

# Metrocom Ltd - FULL Terms and Conditions

## 1. Interpretation

**“Account Holder”** means the Metrocom Ltd customer who is liable for all of the Charges under this Agreement;

**“Agents”** means any contractors, providers, dealers or agents appointed by Metrocom Ltd to perform any of Metrocom Ltd obligations under this Agreement;

**“Agreement”** means these terms and conditions between us and you;

**“Bar”** means suspending access to services and may be either an Out-bar, restricting use of Account for making calls, using data and accessing the Services, or an In-bar, restricting use of the Account for receiving calls and accessing the Services, or both;

**“Bill”** means a paper statement of your Charges or an Online Bill;

**“Charges”** means all monthly access charges, services costs and airtime call charges payable in accordance with the Pricing Plan and any additional charges payable by you. All Charges, unless otherwise stated, exclude GST;

**“Customer Services”** means the Metrocom Ltd customer services team, which is contactable on 09 302 2202;

**“Default rate”** is the rate of 1.5% per month or any other rate notified to you on your account. It applies from the date payment by you is due to the date we receive your payment in full;

**“Fair Use Policy”** has the meaning set out at paragraph 8 of this Agreement and is published on our Website and updated from time to time;

**“GST”** means Goods and Services tax as defined in the Goods and Services Tax Act 1985;

**“Network Operator”** is any entity with whom we have entered into:

(a) an interconnection agreement or arrangement (directly or indirectly) providing for the passing of customer generated or customer destined communications between us and that entity; or

(b) an arrangement to resell wholesale services, including Chorus New Zealand Limited;

**“Online Bill”** means an electronic statement of your Charges.

**“Payment”** means payment to your Metrocom Ltd account by any means made available by us from time to time;

**“Phone Number”** means the landline phone number which is either allocated to you by us or which you Ported or seek to Port;

**“Port”** means to transfer the Phone Number from one Telecommunications Service Provider to another, according to the approved industry process (and words such as Porting, Ported and Porting process will be construed accordingly);

**“Pricing Plan(s)”** are your chosen voice, data and access rates, and form part of this Agreement. Pricing Plans are published on our Website and are available at our retail locations;

**“Service(s)”** means the fixed line and broadband services, and related products and services that are made available to you by us or our agents from time to time.

**“Telecommunications Service Provider”** means a provider of telecommunications services to the public in New Zealand;

**“Term”** means, subject to any early termination under this Agreement, the period specified in your Pricing Plan or in any extension to or replacement for this Agreement;

**“User”** means any individual who uses the Services;

**“Website”** means our website at [www.metrocom.co.nz](http://www.metrocom.co.nz)

**“we”** or **“us”** means Metrocom Ltd and **“our”** has a corresponding meaning;

**“you”** means the customer under this Agreement and **“your”** has a corresponding meaning.

## 2. Commencement and Term

This Agreement begins when we set up your connection to our Services to be available for your use.

(a) If your connection to our network or a service is for a fixed Term:

- This Agreement will continue for the duration of that fixed Term, including the period of any suspension in accordance with this Agreement, in which case the period of any such suspension will be added onto the fixed Term.
- If you terminate this Agreement before the end of that fixed Term you may have to pay early termination charges. You may obtain details of any early termination charges by referring to our Website or by contacting Customer Services.
- If you re-sign to a new term before the end of that fixed Term, you may have to pay early re-sign charges. You may obtain details of any early re-sign charges by contacting Customer Services.
- On expiry of that fixed Term, your connection may be terminated by you or us on one month's notice or any lesser notice period agreed between us.

(b) If your connection to our network or Service does not have a fixed Term, this Agreement continues on a month by month basis until it is terminated in accordance with these terms and conditions. Unless we have agreed otherwise, no early termination charges are payable by you if you wish to discontinue a connection to our network or a Service which is not a fixed Term connection.

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### 3. Coverage and Services

(a) While we will do our best to provide quality services, because of the nature of telecommunications, it is impossible to guarantee a fault-free Service, as the quality and coverage of the Services depends partly on our network, and partly on other Telecommunications Service Providers to which our Services are connected.

