

**Standard Terms & Conditions**

**1.0 Our Agreement with You**

1.1 **(Agreement)** These terms and conditions together with the Proposal, Your Application, the Schedules and Our currently applicable price list, will form the agreement which governs the provision of the Services to You.

1.2 **(Defined Terms)** In this Agreement, unless the context otherwise requires:

(a) **Application** means the application for the provision of services You complete or have completed and provided to Us in connection with the provision of the Services to You;

(b) **CPE** means Customer Premise Equipment and includes (i) PABX; (ii) telephone or key system; (iii) router; (iv) software; (v) modem; (vi) data termination unit; and (vii) other cable mountings;

(c) **Premises** means the premises specified in Your Application;

(d) **Proposal** means the latest proposal for the provision service by Us to You; and

(e) **Schedule** means the Schedule – Standard Specific Terms and Conditions attached to these terms and conditions.

**1.3 Interpretation**

“You” or “Your” means the Customer or any person authorized by the Customer.

“We”, “Our” or “Us” means Arrow Voice and Data wholly owned by Australian Telecommunications Pty Limited ABN 88 099 741 590.

1.4 **(Authority)** You agree that We may (i) rely on any notice which We believe to have been sent by You including without limitation a facsimile or email (without verifying that it was actually sent by You); and (ii) You will be bound by any verbal instructions or authority given to Us over the telephone by You, as recorded by Us in the process of completing Your Application.

**2.0 Prices and Charges for the Services**

2.1 **(Fees)** The fees for each of the Services provided to You under this Agreement will be set out in the Proposal. In addition to the fees set out in the Proposal You will be liable for any other fees set out in these terms and conditions.

2.2 **(Supply of local call and rebill services)** For any one calendar month, where We are supplying You with local call services (not long distance, data, or mobile services) from another carrier or network, We will charge You the nominated reoccurring

service and equipment charge for the month that only local call services were supplied.

2.3 **(Rate Plan)** Charges for the Services are determined in accordance with the Rate Plan or such other manner specified in the Proposal.

**2.4 (Variation of Fees and Charges)**

(a) From time to time, We may vary the fees and charges of any Service provided. If We wish to vary the fees or charges of any Service, We will notify You in writing 21 days prior to the changes taking effect or within 48 hours of receiving a notice from the third party Carrier or Supplier Network advising Us of any fee change, whichever is the later.

(b) You will be deemed to have accepted any changes to the fees or charges of any Service if You do not terminate the service and continue using it once the price change takes effect.

(c) You may obtain a copy of Our current fee list for Services by contacting 1300 555 330.

(d) Invoice reprints are charged at \$15 per copy.

2.5 **(Modifications/Enhancements)** You agree that We may charge You for any modifications or enhancements to any service We provide at Our standard fees and charges current for such modification or enhancement at the time of Your request.

**3.0 Service Description**

**3.1 (Identification of Services)**

(a) The Services provided to You by Us will be as set out in Your Application (once approved by Us) and any additional Services which We agree to provide to You from time to time.

(b) You must not re supply any of the Services without Our express agreement in writing.

3.2 **(Third Party Supplier)** You acknowledge and agree that:

(a) the telecommunication services You have requested to be provided will be provided through a third party Carrier or supplier network that We nominate from time to time;

(b) We may at any time during the term of this Agreement vary the third party Carrier or supplier network (in Our absolute discretion without notifying You); and

(c) We will use all reasonable efforts to maintain the connection while You comply with this Agreement.

3.3 **(Provision of Mobile Services)** If We are providing mobile phone services to You, We will:

- (a) connect Your mobile phone to the network as soon as it is reasonably practicable after Your Application has been accepted;
- (b) provide You with a SIM card to use in relation to the Services (provided that despite any provision of this Agreement to the contrary, We retain at all time ownership of the SIM card.
- (c) where We are transferring mobile services under mobile number portability arrangements, activate the SIM card provided in relation to the Services upon Your request for activation and if no such activation request is received within 15 business days of dispatch, We will activate the SIM card on Your behalf.

3.4 **(Provision of Data Services)** Where We are providing Data Services, the ADSL and or SHDSL access component of the relevant data service and, optionally, a rented CPE router, are supplied to Us by a third party(s) as a wholesale supplier.

#### 4.0 Payment

4.1 **(General Payment)**

- (a) You will be invoiced for all calls, services, usage or other charges on a monthly basis and You agree to pay the fees and charges **within 14 days of the date of the invoice**.
- (b) Fees or charges that do not appear on a monthly invoice may appear on future accounts due to processing procedures.
- (c) Our charges to You may include fees for connection, initiation or cancellation of any services, as specified in the Proposal or any subsequent notice issued to You pursuant to **clause 2.2**.
- (d) Any fees and charges billed to You after the Cancellation Date from Your previous service provider will be due and payable by You to that service provider.
- (e) All payments due to Us must be made in Australian dollars by direct debit using a bank account or credit card acceptable to Us. If any direct debit is dishonoured or rejected You will be charged by Us a dishonour fee of \$29.00 in each instance.
- (f) If any direct debit option is cancelled by You at any time, You will be charged by Us a monthly manual payment surcharge of \$20.00.
- (g) All payments made using either American Express or Diners Club credit cards will be subject to a 3% surcharge and all payments made using a Visa, MasterCard or Bankcard will be subject to a 1% surcharge.

