

## OUR ACCEPTABLE USE POLICY

### 1. Definitions

The following definitions are used in our Acceptable Use Policy.

**Agreement** means the agreement between you and us for the Service, comprising the terms stated in your Application Form (including compliance with this Acceptable Use Policy), the Standard Form of Agreement, the Rate Card, the Schedule of Charges and our Telecommunications Service Book.

**Application Form** means the application form you complete for the Service we provide to you.

**Classification Board** has the same meaning given to it in Schedule 7 of the *Broadcasting Services Act 1992*.

**Data Service(s)** means both, jointly and severally, the Internet and Web Solution service.

**Internet** means the world wide connection of computer networks which provides a number of services to users including the transmission of electronic mail, provision of information on the World Wide Web and transfer of files.

**Internet Service** means the service (identified in your Application Form) by which we provide you with access to the Internet, including our Broadband and Dial up products, and data network solutions including, but not limited to, Virtual Private Networks.

**Mobile Service** means the service (identified in your Application Form) by which we provide you with access to our mobile network.

**Fixed Phone Service** means the service (identified in your Application Form) by which we enable you to make and receive local calls, long distance calls and/or calls to mobiles over a fixed telephone line or over the Internet using VoIP.

**Policy** means this Acceptable Use Policy, a copy of which is accessible on our website at [ballarat.communitytelco.com.au](http://ballarat.communitytelco.com.au).

**Restricted Access System** means a system for controlling access to MA15+ and R18+ classified content in accordance with the *Restricted Access Systems Declaration 2007*.

**Service** means, collectively, a Data Service, Internet Service, Mobile Service, Fixed Phone Service or Web Solutions Service.

**SFOA** means our Standard Form of Agreement.

**Special Offer** means where we offer you mobile or telephone calls or data usage or web solutions for free or at rates lower than our standard rates for that Service, whether in connection with a specific promotion or pricing plan, or a generally available pricing plan.

**VoIP** means a telephony service which enables you to make and receive calls over the Internet using an IP Phone, Softphone, IP PBX or similar technology.

**Web Solutions Service** means the service (identified in your Application Form) which provides you with a range of internet based business services including, but not limited to, web hosting, email hosting and domain name hosting.

### 2. Application of this Policy

This Acceptable Use Policy forms part of your Application and Ballarat Community Telco's SFOA.

Part A of this Policy applies to customers who acquire a Data Service from us.

Part B of this Policy applies to customers who acquire a Mobile Service from us.

Part C of this Policy applies to customers who acquire a Fixed Phone Service from us.

Your obligation to comply with this Policy includes your obligation to ensure any person who you authorise or permit to use your Service also complies with this Policy.

Your failure to comply with this Policy (including by any person who you authorise or permit to use your Service) may lead to the restriction, suspension or termination of your Service.

### **3. Cancellation**

Upon cancellation of a Service for violation of this Acceptable Use Policy, we are authorised to delete any files, programs, data, email messages and other content associated with the Service.

### **4. Disclaimer**

We disclaim all liability for, and do not accept any responsibility for, anything that may happen to you or your equipment, or any loss incurred by you as a result of, or in any way connected with the suspension or termination of your service by us under this Acceptable Use Policy.

Whilst we make reasonable efforts to back-up web solution data, we do not accept any responsibility for the integrity of any back-up of your web solution data or that data being available when required. It is your responsibility to maintain a current copy of your web solution data at all times. Should your data be lost due to an equipment failure or data corruption, we will undertake all reasonable efforts to restore your web solution data but we will not be liable for any loss or damage to you or your business caused by the loss of your data or for any resulting data that is incomplete, out-of-date, corrupt or otherwise deficient.

This disclaimer of liability does not supersede or replace any other disclaimer or obligation expressly provided in any other part of your Agreement with us.

### **5. Limitation of Liability and Indemnity**

We accept no liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to a breach of this Acceptable Use Policy by you, and you agree to hold us harmless from any such claims by you or anyone else on a full indemnity basis.