(b) You agree

- To keep any password, PIN number or security code that relates to the Services confidential, and to change any of the same if we request that you do so;
- To notify us immediately if you believe that someone else has discovered your password, PIN number or security code, or has made fraudulent use of the Services

(c) You agree that you will not use the Services:

- in a way which breaks any law or infringes anyone's legal rights;
- to obtain unauthorised access to anyone's computer or communications equipment;
- to annoy anyone or to interfere with anyone else's use of our Services.

(d) We reserve the right to remove any material from our servers which we consider, in our reasonable opinion, to breach the terms of this Agreement or any law.

(e) The Services may be changed, modified, advanced, suspended or removed by us. We will notify you before doing this, or introducing substitute or new services in accordance with paragraphs 17 and 20 below. If any of our new Services require new or upgraded equipment, you will be responsible for obtaining that equipment.

(f) You agree to follow our instructions about the use of the Services and ensure that all Users meet your responsibilities when using your Service. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such use of the Services. You are responsible for any Users use or misuse of the Services.

(g) You agree not to use the Services for any abusive, illegal or fraudulent purpose.

(h) Using or agreeing to use the Services does not give you any rights in any part of the Services. You must not resell, in any way whatsoever, the whole or any part of the Services.

(i) You agree that if you do not use the Services in accordance with these conditions and, with our Fair Use Policy, we may restrict or suspend your use of the Services.

(j) You acknowledge that our control of data speeds is limited to our own network. We may use traffic prioritisation policies at any time to improve the overall performance among our customers. Connections to servers outside the Metrocom Ltd network are on a "best endeavours" basis, and it may not be possible for you to achieve your desired or expected speed or latency.

(k) The integrity or quality of the data or information you send or receive via the Services may be affected or compromised due to the configuration of our network, the use of the internet, or the configuration or limitations of your, or your intended recipient's, hardware or other device.

(l) From time to time scheduled outages will be required for maintenance and upgrade purposes.

### 4. Charges and Billing

(a) We will send you a Bill for your Charges on a regular basis, starting from on or about when you enter into an agreement with us for the provision of the Services. You must pay the total amount on this Bill by the date specified on the Bill. You will pay the Charges no matter who incurs them or how they are incurred. We may charge for some Services in arrears depending on when charges come through from other Network Operators and providers. If you do not pay on the due date you will be charged a late payment fee. You will also have to pay any reasonable expenses (including solicitor and own client costs) we incur in collecting any money that you owe to us or in exercising any of our other legal rights. If you receive Bills in paper format, we may charge you for this.

(b) You must advise us when you change your address.

(c) We will not be responsible if a Bill is not received by you for any reason.

(d) If there is a mistake on your Bill, please let us know as soon as possible. You may only withhold payment of the disputed part of a Bill. If we agree there has been a mistake, we will correct it. Otherwise, you must pay your Bill by the due date without set-off or deduction.

(e) We can use any credit balance or security deposit in any of your accounts or use any money we owe you to cover your outstanding Charges. We may charge a reasonable account administration fee in relation to accounts we regard as being dormant or for providing statements or for dealing with unused credit balances. Subject to those rights, we will refund any unused credit or security deposits at the end of this Agreement. We will hold any security deposit in a non-interest bearing account.

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- (f) At our discretion, if you terminate your Agreement prior to the expiry of the Term for any reason other than our default:
- you will repay to us any credit we have given against your account, pro-rated to the length of the Term remaining; and
  - any credit remaining on the account will not be used to set off any Charges or early termination charges.
- (g) We can, at our discretion, impose credit limits for your use of the Services and we will try to notify you as soon as we impose such limits. You must observe any credit limits we set from time to time. We may restrict your use of the Services without further notice to you if you exceed the credit limits we have set. However, you will continue to be liable for all Charges incurred in excess of any credit limit in place.
- (h) We may impose a credit limit on your use of the Services without further notice to you. You will continue to be liable for all Charges incurred in excess of any credit limit in place.
- (i) Each call is charged at the rate which is applicable when the call is commenced. We will not be responsible for any loss you suffer as the result of an assumption that a particular number is on a particular network (for example that an 021 number is held by a Metrocom Ltd customer).
- (j) Data is charged at the rate which is applicable at the time that the data is used.
- (k) You are responsible for all Charges, and for all calls made and data used under your Account.
- (l) If you require us to provide you with technical support, or administration services (including, as applicable, call barring, call redirection), we may charge you for the costs we incur in carrying out these services. If you require prior notification of our current charges please call Customer Services.

