

Signature of Paul Fletcher

Name of witness (print)

SIGNED by **PAUL FLETCHER** as authorised signatory for **OPTUS NETWORKS PTY LIMITED** in the presence of:

Signature of witness

Signature of Paul Fletcher

Name of witness (print)

SCHEDULE 1

SERVICE DESCRIPTION

OPTUS DOMESTIC GSM TERMINATING ACCESS SERVICE

1. DOMESTIC GSM TERMINATING ACCESS SERVICE

1.1 The Optus DGTA Service is an access service for the carriage of voice calls from a Point of Interconnection, or potential Point of Interconnection, to a B-Party directly connected to the Optus GSM Network.

1.2 Definitions

Where words or phrases used in this Schedule 1 are defined in the *TPA* or the *Telecommunications Act 1997* or the *Telecommunications Numbering Plan 1997*, they have the meaning given in the relevant Act or instrument.

Other definitions:

B-Party is the end-user to whom a telephone call is made.

GSM means the Global System for Mobiles (formerly Groupe Speciale Mobile) as defined by ETSI and the GSM Memorandum of Understanding (or any successors) and as applied in Australia.

GSM Memorandum of Understanding means the agreement between certain GSM network operators and regulatory authorities from various countries entitled GSM Memorandum of Understanding dated 7 September 1987 as varied by the Addendum dated 24 September 1991 and as varied or replaced from time to time.

Optus GSM Network is the telecommunications network that conforms to GSM standards which is owned and operated by Optus.

Point of Interconnection is a location which:

- (a) is a physical point of demarcation between the Access Seeker's Network and the Optus GSM Network; and
- (b) is associated with (but not necessarily co-located with) one or more gateway exchanges of the Access Seeker's Network and Optus GSM Network.

SCHEDULE 2

PRICE LIST FOR OPTUS DGTA SERVICE

1. GENERAL

1.1 Definitions

- (a) Unless the context indicates otherwise, capitalised terms used in this Schedule 2 that are not otherwise defined in the main body or other Schedules of the Undertaking have the meaning given below:

ACIF MNP Code means the *Australian Communications Industry Forum Industry Code for Mobile Number Portability (ACIF C570:2003)* registered with the Australian Communications Authority pursuant to the *Telecommunications Act 1997* on 1 March 2004.

ACIF Pre-selection Code means the *Australian Communications Industry Forum Industry Code for Pre-Selection (ACIF C515:2003)* registered with the Australian Communications Authority pursuant to the *Telecommunications Act 1997* on 27 October 2003.

CPM means cents per minute of the Optus DGTA Service measured in one minute increments or parts thereof.

Customer has the meaning set out in the ACIF Pre-selection Code.

Incoming International Traffic means voice calls from an end user that is located outside of Australia that are delivered to a B-Party directly connected to the Optus GSM Network via the Access Seeker's Network.

Mobile Network Operator means a party who owns or operates a telecommunications network that delivers a Public Mobile Telecommunications Services.

Mobile Service Number has the meaning set out in the ACIF MNP Code.

Permanent Override Customer means a customer who makes use of an over-ride code on a routine basis to elect the Access Seeker as its Prime Service Deliverer.

Pre-selection has the meaning set out in the ACIF Pre-selection Code.

Preselected Customer means :

- (a) a Customer who has made a Pre-selection that elects the Access Seeker as its Prime Service Deliverer;
- (b) a Customer in respect of whom the Access Seeker has set itself as the Prime Service Deliverer pursuant to section 10.6 of the ACIF Pre-selection Code; and
- (c) a Customer who has made a Pre-selection that elects a reseller of the Access Seeker as its Prime Service Deliverer.

Prime Service Deliverer has the meaning set out in the ACIF Pre-selection Code.

Public Mobile Telecommunications Services has the meaning given to that term in the Telecommunications Act 1997.

Quarter means consecutive three months calendar periods of a Year commencing on 1 January.

Services in Operation or **SIO** means the number of customers determined in accordance with clause 3.3.

Transit Traffic means voice calls in respect of which the retail price is set by a person other than the Access Seeker or its resellers.

Year means a calendar year commencing on 1 January and expiring on 31 December.

1.2 Election by Access Seeker

- (a) The Access Seeker may acquire the Optus DGTA Service in consideration of the payment of prices determined under Option 1 Pricing or Option 2 Pricing. In summary, the Option 1 Pricing and Option 2 Pricing is as follows:

Year	Option 1 Pricing*	Option 2 Pricing*
Year 2005	19.25 CPM	Monthly fixed charge per SIO + 14.25 CPM
Year 2006	18 CPM	Monthly fixed charge per SIO + 13 CPM
Year 2007	17 CPM	Monthly fixed charge per SIO + 12 CPM

* Subject to the terms and conditions set out in this Undertaking.

- (b) Subject to clause 1.2(d), the Access Seeker must, prior to the execution of the Service Agreement, notify Optus in writing whether it wishes to acquire the Optus DGTA Service in consideration of the payment of prices determined under:
- (i) Option 1 Pricing; or
 - (ii) Option 2 Pricing.
- (c) The selection made by the Access Seeker under clause 1.2(b) will apply for the duration of the term of the Service Agreement and may not be varied by the Access Seeker or Optus.
- (d) Optus may in writing reject the Access Seeker's choice of Option 2 Pricing made under clause 1.2(b) if the information provided by the Access Seeker under clause 4.2(a) cannot be certified by an Auditor appointed under clause 4.3 within 30 days of the receipt of that information. If Optus rejects the Access Seeker's choice under this clause 1.2(d), Optus may immediately apply Option 1 Pricing in respect of the supply of the Optus DGTA Service from the Commencement Date.

2. OPTION 1 PRICING

2.1 Application

The fees payable by the Access Seeker for the Optus DGTA Service determined by reference to the Option 1 Pricing will apply to an Access Seeker:

- (a) who has elected Option 1 Pricing under clause 1.2(b);
- (b) who has been rejected for Option 2 Pricing under clause 1.2(d); and
- (c) in respect of all Transit Traffic and Incoming International Traffic irrespective of whether the Access Seeker elected Option 1 Pricing or Option 2 Pricing.