### **6. Severability**

You agree that if any portion of this policy is held invalid or unenforceable, that portion will be construed consistent with applicable laws as near as possible, and the remaining portions will remain in full force and effect.

### **7. Changes**

We may vary this Policy by posting the revised Policy on our website at [ballarat.communitytelco.com.au](http://ballarat.communitytelco.com.au). We may also give notice to you of any variation of this Policy by email to the email address notified by you or otherwise in accordance with the notice provisions of our SFOA. The continued use of your Service after such posting or notice will constitute your acceptance of the variation.

### **8. Complaints**

If you have a complaint about mobile or Internet content you should visit ACMA's website at [www.acma.gov.au/hotline](http://www.acma.gov.au/hotline).

If you have any questions or concerns about this Policy or would like to report a breach of this Policy you should contact us at [customerservice@ballarattelco.com.au](mailto:customerservice@ballarattelco.com.au) or by calling 1300 660 703.

## **PART A - DATA SERVICES**

This Part A sets out the rules which apply to your use of our Data Service(s) or any other service we provide to you for connection to the Internet, email and other publicly accessible data and information networks,

To the extent that you access the Internet or access or publish content via your mobile phone, you must also comply with Part B - Mobile Services, set out below.

### **1. Responsible Usage**

You must use your Data Service responsibly and in accordance with the law.

If you engage in any conduct which could result in injury or damage to any person or property (including our network, systems and equipment), access to your Data Service may be restricted, suspended or terminated without prior notice and without refund.

You **must not** use or attempt to use your Data Service to store, send, distribute or otherwise make available any content or material which:

- defames, harasses, threatens, abuses, menaces, offends or incites violence or hatred against any person or class of persons whether on grounds of gender, race, religion or otherwise;
- is prohibited or unlawful under any Commonwealth, State or Territory law or classification system, or which is likely to be offensive or obscene to a reasonable person;
- is confidential, subject to copyright or any other rights of a third party (unless you have a lawful right to do so); or
- is otherwise illegal, fraudulent or likely to give rise to civil or criminal proceedings.

You **must not** use or attempt to use your Data Service to:

- store, send or distribute any viruses or other harmful programs, codes or other malicious software;
- hinder, restrict or interfere with the normal operation of our network, systems and equipment or that of any other person;
- access, monitor, use or control any other person's equipment, systems, networks or data (including usernames and passwords) without their knowledge or consent or to otherwise probe, scan or test the vulnerability of any such equipment, networks, systems or data;
- send, relay or otherwise distribute any electronic message, the contents or properties of which have been created, forged or altered for the purpose of impersonating, hiding or otherwise obscuring the original sender or source of that message;
- send or distribute unsolicited commercial electronic messages in breach of the provisions of the *Spam Act 2003* (Cth); or
- send or distribute any material or take any other action with the aim of overloading any network or system (including our network and systems).

You must not authorise, aid, abet, encourage or incite any other person to do or attempt to any of the acts or engage in any of prohibited conduct described above.

### **2. Excessive use**

You must use your Data Service in accordance with any download or capacity limits stated in your Agreement. We may limit, suspend or terminate your Data Service if you unreasonably exceed such limits or excessively use the capacity or resources of our network and systems in a manner which may hinder or prevent us from providing services to other customers.

### 3. Security

You are responsible for:

- maintaining the security of your Data Service, including protection of account details, usernames and passwords against unauthorized use by a third party;
- all charges incurred by yourself and third parties, whether or not you authorised such use of the Service, until such time as you notify us of any security breach regarding the service or of your confidential password, usernames or account details; and
- taking appropriate security measures such as installation of a firewall and use of anti-virus software to protect your personal data, computer and other equipment from loss or damage.

### 4. Copyright

You must not use your Internet Service to copy, reproduce, distribute or otherwise make available to other persons any content or material (including but not limited to music files in any format) which is subject to copyright or do any other acts in relation to such copyright material which would infringe the exclusive rights of the copyright owner under the *Copyright Act 1968 (Cth)* or any other applicable law.