### 5. Pricing Plans

- (a) You may choose to change from one Pricing Plan to another. If you change your Pricing Plan it is up to you to check what, if any, special terms and conditions there may be for the different Pricing Plans or if there is any fee for changing your Pricing Plan. You may contact Customer Services or visit our Website to obtain information about Pricing Plans.
- (b) There is a one minute minimum charge for fixed line calls. Thereafter:
- If you are a business customer, your call will be charged by the second
- (c) The charges for data and other additional Services shall be as set by Metrocom Ltd from time to time. You can contact Customer Services or visit our Website for current details of such charges.

### 6. ID Check, Credit References and Provision of Related Services

- (a) You authorise us to check your identity (by obtaining a Driver Check from NZTA), and your credit status with any credit reference agency as we see fit from time to time and to pass on credit information about you to any credit reference agency at any time. If you are not satisfied with the information about you which we receive from any credit reference agency, you must deal directly with the credit reference agency.
- (b) If you do not give us the names of any credit referees when we ask for them, or we are dissatisfied with the information regarding your credit status, we may decline your application or terminate your access to the Services.
- (c) We may ask for a security deposit and/or impose other conditions upon approving your application. These may include, but are not limited to, a mandatory payment method or credit limit.
- (d) If you ask for any additional services, we may ask for further credit referee(s) and/or a security deposit for that Service and may also impose a credit limit.
- (e) We may decline your application and/or any request for additional Services or provide a restricted service at our discretion. Subject to any applicable privacy laws, we do not have to disclose our credit criteria or the reasons for our decision.

### 7. Consumer Guarantees Act and Limitation of Liability

- (a) You may have the benefit of statutory guarantees under the Consumer Guarantees Act 1993. Unless you use, or hold yourself out as using, the Services for the purposes of a business, nothing in this paragraph 9 will limit or exclude your rights under that Act.
- (b) Where you do use, or hold yourself out as using, our Services for the purposes of a business, then the Consumer Guarantees Act statutory guarantees do not apply to your connection or to our Services and we exclude any liability of any kind (whether in contract, tort, equity or otherwise) to you or anyone claiming through you, relating to any loss of profits or revenue, loss of data, lost business or missed opportunities, wasted expenditure or savings you might have had, or any form of indirect or consequential loss whatsoever, arising from:

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- your connection to our network or the content or supply of any Services;
- the failure, interruption or delay in the supply of, any services (including number transfer if applicable) or any part of them or any negligence in this regard;
- the fitness of all or any of the Services for any particular purpose;
- errors in or omissions from any directory assistance listing or published directory assistance;
- the inaccurate or incomplete transmission of any call or any email;
- any other matter which relates to this Agreement.

**(c)** If you are a consumer customer, except where we cause direct damage to your property due to our negligence (and subject to paragraph 7(a) and the liability cap in paragraph 7 (d)), to the extent allowed by law we have no other liability to you or any other person in respect of this Agreement.

**(d)** If for any reason the exclusions in paragraph 10(b) and (c) do not apply, then our liability to you, or anyone claiming through you, will be limited at all times to \$10,000 or the total amount of all Payments made by you in the 6 month period immediately prior to the date of your claim, whichever is the lesser sum. This limitation applies to each claim or series of related claims made by you. For the purposes of paragraphs 7 (b), (c) and (d), “we” and “our” include our officers, employees and agents, as well as all Network Operators.

### 8. Access to Premises

You will allow us or our Agents access to your property to perform our obligations under this Agreement. We will always try to give you reasonable prior notice if we require access to your premises and we will ensure that we or our Agents carry sufficient proof of identity. If you do not allow us to access your premises your ability to use the Services may be adversely affected.

### 9. Provision of Hardware and Additional Services

**(a)** If you have acquired any hardware from us, or from one of our dealers or Agents, all claims in relation to those products are covered by the warranty, if any, offered by the relevant manufacturer. This paragraph does not limit any rights you may have under the Consumer Guarantees Act 1993.