2.2 Rates

- (a) The fees payable by the Access Seeker for the Optus DGTA Service supplied by Optus in a particular Billing Period under Option 1 Pricing is determined by reference to:
- (i) the per minute charge for the Optus DGTA Service applying to that Billing Period; and
 - (ii) the total number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in that Billing Period.

For the purposes of Option 1 Pricing, a Billing Period is a calendar month.

- (b) The fees payable by the Access Seeker monthly in arrears for the Optus DGTA Services supplied by Optus in a Billing Period will be determined by reference to the following formula:

$$\text{Fees} = R1 \times M$$

where:

'R1' is the variable rate set out in clause 2.2(c) and applying to the Billing Period in which the Optus DGTA Service was supplied.

'M' is the number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in the particular Billing Period.

- (c) The variable rate applying to the Billing Periods in the Years 2005, 2006 and 2007 are as set out below:

Year 2005 19.25 CPM

Year 2006 18 CPM

Year 2007 17 CPM

Example of the calculation of the monthly charge for the Optus DGTA Service where the Access Seeker has elected Option 1 Pricing:

- In the month of October 2005, Optus supplied 51 000 minutes of Optus DGTA Service to the Access Seeker.

- In the month of November 2005, Optus supplied 51 296 minutes of Optus DGTA Service to the Access Seeker.
- In the month of December 2005, Optus supplied 51 594 minutes of Optus DGTA Service to the Access Seeker.

The monthly fees payable by the Access Seeker is calculated as follows:

Fees for October 2005 = $0.1925 \times 51\,000 = \$ 9187.50$

Fees for November 2005 = $0.1925 \times 51\,296 = \$ 9874.48$

Fees for December 2005 = $0.1925 \times 51\,594 = \$ 9931.85$

Total:

Total fees payable in the last Quarter of 2005 = $9187.50 + 9874.48 + 9931.85 = \$ 28\,993.83$

3. **OPTION 2 PRICING**

3.1 **Application**

- (a) Subject to clause 3.1(f), the fees payable by the Access Seeker for the Optus DGTA Service determined by reference to the Option 2 Pricing will apply to an Access Seeker who has elected Option 2 Pricing under clause 1.2(b).
- (b) The fees payable by the Access Seeker for the Optus DGTA Services supplied by Optus determined by reference to the Option 2 Pricing will include:
 - (i) an amount in respect of the Monthly Fixed Charge determined in accordance with clause 3.2.1 for each calendar month and payable monthly in arrears;
 - (ii) an amount in respect of the Monthly Fixed Charge Reconciliation determined in accordance with clause 3.2.2 for each Quarter and payable two Quarters in arrears; and
 - (iii) an amount in respect of the Monthly Variable Charge determined in accordance with clause 3.2.3 for each calendar month and payable monthly in arrears.
- (c) Option 2 Pricing will not apply to Optus DGTA Services supplied in respect of Transit Traffic and Incoming International Traffic. The Access Seeker must provide Optus with all reasonable assistance to identify Transit Traffic and Incoming International Traffic.

- (d) The Access Seeker must not engage in any conduct which has the purpose or effect of concealing or misrepresenting the origins or nature of any traffic or concealing or misrepresenting the nature or number of SIOs.
- (e) If Optus reasonably believes that the Access Seeker is in breach of clause 3.1(d), Optus may, by written notice to the Access Seeker, remove the application of Option 2 Pricing to the Access Seeker, whether whole or in part, and instead apply Option 1 Pricing to the Access Seeker.
- (f) It is a condition of Option 2 Pricing that if the Access Seeker is a Mobile Network Operator, upon request by Optus and from the date noted in such request, the Access Seeker must make a binding offer, capable of immediate acceptance by Optus, for the provision of an equivalent service to the Optus DGTA Service for termination of calls on the Access Seeker's Network to Optus on the same terms and conditions as Option 2 Pricing. If this condition is not met by the Access Seeker at any time, Optus may immediately apply Option 1 Pricing to the Access Seeker.

3.2 Rates

3.2.1 Monthly Fixed Charge

- (a) The fees in respect of the Monthly Fixed Charge payable by the Access Seeker for the Optus DGTA Services to be supplied by Optus in a Billing Period is determined by reference to:
 - (i) the total number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in the Year 2004;
 - (ii) the audited number of SIOs existing as at 31 December 2004; and
 - (iii) the actual audited number of SIOs as at the last day of the second Quarter that immediately precedes the Quarter to which that Billing Period relates. For example, for each of the calendar months (ie. Billing Periods) of the third Quarter, the actual audited number of SIOs as at the last day of the first Quarter will be used to calculate the relevant fees.

For the avoidance of doubt, the Billing Period for Monthly Fixed Charges is a calendar month.

- (b) The fees in respect of the Monthly Fixed Charge payable by the Access Seeker monthly in arrears for the Optus DGTA Services to be supplied by Optus in a Billing Period is determined by the following formula:

$$\text{Fees} = \text{MFC} \times \text{T}$$

where:

'T' is the actual audited number of SIOs existing as at the last day of the second Quarter that immediately precedes the Quarter to which that Billing Period relates. For example, for each of the calendar months (ie. Billing Periods) of the third Quarter, the actual audited number of SIOs as at the last day of the first Quarter will be used to calculate the relevant fees

'Monthly Fixed Charge' or 'MFC' is the amount per SIO determined by the following formula:

$$\{[(A \times R1) - (A \times R2)] \div D\} \div 12$$

where:

'A' is the number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in the Year 2004.

'R1' is the variable rate set out in clause 2.2(c) and applying to the Year 2005.

'R2' is 13.81 CPM.

'D' is the audited number of SIOs existing as at 31 December 2004.

3.2.2 Monthly Fixed Charge Reconciliation

- (a) The amount in respect of the Monthly Fixed Charge Reconciliation payable by the Access Seeker to Optus or Optus to the Access Seeker, as the case may be, applying to a Billing Period is determined by reference to the actual audited number of SIOs existing as at the last day of each calendar month of that Billing Period.
- (b) For the avoidance of doubt, the Billing Period for the Monthly Fixed Charge Reconciliation is a Quarter. Optus will carry out the calculations in respect of the Monthly Fixed Charge Reconciliation for a Billing Period immediately after receipt of the actual audited number of SIOs applying to that Billing Period under clause 4.3.
- (c) The amount in respect of the Monthly Fixed Charge Reconciliation payable by the Access Seeker to Optus or Optus to the Access Seeker, as the case may be, is determined by the following formula:

$$\text{Reconciliation Amount} = F - G$$

where:

'F' is the sum of the fees payable under clause 3.2.1 for each calendar month of the Billing Period.