Commonwealth legislation allows copyright owners or their agents to direct us to remove copyright materials from our servers or to prevent users from accessing copyright materials. We may take all necessary steps in order to comply with a notification from a copyright owner or their agent, including removing any content (including part or all of a website) from our servers, closing or suspending your Ballarat Community Telco Internet account, filtering the Internet content made available to you or restricting access to a particular website. You acknowledge and agree that we may take these steps at any time and without notice to you.

### 5. Access to Internet content

You are responsible for determining the content and information you choose to access on the Internet when using your Data Service.

It is your responsibility to take all steps you consider necessary (including the use of filtering programs) to prevent access to offensive or obscene content on the Internet by children or minors who you authorise or permit to use your Data Service. You may obtain further information on the filtering products by contacting:

[customerservice@ballarattelco.com.au](mailto:customerservice@ballarattelco.com.au).

### 6. Communicating with others

You must not use, attempt to use or permit to be used your Data Service to make inappropriate contact with children or minors who are not otherwise known to you.

You are solely responsible for any content you publish, send or distribute (or permit to be published, sent or distributed) including, but not limited to, content you post on web pages, email, chat or discussion forums, bulletin boards, instant messaging, mobile portal content, premium SMS/MMS content and any other publishing mediums via the Data Service.

Your failure to comply with these requirements may lead to immediate suspension or termination of your Data Service without notice.

### 7. Classifying content

You must not publish material that is or would potentially be classified by the Classification Board as RC rated or X18+ rated via websites, email, newsgroups or other publishing mediums accessible via the Data Service.

You must take appropriate precautions to prevent minors from accessing or receiving any content you have published that may potentially be unsuitable for them. This includes implementing a Restricted Access System in respect of content that is or would be classified by the Classification Board as MA15+ or R18+. You must also use appropriate warnings and/or labeling systems in respect of content which is likely to be considered unsuitable for children in accordance with relevant state legislation.

You must label or otherwise clearly identify any content you make publicly available via the Data Service in accordance with the applicable classification guidelines and the National Classification Code (issued pursuant to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth)) or any other industry code or content standard which applies to your use or distribution of that content.

#### **8. Complying with regulatory authorities**

Commonwealth legislation allows the Australian Communications and Media Authority (**ACMA**) to direct us to remove from our network and servers certain prohibited or potentially prohibited content or to prevent users from accessing certain content. You acknowledge and agree that we may take all steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from ACMA, including removing any content (including part or all of a website) from our servers, blocking access to newsgroups, closing or suspending your Ballarat Community Telco Internet account, filtering the content made available to you or restricting access to a particular website. We may take these steps at any time and without notice to you. You must not hinder or prevent us from taking all steps necessary to comply with any direction from ACMA or any law enforcement agency. We may recover the cost of such investigation if it is established you have misused the Service.

You acknowledge that we reserve the right to restrict, suspend or terminate your Data Service if there are reasonable grounds for suspecting that you are engaging in illegal conduct or where use of your Data Service is subject to any investigation by law enforcement agencies or regulatory authorities.

We are under no obligation to monitor transmissions or published content on the Data Service. However, we (or our agents) have the right to monitor such transmissions or published content from time to time and to disclose that content to the appropriate authorities.

#### **Cancellation of the Data Service**

We are not responsible for forwarding or storing messages sent to any Internet account that has been suspended or cancelled. Such messages may be returned to sender, ignored, deleted, or stored temporarily at our sole discretion.

#### **9. Warranty**

When using the Data Service to reproduce, publish, display, transmit or distribute yours or third party content, you warrant that the content complies with this Policy. You authorise us (or our nominees) to reproduce, publish, display, transmit and distribute such content as necessary for us to deliver the Services in a timely manner.

## **PART B - MOBILE SERVICES**

This Part B aims to ensure that you do not use Special Offers in an excessive or unreasonable manner which may interfere with the reliable operation of our network or which may hinder or prevent us from providing quality Mobile Services to other customers.