**(b)** If you have acquired hardware from some other source, for example from overseas or second-hand, and it does not support all of the services offered by us, we are not under any obligation to take any action so that you can access any such Services.

**(c)** We do not make any warranty as to the accuracy, completeness or currency of any content or material which you may access or have provided to you, using our Services. Where Services are provided by a third party we accept no responsibility or liability for their quality or the nature of their content.

**(d)** We VoIP and Verse DECT can only be used in conjunction with Metrocom Ltd supplied Managed Voice Router.

### 10. Phone Numbers and Number Portability

**(a)** Phone Numbers allocated to you by us or another Telecommunications Provider and do not belong to you.

**(b)** You may Port the Phone Number to another Telecommunications Service Provider. If you wish to do so, you must contact the Telecommunications Service Provider to whom you wish to Port. You will be responsible for completing the Porting requirements of that Telecommunications Service Provider. We will comply with our obligations under the Terms for Local and Mobile Number Portability in relation to the Porting of the Phone Number to the other Telecommunications Service Provider. You will be responsible for all costs associated with Porting the Phone Number (including any applicable early termination charges).

**(c)** We may be required by law, under contracts with other Network Operators or for other reasons to change your Phone Number(s). We will do our best to give you notice of any change required. We will not be liable for any costs which you, or anyone else, may incur as a result of such change.

**(d)** If you or we disconnect your connection to the Services, we may allocate your Phone Number to another customer.

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### 11. Privacy

- (a)** You agree that we and our Agents can collect information about you and the way in which you are using the Services. This information may be obtained from you or we may obtain it from our records. You may ask to see personal information we have about you and ask us to correct any information that is not correct.
- (b)** You agree that we and our Agents can use and hold this information and share it with one another, or with any Metrocom Ltd Group company and with those employees who need to use your information in the context of our business, for a range of lawful purposes connected with our business operations including:
- providing you and others with the Services;
  - sending you Bills and collecting the Charges;
  - maintaining and improving the quality of the services;
  - directory purposes (see paragraph 13 below);
  - checking your creditworthiness; and
  - keeping you informed about our special offers, products and Services, and those of selected Agents, which may be of interest to you (unless you have told us you do not wish to receive such information);
- (c)** To maintain and improve the Services, we may monitor and record calls you make to us or we make to you.
- (d)** Some personal information can be shared with other Network Operators so you can make and receive calls, so we can transfer numbers from one network to another and to monitor or investigate fraud or other offences. We may also provide your personal information to public sector agencies in order for them to investigate an offence.
- (e)** Subject to any rights you may have under the Privacy Act 1993, we will not be liable to you, or to anyone else, for:
- the content or lack of confidentiality of any services you use;
  - any disclosure we make by law to a public sector agency.
- (f)** You agree that we and our Agents may send you marketing messages, electronic or otherwise, about our special offers, products and services, and those of our selected Agents and third parties which may be of interest to you. You agree too that the electronic marketing message that we or our Agents and third parties send need not include an unsubscribe facility.
- (g)** You agree to procure from each of your Users their authorisation for the collection, disclosure and use of personal information about him or her by us on like terms as set out above in this paragraph 13

### 12. Directory Assistance and Listing

- (a)** We may include your personal information in any telephone or similar directory or directory enquiry service provided or operated by us or by a third party subject to any objection or preference you may have indicated to us. We will give you an opportunity to express any objection or preference. If you indicate that you wish to be listed in the white/yellow pages and/or for directory assistance, your name(s), telephone number(s) and address details will be given to the directory assistance service provider for listing at your cost.
- (b)** Any arrangement you make to be listed will be a matter between you and that directory listing service only.