'G' is the amount determined by the following formula:

$$(MFC \times T1) + (MFC \times T2) + (MFC \times T3)$$

where:

'T1' is the actual audited number of SIOs existing as at the last day of the first calendar month of the Billing Period.

'T2' is the actual audited number of SIOs existing as at the last day of the second calendar month of the Billing Period.

'T3' is the actual audited number of SIOs existing as at the last day of the third calendar month of the Billing Period.

'MFC' is the Monthly Fixed Charge determined under clause 3.2.1(b).

- (d) If:
- (i) the Reconciliation Amount calculated under clause 3.2.2(c) is a negative amount, the Access Seeker must pay to Optus that amount upon Optus issuing an invoice to the Access Seeker to that effect; and
 - (ii) the Reconciliation Amount calculated under clause 3.2.2(c) is a positive amount, Optus must pay to the Access Seeker the amount set out in an invoice issued by Optus as soon as reasonably practicable.

3.2.3 Monthly Variable Charge

- (a) The fees in respect of the Monthly Variable Charge payable by the Access Seeker for the Optus DGTA Service supplied by Optus in a particular Billing Period is determined by reference to:
- (i) the per minute charge for the Optus DGTA Service applying to that Billing Period; and

- (ii) the total number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in that Billing Period.

For the avoidance of doubt, the Billing Period for Monthly Variable Charges is a calendar month.

- (b) The fees in respect of the Monthly Variable Charge payable by the Access Seeker for the Optus DGTA Services supplied by Optus in a Billing Period will be determined by reference to the following formula:

$$\text{Fees} = R2 * M$$

Where:

'R2' is the variable rate set out in clause 3.2.3(c) and applying to the Billing Period in which the Optus DGTA Service was supplied.

'M' is the number of minutes of the Optus DGTA Service supplied by Optus to the Access Seeker in the particular Billing Period.

- (c) The variable rate applying to the Billing Periods in Years 2005, 2006 and 2007 are as set out below:

Year 2005 14.25 CPM

Year 2006 13 CPM

Year 2007 12 CPM

Examples of the calculation of the monthly charge for the Optus DGTA Service where the Access Seeker has elected Option 2 Pricing:

- Access Seeker has 5000 SIOs at 31 December 2004. Optus supplied the Access Seeker with 570 000 minutes of the Optus DGTA Service in the Year 2004.
- The number of SIOs on the last day of June, 2005 is 5050.
- The actual audited number of SIOs on 31 October 2005 was 5100.
- The actual audited number of SIOs on 31 November 2005 was 5110.
- The actual audited number of SIOs on 31 December 2005 was 5121.
- In the month of October 2005, Optus supplied 51 000 minutes of Optus DGTA

Service to the Access Seeker.

- In the month of November 2005, Optus supplied 51 296 minutes of Optus DGTA Service to the Access Seeker.
- In the month of December 2005, Optus supplied 51 594 minutes of Optus DGTA Service to the Access Seeker.

Monthly Fixed Charge fees payable for the last Quarter of 2005:

Monthly Fixed Charge = $(0.1925 \times 570\,000) - (0.1381 \times 570\,000) \div 5000 \div 12 = \0.52
per SIO

Monthly Fixed Charge for October 2005 = $\$0.52 \times 5050 = \$ 2626$

Monthly Fixed Charge for November 2005 = $\$0.52 \times 5050 = \$ 2626$

Monthly Fixed Charge for December 2005 = $\$0.52 \times 5050 = \$ 2626$

Fees payable in respect of the Monthly Fixed Charge for the last Quarter of 2005 =
 $\$2626 + \$2626 + \$ 2626 = \$ 7878$

Fees in respect of the Variable Monthly Charge

Monthly Variable Charge fees payable for October 2005 = $\$0.1425 \times 51\,000 = \$ 7267.50$

Monthly Variable Charge fees payable for November 2005 = $\$0.1425 \times 51\,296 =$
 $\$ 7309.68$

Monthly Variable Charge fees payable for December 2005 = $\$0.1425 \times 51\,594 =$
 $\$ 7352.15$

Total Variable Monthly Charge fees for the last Quarter of 2005 = $7267.50 + 7309.68 +$
 $7352.15 = 21\,929.33$

Fees in respect of the Monthly Fixed Charge Reconciliation for the last Quarter of 2005

Reconciliation Amount = $7878 - [(0.52 \times 5100) + (0.52 \times 5110) + (0.52 \times 5121)] =$
 $- \$94.12$

Optus to issue the Access Seeker with an invoice for \$94.12 payable to Optus.

Reconciled Monthly Fixed Charge fees for the last Quarter of 2005 = $7878 + 94.12 =$
 $\$ 7972.12$

Total:

Total reconciled fees payable in respect of the last Quarter of 2005 = $7972.12 + 21$
 $929.33 = \$ 29\,901.12$

3.3 Services in Operation

Services in Operation or SIO means the total number of customers of the Access Seeker which are calculated monthly by adding together all:

- (a) Preselected Customers of the Access Seeker;
- (b) Permanent Override Customers of the Access Seeker;
- (c) end users who are connected to the Access Seeker's Network (including by means of resellers of the Access Seeker) and able to receive Public Mobile Telecommunications Services. Unless otherwise agreed by Optus and the Access Seeker, end users who are prepaid customers will be included in the calculation of SIOs unless their Mobile Service Number(s) have not been active over a continuous period of 6 months prior to the relevant date for the calculation of the SIOs; and
- (d) any other customer of the Access Seeker who has access to any network element or telecommunications services of the Access Seeker that is capable of making a voice call to a B-Party directly connected to the Optus GSM Network.