To the extent that the use of your Mobile Service involves access to the Internet or access to or publication of any content (including mobile portal content and premium SMS/MMS content), you must also comply with Part A - Data Services, set out above.

### **1. Excessive Use**

You must not use any of our Special Offers in a way that is excessive.

Unless the terms relating to a specific Special Offer state otherwise, we consider 'excessive' use to be usage of more than:

- 2500 minutes of mobile calls made per month per service;
- 500 SMS text messages sent per month per service;
- 500 MMS messages sent per month per service;
- 300 MMS Video messages requested per month per service, or
- 1500 MB of data downloaded and/or uploaded per month per service via GPRS.

In the case of other uses of a Mobile Services, what is excessive use will either be advertised by us at the time of the relevant promotion or included in this Acceptable Use Policy prior to the commencement of the relevant promotion.

### **2. Unreasonable Use**

You must not use any of our Special Offers in a way that is unreasonable.

We consider your use of a Special Offer to be 'unreasonable' if you:

- re-supply or commercially exploit our Mobile Services without our consent to enable others to take advantage of a Special Offer;
- set up switch devices to overcome the time cap on Special Offers involving a level of free time on calls or a flat charge for part of a call, thus keeping the line open for lengthy periods and limiting the ability of other customers to access the network; or
- engage in any other conduct which is fraudulent or results in significant network congestion.

### **3. Our rights**

We may monitor your use of the Special Offers to ensure your compliance with this Policy.

Without limiting our rights under the SFOA, if we believe on reasonable grounds that you are in breach of this Part B, we may ask you to reduce your usage so that it complies with this Policy. If your usage continues at an excessive level following this request, we may, in our absolute discretion and without further notice to you:

- cancel or limit your access to the relevant Special Offer and charge you at our standard retail rates;
- suspend or limit the Mobile Service (or any feature of it) for any period we think is reasonably necessary,
- require you to reimburse us the difference between the standard retail rates (without any Special Offer applied) and the amount you have paid to us calculated from the date of the breach; and/or
- terminate your service.

## **PART C - FIXED PHONE SERVICES**

This Part C aims to ensure that you do not use the Fixed Phone Service in an excessive or unreasonable manner which may hinder or prevent us from providing quality service to other customers.

### **1. Excessive Use**

You may only use the Fixed Phone Service for personal, residential or business purposes, in accordance with the terms stated in your Application Form. You may not use the Fixed Phone Service to engage in activities which may cause significant network congestion, such as:

- autodialing;
- continuous or extensive call forwarding;
- continuous connectivity;
- fax broadcasting;
- fax blasting;
- telemarketing; or
- any other activity that would be inconsistent with reasonable personal, residential and business use patterns;

unless you first obtain our express written permission for such use.

### **2. Unreasonable Use**

You must not use any of our Special Offers in a way that is unreasonable.

We consider your use of a Special Offer to be 'unreasonable' if you:

- re-sell, re-supply or commercially exploit our Fixed Phone Service, without our written consent, to enable others to take advantage of a Special Offer;
- set up switch devices to overcome the time cap on Special Offers involving a level of free time on calls or a flat charge for part or all of a call, thus keeping the line open for lengthy periods and limiting the ability of other customers to access the network; or
- engage in any other conduct which is fraudulent or results in significant network congestion.

### **3. Our rights**

We may monitor your use of the Fixed Phone Service to ensure your compliance with this Policy.

Without limiting our rights under the SFOA, if we believe on reasonable grounds that you are in breach of this Part C, we may ask you to reduce your usage so that it complies with this Policy. If your usage continues at an excessive level following this request, we may, in our absolute discretion and without further notice to you:

- cancel or limit your access to any relevant Special Offer and charge you at our standard retail rates;
- suspend or limit the Fixed Phone Service (or any feature of it) for any period we think is reasonably necessary;
- require you to reimburse us the difference between the standard retail rates (without any Special Offer applied) and the amount you have paid to us calculated from the date of the breach; and/or
- terminate your service.