### 13. Disconnection of Services

- (a)** You may discontinue your connection to our network or give up any Service at any time by calling Customer Services and giving us at least one calendar month's notice. Your connection to our network or the particular Service will be disconnected one calendar month after receiving your notice and this shall be the date of disconnection. Some Services may be able to be terminated sooner than this.
- (b)** If you request us to, or we elect to, disconnect your connection to the Services, you must pay us in respect of each connection you have:
- any early termination charges (if they apply) ; and
  - all Charges incurred until the date of disconnection; and
  - any outstanding Charges and other monies payable by you for the Services.
- (c)** We can suspend, Bar, Re-direct or restrict your use of any or all of the Services or disconnect your connection without telling you if:
- you do not pay any Charges by the due date;
  - you exceed any credit limit in place or your usage of the services is unusual or excessive;



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- you become (or are likely to become) insolvent, bankrupt or where you are or might be a poor credit risk;
  - a receiver, manager and receiver, or statutory manager is appointed over any or all of your assets;
  - a resolution for liquidation is proposed or passed or proceedings to liquidate you are filed or presented;
  - you die or, in the case of a partnership, it is or is intended to be dissolved; or
  - you do not remain connected to the Services.
  - you do not abide by the terms and conditions in this Agreement;
  - you make abusive, offensive, malicious or nuisance calls or communications, or use any of our Services in an offensive way;
  - you are abusive or offensive to us, our dealers or agents, or any other person;
  - we suspect you of using the services for any illegal or fraudulent activity; or
  - all of the services are permanently or temporarily (for any reason) unavailable to you;
- and all charges for any Services, including any costs incurred in the suspension or restriction of the Services, will be payable by you in accordance with this Agreement.

**(d)** If we suspend your use of our Services, we will try to contact you before doing so. We may not suspend Services before disconnecting your connection.

**(e)** Where we suspend, Bar, re-direct or restrict the Services all Charges will continue to apply.

### 14. Transferring Responsibilities

**(a)** We may transfer to someone else the whole of this Agreement and/or any interest in our network.

**(b)** Your interests in this Agreement are personal to you and you may not transfer or on-sell the Agreement or any benefit or obligation under it to another person without our consent. If you are a company and your effective management or control is changed in any way, we may treat this as a transfer of this Agreement entitling us to end it.

**(c)** You must pay any costs in respect of recording any transfer to which we consent (including our costs in checking the creditworthiness of the transferee). Metrocom Ltd normal credit criteria will apply to any proposed transferee.

**(d)** Metrocom Ltd retains the right to alter its Services and/or terms and conditions for the proposed transferee

### 15. Metrocom Ltd's right to end this Agreement

Notwithstanding any other clause in this Agreement, we may disconnect your connection or terminate particular Services:

- if any of our licences to operate our network is ended or suspended or any interconnection agreement with any other Network Operator expires or is ended; or
- for any other reason we believe that it is appropriate to do so, and in either case you will only have to pay any outstanding Charges incurred up to and including the time of disconnection.

### 16. Termination

We require 30 days written notice for the termination of any Service. If that Service is being provided to you for a specific term and you cancel within that term, then you must also pay us a penalty fee of 100% of the total monthly Charges remaining in your term, unless explicitly stated otherwise in the Service Agreement.

Either party may terminate any or all Services immediately and without penalty if the other party:

- materially breaches these Terms; or
- (or its directors/principals) goes into liquidation, bankruptcy, or receivership; or
- has a receiver or statutory manager appointed over any or all of its assets; or
- is removed from the Companies Register, is dissolved, or dies; or
- commits an act of fraud, theft, or dishonesty that impacts the other party.

If we require consent from owners of any site for access in order to supply you with a particular Service and the owners of that site withdraw such consent or request us to remove our equipment, then we may terminate the Service provided to you by written notice with effect of the date on which access to the site will be unavailable to us. You acknowledge and accept that we will not be liable to you in any way for failure to supply any Service where we terminate such Service under this provision.

Termination due to breach of these Terms will not affect other rights and remedies. If Services are terminated due to breach, then you agree to pay us any monies owing (including any applicable penalty fee of 100% of the total monthly Charges remaining in your term, unless explicitly stated otherwise in the Service Agreement) and immediately return any equipment owned by us or provide us access to retrieve our equipment.

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### 17. Contacting each other

(a) If you need to contact us for any reason you can do so by:

- calling Customer Services; or
- contacting us via our Website.