4. CHARGE VERIFICATION

4.1 Application

This clause 4 only applies if the Access Seeker has elected Option 2 Pricing under clause 1.2(b).

4.2 Provision of Information

- (a) At least 5 days before making an election under clause 1.2(b), the Access Seeker must provide Optus in writing the number of SIOs existing on 31 December 2004.
- (b) No more than 14 days after the end of each calendar month, the Access Seeker must report to Optus in writing:
 - (i) the number of SIOs existing on the last day of that calendar month;
 - (ii) volume of Transit Traffic and Incoming International Traffic.
- (c) The Access Seeker is responsible for obtaining and providing all information under this clause 4.2, including obtaining information from the Access Seeker's resellers.

- (d) If the Access Seeker fails to provide information under clause 4.2(b) for a particular month within the required timeframe, Optus may make a reasonable estimate for that month for the purposes of determining the amounts payable by the Access Seeker under this Schedule 2.

4.3 Audit Rights

- (a) Optus may appoint a person or entity (**Auditor**) to carry out an audit of the information provided by the Access Seeker under clause 4.2.
- (b) If Optus appoints an Auditor under clause 4.3(a), Optus must procure the Auditor to:
 - (i) commence the audit immediately upon appointment;
 - (ii) complete the audit as soon as practicable; and
 - (iii) provide Optus and the Access Seeker with a written audit report that identifies the actual audited value of the information set out in clause 4.2.
- (c) The Auditor must:
 - (i) be independent of Optus and the Access Seeker; and
 - (ii) have suitable qualifications and experience to perform the audit.
- (d) The costs of each audit directly attributable to the Auditor shall be shared by Optus and the Access Seeker.
- (e) The Access Seeker must provide the Auditor with access during business hours to all relevant records, other documents, systems, the relevant officers and employees of the Access Seeker as necessary to conduct the audit.
- (f) The parties must ensure the Auditor and any other person involved in the audit adheres to the confidentiality requirements set out in clause 17 of Schedule 3 of the Undertaking.
- (g) If the Auditor's determination of the SIOs for a period as set out in the audit report under clause 4.3(b) differs to the amount provided by the Access Seeker under clause 4.2 and the amount provided by the Access Seeker has been utilised by Optus in determining any fees payable by the Access Seeker:

- (i) in the case of the Auditor's determination exceeding the Access Seeker's reported number of SIOs, the Access Seeker must pay Optus the excess amount within the time period notified by Optus; and
 - (ii) in the case of the Access Seeker's reported number of SIOs exceeding the Auditor's determination, Optus must pay to the Access Seeker the excess amount as soon as reasonably practicable after the Auditor has made its determination and no later than 20 Business Days after the date of the Auditor's determination.
- (h) If the Auditor's determination of the volume of Transit Traffic and Incoming International Traffic as set out in the audit report under clause 4.3(b) differs to the amount provided by the Access Seeker under clause 4.2 and the amount provided by the Access Seeker has been utilised by Optus in determining any fees payable by the Access Seeker:
- (i) in the case of the Auditor's determination exceeding the Access Seeker's reported volume of Transit Traffic and Incoming International Traffic, the Access Seeker must pay Optus the excess amount within the time period notified by Optus; and
 - (ii) in the case of the Access Seeker's reported volume of Transit Traffic and Incoming International Traffic exceeding the Auditor's determination, Optus must pay to the Access Seeker the excess amount as soon as reasonably practicable after the Auditor has made its determination and no later than 20 Business Days after the date of the Auditor's determination.

SCHEDULE 3

TERMS AND CONDITIONS OF ACCESS TO THE OPTUS DGTA SERVICE

PART A - INTRODUCTION

1. DEFINITIONS

In this Schedule 3 the following words which are not otherwise defined in the Undertaking have these meanings unless the context otherwise requires:

ACA means the Australian Communications Authority.

ACCC means the Australian Competition & Consumer Commission.

Billing Information comprises the billing information required to be provided by Optus to the Access Seeker under the regulations made pursuant to sections 152AR(6) and (7) of Part X1C of the TPA or in the absence of such a regulation applicable to the Optus DGTA Service, such billing information as is agreed between the Parties.

Billing Period means the monthly or Quarterly period specified in clause 9.2.

Carriage Service has the same meaning given to that term in section 7 of the Telecommunications Act, and includes a proposed Carriage Service.

Carrier has the meaning given in section 7 of the Telecommunications Act.

Carrier Interconnect Manual means the compilation of documents and procedures relevant to Interconnection prepared by Optus, including:

- (a) the Interconnect, Ordering and Forecasting Procedures;
- (b) the Operations and Maintenance Procedures; and
- (c) technical procedures.

Charges means the charges for the supply of the Optus DGTA Service as set out in Schedule 2 of the Undertaking.

CLI or calling line identification means:

- (a) the information generated by the Network capability which identifies and forwards through one Party's Network to the other Party's Network the calling number; or
- (b) any other form of caller identification such as a calling card number.

Commencement Date means the date determined under clause 2 of the Undertaking.

Confidential Information means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of Optus or the Access Seeker (as the case may be), but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of the Services Agreement); or
- (b) information rightfully received by another Party from a third party without a duty of confidentiality being owed by the other Party to the third party, except where the other Party has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned Party; or
- (c) information which has been independently developed by another Party.

Dispute Resolution Procedures means the dispute resolution procedures to be agreed between the Parties.

Eligible Service has the same meaning given to that term in section 152AL(1) of the TPA.

Force Majeure means any cause which is not reasonably within the control of the Party affected including, but not limited to, act of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion or meteor, governmental restraint, expropriation or prohibition (including a competition notice issued to a Party under section 151AL of the TPA) unavailability or delay in availability of software, equipment or transport, inability or delay in granting or obtaining governmental approvals (other than in respect of external financing), consents, permits, licences or authorities, where, in respect of all such events, the cause is not reasonably within the control of the Party affected.

Gateway Exchange means an exchange which:

- (a) provides operational interworking between the Parties' respective Networks; and

- (b) provides an agreed interface between the signalling, switching, transmission and operations systems of each Party; and
- (c) is defined by a unique name or code; and
- (d) supports, or is capable of supporting, one or more POIs.