(b) If we need to notify you of anything we may do so by

- by e-mail if you are an internet customer, or a customer for any other Services who has supplied us with an email address;
- by post;
- by phone;
- short message service (SMS);
- by a notice on our Website;

(c) If your contact details change you must tell us. You will be deemed to have received any notice which was sent to your last known email or postal address.

### 18. Rights and Responsibilities that Continue

Ending this Agreement does not affect any of the rights or responsibilities which are intended to continue or to come into existence after this Agreement ends including (without limitation) any obligation you may have to:

- pay any outstanding charges;
- pay any applicable early termination charges;
- and return any Metrocom Ltd hardware you may have on loan from us or any of our dealers or agents, or pay any outstanding amounts in respects of such hardware.

### 19. Network Operators and Other Suppliers

(a) We have certain obligations towards other Network Operators and our dealers, Agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the services we provide or from your use of those services and our network, including (without limitation) your access to and use of any Telecommunications Service Provider's site or Network Operator's networks. This paragraph creates an obligation that other Network Operators and/or our dealers, Agents and suppliers can enforce, whether as a defence or otherwise.

(b) You acknowledge that certain equipment and lines installed on your property and used to provide the Services are ours, another Network Operator's, or a third party's, and you waive any rights, title or interest in them. Such equipment and lines are not fixtures and may be removed without recourse to legal proceedings. You agree to obtain any building or landowner authorisation necessary for us or another Network Operator to install, inspect, maintain, replace, or remove that equipment and lines, and will supply us with any contact or other information we reasonably require to assess what authorisations, licences or consents are necessary for that purpose. You acknowledge that other Network Operators may require access to your premises in order to provide the Services, and that, if such access is denied, there may be interruptions to, or disconnection of, the Services.

### 20. Notices and Variations of Charges, Terms and Pricing Plans

(a) We may change this Agreement and any free Services at any time. Changes will be posted on our Website. Please check this regularly for updates.

(b) We may vary the charges set out in our Pricing Plan(s) at any time. We will give you at least 10 business days' prior notice, and where possible 1 month's notice of these changes. We will notify you of these changes by posting them on our Website. Please check our Website regularly for updates. For the avoidance of doubt, we may not notify you of price decreases or of promotional offers.

(c) If we materially increase a Pricing Plan, or materially reduce elements of a Service you are using, or change the terms and conditions of this Agreement so that it has a materially detrimental effect on you we will give you at least 10 business days' prior notice, and where possible one month's notice of these changes. We will notify you of any changes by Bill message and/or leaving a message on your voicemail and/or by email. Any such changes will also be posted on our Website.

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### 21. Severable clauses

If for any reason any clause of this Agreement is deemed to be unenforceable, all remaining clauses in this Agreement shall remain binding on you.

### 22. New Zealand Law

This Agreement is governed by the laws of New Zealand and you submit to the jurisdiction of the New Zealand Courts.

### 23. Waiver

If we fail or delay to exercise any right or power under this Agreement, this will not be a waiver of that right or power. Any failure or delay will not prevent us from exercising that right or power in the future.

### 24. Disputes

If you have any dispute with us or our services, please refer that dispute, initially, to Customer Services. If Customer Services are unable to resolve your concerns the matter will be escalated to the Customer Operations Support Manager.

### 25. Force Majeure

We will not be liable for any delay or failure of the Services or for any loss or damage from such delay or failure to the extent that it was caused, in whole or part, by an act of God, war, terrorism, civil disobedience, riots, strike, industrial stoppage or unrest, fire, volcanic eruption, earthquake, shortage of suitable labour, materials, equipment or energy or any other event beyond our control.

### 26. Agents of Metrocom Ltd

**(a)** We shall be entitled to subcontract or delegate the performance of any of our rights or obligations under this Agreement but any such subcontracting or delegation will not relieve us from liability for performance of any such obligation. Without limiting this, we may appoint an Agent to provide billing services (including credit checking and control) and customer services.

**(b)** Invoices issued by our Agent will be binding on you and payment of those invoices in full to our Agent will be a valid discharge of your liability to pay those invoices under this Agreement.

**(c)** Our Agents can enforce those obligations expressed to be for their benefit in accordance with the Contracts (Privacy) Act 1982.