GSM means Global System for Mobiles as defined in ETSI and the GSM Memorandum of Understanding and as applied in Australia.

GSM Memorandum of Understanding means the agreement between certain GSM Network operators and regulatory authorities from various countries entitled GSM Memorandum of Understanding dated 7 September 1987 as varied by the Addendum dated 24 September 1991 and as varied or replaced from time to time.

Interconnect, Ordering and Forecasting Procedures means the Interconnect, Ordering and Provisioning procedures specified by the Optus from time to time.

Listed Carriage Service has the same meaning given to that term in section 7 of the Telecommunications Act.

Network has the same meaning as “Telecommunications Network” in the Telecommunications Act.

Network Unit has the same meaning given to that term in section 7 of the Telecommunications Act.

Operations and Maintenance Procedures means the operations and maintenance procedures specified by Optus from time to time.

Party means a party to the Services Agreement.

Privacy Act means the Privacy Act 1988 (Cth) as amended from time to time.

QOS Standards means the agreed quality of service standards set out in the Carrier Interconnect Manual from time to time.

SAA means Standards Australia.

Services Agreement means the agreement under which Optus agrees to provide the Optus DGTA Service to the Access Seeker which will include the terms and conditions specified in this Schedule 3

together with such other additional terms and conditions negotiated or determined in accordance with clause 3.2(a) of the Undertaking.

Suspension Event means an event as set out in clause 6.2.

Suspension Notice means a notice given by Optus in accordance with clause 6.3.

Taxes means any fees, charges or other levies (including GST) imposed by the Federal Government or any State, Local Government in relation to the Services Agreement, or any Service provided under the Services Agreement.

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

Undertaking means the ordinary access undertaking given by Optus to the ACCC under Division 5 of Part XIC of the TPA in relation to the Optus DGTA Service, dated 23 December 2004.

Undertaking Expiry Date means the date of expiry of the Undertaking as determined in accordance with clause 2.1 of the Undertaking.

PART B – TERMS OF SUPPLY

2. OPTUS DGTA SERVICE

Subject to the terms of the Services Agreement, from the Commencement Date, Optus will supply to the Access Seeker the Optus DGTA Service and continue until expiry or termination under clause 6.1.

3. NON - DISCRIMINATION

3.1 In supplying the Optus DGTA Service, Optus will treat the Access Seeker on a non-discriminatory basis as required by the Applicable Standard Access Obligations, including but not limited to, if requested by the Access Seeker:

- (a) taking all reasonable steps to ensure that the technical and operational quality of the Optus DGTA Service supplied to the Access Seeker is equivalent to that which Optus provides to itself; and
- (b) taking all reasonable steps to ensure that the Access Seeker receives, in relation to the Optus DGTA Service supplied to the Access Seeker, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which Optus provides to itself.

3.2 The non-discrimination principals referred to in clause 3.1:

- (a) is intended to promote the long term interests of end users of Carriage Services and of services supplied by means of Carriage Services, in accordance with section 152AB of the TPA; and
- (b) is intended to be implemented in a way which will promote competition in markets for Listed Carriage Services having regard to (amongst other things) the extent to which relevant things will remove obstacles to end-users of Listed Carriage Services gaining access to the Listed Carriage Services and to achieve the other objectives contained in section 152AB(2) of the TPA;
- (c) does not limit the Access Seeker's ability to request superior or lesser relevant aspects of the supply of the Optus DGTA Service to enable the provision of the Optus DGTA Service than Optus provides to itself, provided always that Optus will not be required to accept such a request.

4. **CONSEQUENCES OF VARIATION, REPLACEMENT OR WITHDRAWAL OF UNDERTAKING**

If the Undertaking:

- (a) is varied, the terms of the Services Agreement will be deemed to be varied in accordance with the terms of any such variations;
- (b) is replaced, the Services Agreement will be deemed to be varied in accordance with the terms of the replacement undertaking; and
- (c) is withdrawn, Optus may terminate the Services Agreement or the supply of the Optus DGTA Service by written notice from Optus.

5. **ACCESS SERVICES**

- 5.1 Optus will only be required to provide the Optus DGTA Service to the Access Seeker to the extent that the Access Seeker has complied with the Interconnect, Ordering and Forecasting Procedures in respect of the Optus DGTA Service and has requested, paid for and been provided with sufficient interconnection under the Service Agreement.
- 5.2 Optus will ensure that the carriage of Communications conforms to the applicable QOS Standards for the carriage in respect of which Optus has control.
- 5.3 Each Party is responsible for the quality of service provided from a POI to the Network termination point applicable to the called or calling number (as the case may be).

6. **TERM, SUSPENSION AND TERMINATION**

- 6.1 The Services Agreement takes effect on the Commencement Date and continues until the Undertaking Expiry Date, unless suspended or terminated earlier in accordance with an express provision of the Services Agreement or by law.
- 6.2 Optus may suspend the Optus DGTA Service by giving a Suspension Notice to the Access Seeker in accordance with clause 6.3 and within 20 Business Days of becoming aware of a Suspension Event. For the purposes of this clause 6.2, a “Suspension Event” means the following:
- (a) any technical failure, modification or maintenance involving the Service;
 - (b) subject to clause 6.4, the Access Seeker has failed to pay monies owing under the Services Agreement;
 - (c) the Access Seeker or any Access Seeker customer does or allows anything to be done, which in Optus’ reasonable opinion may jeopardise the operation of the Optus DGTA Service or Optus GSM Network;
 - (d) Optus, in its reasonable opinion, deems it necessary to protect against fraudulent or illegal use or to otherwise protect Optus or any supplier from legal liability; or
 - (e) the Access Seeker breaches a term of the Services Agreement.
- 6.3 A Suspension Notice will:
- (a) specify the Suspension Event;
 - (b) require the Access Seeker to institute remedial action (if any) in respect of that event; and
 - (c) specify the action which may follow due to a failure to comply with the notice.
- 6.4 If the Access Seeker fails to institute remedial action as specified in the Suspension Notice within 20 Business Days after receiving the Suspension Notice, then Optus may, by further notice to the Access Seeker, refuse to provide or suspend the provision of the Optus DGTA Service until the remedial action specified in the Suspension Notice is taken. If a Suspension Notice has been in force for more than 30 Business Days, Optus may immediately terminate the Services Agreement or the Optus DGTA Service by providing notice to the Access Seeker.

- 6.5 While the Services Agreement is in force, Optus must, at the reasonable cost of the Access Seeker, recommence supply of the Optus DGTA Service as soon as practicable after the Suspension Event has been remedied by the Access Seeker.
- 6.6 During an emergency where continued supply of the Optus DGTA Service may pose a threat to safety of persons, hazard to equipment or a threat to Network security Optus may immediately and without notice refuse to provide or suspend the provision of the Optus DGTA Service until Optus considers that the emergency no longer poses a threat to safety of persons, hazard to equipment or a threat to Network security.
- 6.7 A Suspension Notice issued under this clause 6 does not limit Optus' rights to terminate the Services Agreement under this clause 6 or otherwise.
- 6.8 During any maintenance involving the Optus DGTA Service that requires, in the opinion of Optus, temporary suspension of that Optus DGTA Service, Optus will provide, except where not practicable due to an emergency, the Access Seeker with reasonable notice of:
- (a) its intention to temporarily suspend the supply of the Optus DGTA Service;
 - (b) the date or approximate date from which the Optus DGTA Service will be suspended; and
 - (c) an estimate of the period for which the Optus DGTA Service will be suspended.
- 6.9 Notwithstanding the rest of this clause 6, if:
- (a) the Access Seeker breaches a material obligation under the Services Agreement; and
 - (b) the Access Seeker fails to institute remedial action as specified in a notice from Optus (**Breach Notice**) within 20 Business Days of receipt of the Breach Notice (**the remedy period**),
- then Optus may terminate the supply of the Optus DGTA Service or the Services Agreement, with immediate effect.
- 6.10 Optus may terminate the Services Agreement or the supply of the Optus DGTA Service by written notice with immediate effect if:
- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the Access Seeker;

- (b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Access Seeker;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Access Seeker;
- (d) the Access Seeker is unable to pay its debts as they fall due;
- (e) a Force Majeure, substantially and adversely affecting the ability of Optus to perform its obligations to the Access Seeker, continues for a period of 2 months;
- (f) Optus' obligation to supply Listed Carriage Services is removed by the ACA or the ACCC;
- (g) the Access Seeker does not pay any sums due to Optus under the Services Agreement by the due date, within 2 days of receiving notice from Optus;
- (h) either Optus or the Access Seeker ceases to be a Carrier or Carriage Service Provider; or
- (i) Optus has grounds for refusing to supply the Optus DGTA Service to the Access Seeker in accordance with sections 152AR(4) and (9) of the TPA.

6.11 Clause 6 will apply, in respect of the Optus DGTA Service, from the date of termination of supply of a Optus DGTA Service.

7. CONSEQUENCES OF TERMINATION, EXPIRY OR SUSPENSION

7.1 If, after the termination, expiry or suspension of the Services Agreement or the Optus DGTA Service:

- (a) Optus gives notice requesting the Access Seeker to carry out necessary disconnection works and, if required by Optus, to return any equipment or facilities of Optus or a third party installed by or for Optus; and
- (b) the Access Seeker has failed to comply with the request,

then subject to the approval (if required) of any lessor and law, Optus may enter the premises of the Access Seeker on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The Access Seeker on whose premises such equipment or facilities were installed is responsible for compensating Optus

for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted).

- 7.2 The Access Seeker must pay all Optus reasonable costs of the disconnection described in clause 7.1.
- 7.3 Termination, expiry or suspension of the Services Agreement does not operate as a waiver of any breach by Optus of the Services Agreement and is without prejudice to any rights, liabilities or obligations of Optus which have accrued up to the date of the termination or expiry, including a right of indemnity.

8. **FORCE MAJEURE**

- 8.1 Neither Party will be liable for any failure to fulfil any term of this Agreement (other than an obligation to pay money) if such fulfilment is delayed, prevented, restricted or interfered with by reason of Force Majeure.
- 8.2 The Party unable to perform its obligations must:
- (a) notify the other Party promptly of any delay referred to in clause 8.1; and
 - (b) use its best efforts to resume performance in accordance with this Agreement as soon as possible.

PART C – BILLING

9. **BILLING AND SETTLEMENT**

- 9.1 Optus shall invoice the Access Seeker in writing for all Charges (including Taxes levied in respect of those Charges) due under the Services Agreement.
- 9.2 Unless agreed otherwise with the Access Seeker, Optus shall invoice the Access Seeker as follows:
- (a) invoices for monthly charges under Option 1 Pricing, monthly in arrears; and
 - (b) invoices for Monthly Fixed Charges under Option 2 Pricing, monthly in arrears;
 - (c) invoices for the Monthly Fixed Charge Reconciliation under Option 2 Pricing, Quarterly in arrears; and

- (d) invoices for Monthly Variable Charges under Option 2 Pricing, monthly in arrears.
- 9.3 Optus will endeavour to issue invoices to the Access Seeker within 28 days after the end of each Billing Period.
- 9.4 The Access Seeker acknowledges that the:
- (a) Network records of Optus are prima facie evidence that the Optus DGTA Service was supplied as recorded; and
 - (b) audited information under clause 4.2 of Schedule 2 is conclusive evidence that the number of SIOs were in existence as audited.
- 9.5 Subject to clauses 9.8 to 9.14, the Access Seeker must pay an invoice:
- (a) in full within 21 days following the date of invoice;
 - (b) by electronic transfer directly to the nominated account(s) of Optus; and
 - (c) without set off or counterclaim and free and clear of any withholding or deduction.
- 9.6 Interest on due and unpaid amounts is payable for each day the amount is overdue calculated at the end of each month at a rate equal to 2% above the corporate reference rate of Optus' principal bankers on the last Business Day of the relevant month from the due date to the date of payment, and the Access Seeker must pay that amount within five (5) Business Days of the date of invoice.
- 9.7 Where interest in respect of any due and unpaid amount is due to Optus under clause 9.6, Optus may add the amount of such interest to its next invoice.
- 9.8 Subject to clauses 9.9 and 9.10, if the Access Seeker discovers an error in an invoice, they must notify Optus as soon as practicable after discovering the error. Optus will use reasonable endeavours to rectify any errors on its next invoice.
- 9.9 Optus may invoice the Access Seeker for charges previously omitted from an invoice or for charges to make-up for an under-stated charge on a previous invoice, provided no more than 6 months has elapsed since the date of the first invoice issued by Optus after liability for the charges was incurred except as determined under an audit, in which case Optus may invoice for an audited difference at any time.

- 9.10 The Access Seeker may dispute amounts on an invoice received, provided that dispute is in good faith and the Access Seeker notifies Optus within 6 months of the date of the invoice and in the notice:
- (a) gives detailed reason why the Access Seeker disputes the invoices; and
 - (b) nominates the amount in dispute.
- 9.11 The parties will use their reasonable endeavours to resolve billing disputes in accordance with the Dispute Resolution Procedures.
- 9.12 The Access Seeker may only withhold payment of any amount in dispute if the Access Seeker notifies Optus of the dispute within 21 days of the date of the invoice and each of the conditions in clause 9.10 are met by the Access Seeker.
- 9.13 Notwithstanding clause 9.12, the Access Seeker must pay any undisputed amount on an invoice, irrespective of whether other amounts on that invoice are disputed, on or before the due date.
- 9.14 The Access Seeker must not commence any legal proceedings or other dispute resolution proceeding in relation to the provision of billing information prior to the completion of the processes in the Dispute Resolution Procedures.
- 9.15 An invoice will contain an agreed summary of charges, with an attached remittance advice.

10. **BILLING INFORMATION**

Subject to sections 276 and 291 of the Telecommunications Act, Optus will provide the Access Seeker with the Billing Information in respect of the Optus DGTA Service.

11. **CUSTOMER RELATIONSHIPS AND BILLING**

The Access Seeker acknowledges:

- (a) that it is solely responsible for the collection from its customers of payments for the provision of Listed Carriage Services and that it is liable for any bad debts in relation to such Listed Carriage Services; and
- (b) Optus is not responsible for any fraud or dishonesty committed by any customer of the Access Seeker.

PART D – MANUALS AND TECHNICAL AGREEMENTS

12. PROCEDURES AND MANUALS

12.1 Without limiting the effect of any provision of the Services Agreement, the Parties will perform their rights and obligations under the Services Agreement strictly in accordance with:

- (a) the Carrier Interconnect Manual;
- (b) all relevant mandatory technical standards made by the ACA from time to time under section 384 of the Telecommunications Act; and
- (c) relevant voluntary standards of the SAA or any other body or association, where that standard is not inconsistent with the mandatory technical standards referred to in clause(b).

12.2 If Optus proposes to amend the Carrier Interconnect Manual, other than amendments which would have no or only a minor effect on the Access Seeker, then:

- (a) Optus will provide 2 months' notice to the Access Seeker before any such amendment takes effect; and
- (b) Optus will consult with and negotiate in good faith in relation to any reasonable concerns of the Access Seeker in relation to the proposed amendment to the Carrier Interconnect Manual.

12.3 If the Access Seeker seeks an amendment to the Carrier Interconnect Manual, Optus will:

- (a) consider in good faith the amendment sought; and
- (b) negotiate in good faith with the Access Seeker in relation to any sought amendments.

13. NETWORK MANAGEMENT AND MAINTENANCE

13.1 Each Party is responsible for the maintenance and management of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of the Services Agreement:

- (a) does not endanger the safety or health of the officers, employees, contractors, agents or customers of the other Party; and

- (b) does not damage, interfere with or cause any deterioration in the operation of the other Party's Network.
- 13.2 A Party must not interfere with the Network or Carriage Services of another Party, unless otherwise in accordance with the Services Agreement.
- 13.3 The Parties will manage their Networks to minimise disruption to Carriage Services and, in the event of interruption or failure of any Carriage Service, will restore those Carriage Services as soon as is reasonably practical in accordance with the Operations and Maintenance Procedures. In any event, the Parties must take reasonable steps to manage, notify and correct faults arising in their respective Networks which affect the provision of a Carriage Service by either Party as it would in the ordinary course for similar faults affecting the provision of Carriage Services by it.
- 13.4 A Party must take reasonable steps to manage, notify and correct faults arising in its Network which affect the supply of the Optus DGTA Service under the Services Agreement:
- (a) in accordance with the Operations and Maintenance Procedures and Carrier Interconnect Manual; and
- (b) as it would in the ordinary course for similar faults affecting the provision of Eligible Services by it.
- 13.5 Each Party has responsibility for its own service back-up facilities (ie, redundancy capabilities) sufficient to maintain service in accordance with the QOS Standards.

14. **HANDOVER ARRANGEMENTS**

14.1 **Near End Handover**

Under normal operating conditions and unless otherwise agreed, the Access Seeker will handover the carriage of Communications from its Network to the Optus GSM Network to the POI nearest to the location of the calling number at the time of the Communication as determined in accordance with agreed transmission and routing plans.

14.2 **Alternative Handover Arrangements**

The Parties will co-operate with each other and agree alternative and additional handover agreements as required from time to time.

15. **CALLING LINE IDENTIFICATION**

15.1 Subject to clause 15.2, the Access Seeker must:

- (a) provide CLI to Optus in respect of the Optus DGTA Service; and
- (b) assist Optus to identify the origin of traffic as reasonably required by Optus.

15.2 The Access Seeker's obligation to provide CLI to Optus under clause 15.1 is subject to:

- (a) the ability of the local exchange to which the calling party's line is connected to generate CLI;
- (b) CLI being forwarded to it from another Network with which its Network is interconnected;
- (c) barring by the customer; and
- (d) it being necessary to do so for the purposes of Optus:
 - (i) billing a customer;
 - (ii) routing a Communication;
 - (iii) verifying the location of a calling party;
 - (iv) validating that the calling party is entitled to use the service;
 - (v) performing lawful inbound call centre number display applications to improve the quality of service provided by those call centres;
 - (vi) using CLI in a manner required by law; or
 - (vii) such other purposes agreed by the Parties.

15.3 Optus may use CLI disclosed to it under clause 15.1 only for the purposes described in clause 15.2(d).

15.4 The Parties will co-operate in the barring of CLI where required under law, by ACA direction or as otherwise agreed.

15.5 The Access Seeker must not engage in any conduct which has the purpose or effect of concealing or misrepresenting the origins or nature of any traffic.

PART E - OTHER

16. INFORMATION EXCHANGE

16.1 The obligations of a Party to provide information to another Party are subject to:

- (a) the requirements imposed by the Privacy Act, the Telecommunications Act and other relevant laws;
- (b) codes and industry standards in force pursuant to Part 6 of the Telecommunications Act; and
- (c) clauses 16 and 17.

16.2 Nothing in the Services Agreement may be construed as requiring a Party at any time to disclose to the other Party information which is at the date when the Agreement comes into force, the subject of a confidentiality obligation owed to a third party that was given prior to the Commencement Date and has not yet expired, unless the third party consents to such disclosure.

16.3 Subject to clause 16.4, the Parties will exchange, and accurately maintain, information and otherwise co-operate in relation to:

- (a) the prevention and investigation of fraudulent use, theft, or misuse of the Parties' respective Optus DGTA Services and associated equipment; and
- (b) the provision of the Optus DGTA Service.

16.4 Information provided under the Services Agreement may only be used for the purpose for which it was given. Personal information about a customer's credit worthiness, credit standing, credit history or credit capacity may only be used in compliance with the Privacy Act and any other relevant laws or industry codes.

16.5 The receiving Party will establish measures relating to the collection, storage, use, correction and disclosure of the information adequate to meet the requirements of the Privacy Act and other relevant laws. In particular, the receiving Party will not disclose the information to a third party without the consent of the customer, or as otherwise specified in the Privacy Act or other relevant laws.

- 16.6 The Parties acknowledge that when information required to be provided under the Services Agreement is held on a database the Party entitled to receive the information will not be entitled to obtain direct access to the database. The Party obliged to provide the information must provide information from its database to enable the other Party to establish its own database. The information will be provided in a timely manner independent of the source database but in a form and time as nearly as practicably equivalent to the source database. The reasonable charges of the information provider in performing this obligation will be paid by the recipient of the information.
- 16.7 Where the provision of information under the Services Agreement is subject to the consent of a third party, the Party holding the information must use its reasonable endeavours to obtain the consent of that third party.
- 16.8 After the Services Agreement comes into force a Party must not enter into a contract which would prevent it from making information relevant to the other Party's rights and obligations under the Services Agreement available to the other Party unless the contract includes a term which permits the contracting Party to make the information available if directed to do so by ACA or the ACCC.

17. **CONFIDENTIALITY**

- 17.1 Each Party must keep confidential all Confidential Information of another Party which comes to its knowledge or into its possession in connection with the Services Agreement and must not:
- (a) use or copy such Confidential Information except for the purposes of the Services Agreement or as required by the ACA or the ACCC; or
 - (b) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third party.
- 17.2 Each Party must establish and observe procedures adequate to protect the Confidential Information of another Party without limiting the generality of the foregoing, must ensure that each of its directors, officers, employees, agents and representatives to whom that Confidential Information is disclosed for the purposes of the Services Agreement is subject to the confidentiality obligations set out in this section.
- 17.3 Notwithstanding a Party's obligations under clause 17.1, that Party may disclose the Confidential Information of another Party:
- (a) to those of its directors, officers, employees, agents and representatives who have a need to know;
 - (b) for the purpose of receiving professional advice;

- (c) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in the Services Agreement;
- (d) as required by law or regulation provided that the disclosing Party has first notified the other Party that it is required to disclose the Confidential Information so that the other Party has an opportunity to protect the confidentiality of its Confidential Information;
- (e) with the prior written consent of the other Party;
- (f) in accordance with a lawful and binding directive issued by the ACA or the ACCC or any Minister;
- (g) to ACA or the ACCC for the purpose of registration of the Services Agreement or any amendment, modification or alteration of the Services Agreement;
- (h) as required by the listing rules of any stock exchange where the Party's securities are listed or quoted; and
- (i) if reasonably required to protect the safety of personnel or equipment.

17.4 If a Party (**Owner**) is required by the other Party to give its consent to the disclosure of its Confidential Information then it may make it a condition of such consent being granted that before disclosing the Confidential Information to a third party the other Party must:

- (a) impose an obligation upon the third party:
 - (i) to use the Confidential Information disclosed solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information;
 - (ii) not to disclose the Confidential Information without the prior written consent of the Owner; and
 - (iii) obtain an acknowledgment from the third party that:
 - A. the Confidential Information is and at all times remains proprietary to the Owner; and
 - B. misuse or unauthorised disclosure of the Confidential Information will cause serious harm to the Owner.

(b) This clause 17.4 does not apply if disclosure is made to a third party which is the Commonwealth or State Government or a statutory authority in compliance with a requirement imposed by statute or any government agency by which the Parties are regulated.

17.5 Each Party must co-operate in any action taken by another Party to:

(a) protect the confidentiality of the other Party's Confidential Information; or

(b) enforce the rights in relation to its Confidential Information.

17.6 Each Party acknowledges that no warranty is given by a disclosing Party that the Confidential Information disclosed is or will be correct.

17.7 The Parties acknowledge that a breach of this clause 17 by one Party may cause the other Party irreparable damage for which monetary damages would be an inadequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach of this clause 17.

SCHEDULE 4

APPLICABLE STANDARD ACCESS OBLIGATIONS

1.1 In this Schedule 4 the following words which are not otherwise defined in the Undertaking have these meanings unless the context otherwise requires:

Carriage Service has the meaning set out in the Telecommunications Act 1997.

1.2 Optus will:

- (a) supply the Optus DGTA Service to the Access Seeker in order that the Access Seeker can provide Carriage Services; and
- (b) take all reasonable steps to ensure that the technical and operational quality of the Optus DGTA Service or that part of the Optus DGTA Service, is equivalent to that which Optus provides to itself; and
- (c) take all reasonable steps to ensure that the Access Seeker receives, in relation to the Optus DGTA Service or that part of the Optus DGTA Service, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which Optus provides to itself.