(h) You must pay the invoiced amount, without deduction, set-off or counterclaim.

#### 5.0 Disputed Amounts

In the event that a bill is disputed by You, You agree to pay to Us the undisputed amount by the due date of the invoiced account. Failure to do so will result in suspension or disconnection of Your services as stated in clause 9.4 and the associated costs will be borne by You.

5.1 **(Fixed Terms)** If We agree to provide a Service for a fixed term, You agree to pay Us on the date of this contract the amount payable for the whole of that term. Provided that if We allow You to make the payment of that amount by installments or periodic payments and You pay all installments when due and are not otherwise in breach of this Agreement, You may continue to pay that amount in the agreed installments or periodic payments.

5.2 **(Late Payment Fees)** Without relieving You of Your obligation to pay amounts when due, if any invoice is not paid by You on the due date, You will pay the following additional fees and charges:

- (a) if the invoice is not paid within 14 days of the due date, \$30.00;
- (b) if the invoice is not paid after the period referred to in **clause 5.2(a)**, a further \$50.
- (c) interest on the amount not paid (**Overdue Amount**).

Interest on any Overdue Amount will be calculated monthly, at eighteen percent per annum (18% pa), from and including the due date to and including the date that We receive the Overdue Amount plus interest in full.

5.3 **(Deactivation)** We may (but are not obliged to), deactivate or cancel all or part of the Services provided to You if any amount is not paid by its due date.

5.4 **(Mobile Charges)** Where We are providing mobile services monthly, You must also pay Us:

- (a) charges for calls You have made to the extent those charges exceed the Minimum Monthly Spend as set out in the Application; and
- (b) Charges for value added services You have used.
- (c) for all calls made from Your handset, including any calls made in error and it is Your responsibility to take adequate precautions to avoid accidental, unauthorised or improper use.

**6.0 TERM**

- 6.1 **(Initial Term)** Unless terminated earlier in accordance with **clause 8.0**, the term of Your Agreement is as specified in the Proposal together with the period of any extension pursuant to **clause 6.2**.
- 6.2 **(Extension of Term)**
- (a) Subject to **clause 6.2(b)**, at the end of the Initial Term, the term of this Agreement will be automatically extended for a period equal to 90 days unless You advise Us in writing, no earlier than 90 days and no later than 30 days, prior to the expiry of the then current Term that You do not want to extend the Term of this Agreement.
- (b) Despite **clause 6.2(a)**, if We advise You prior to the expiry of the then current term that We do not wish to extend the term of this Agreement, the Term of this Agreement will expire at the end of the then current Term.

**7.0 TERMINATION**

- 7.1 **(Termination)** This Agreement will terminate on the earlier of: (i) the last day of the Term; or (ii) the date of that We terminate this Agreement in accordance with Our rights under this Agreement.
- 7.2 **(Right to Terminate)** In the event that:
- (a) any clause, provision or right that We have under this Agreement, is void or unenforceable; or
- (b) any other agreement that You have with Us is terminated earlier than its expiry or termination date or not extended, for any reason,
- (c) You have breach an obligations under this Agreement,
- We may elect to immediately terminate this Agreement and such termination: (i) will not affect the rights of the parties accrued as at the date of termination; (ii) relieve You from Your obligation to pay to Us any fees and charges payable by You under this Agreement; and (iii) the provisions of **clause 8.0** will apply as if an event of default had occurred.
- (d) If you have opened an account with Arrow as a result of an unsolicited sales approach by Us to You, a cooling off period may apply to the Agreement and you may terminate the Agreement by giving Arrow written notice during the cooling off period by using the following methods:
- (a) Posting the notice to PO Box 5145, NSW 2001
- (b) Faxing the notice to 1300 666 079
- (c) Emailing the notice to info@arrowvoice.com.au

**8.0 END OF THE TERM**

- 8.1 **(Event Of Default)** You will commit an event of default under this Agreement if:
- (a) You fail to pay any amount payable by You under this Agreement or any other agreement You have entered into with Us, on the due date and You do not remedy Your failure within two (2) Business Days of the date that We notify You of Your failure;
- (b) You fail to perform any other obligation under this Agreement or any other agreement that You have entered into with Us, and You do not remedy Your failure within ten (10) Business Days of the date that We notify of Your failure;
- (c) You cease doing business, become insolvent, commit an act of bankruptcy or become the subject of any proceeding under any bankruptcy act, or its counterpart under the law of any territory outside of the jurisdiction of Australia; or
- (d) there is a change in the ownership or control of Your business, by involving either change of director/s or business owners.
- 8.2 **(Effect of Termination on Your obligations)** Termination of this Agreement will not relieve or discharge You from any liabilities or obligations incurred to Us prior to termination.
- 8.3 **(Our rights after an event of default or termination of this Agreement)** If an event of default occurs, We may (but are not obliged to) immediately without notice to You and without releasing You from any accrued obligations do one or more of the following:
- (a) terminate this Agreement;
- (b) declare that any fees and charges are due and payable by You;
- (c) remedy (though We are not obliged to) any default that You commit under this Agreement (at Your cost); and
- (d) We may request that a new Application form (at Your cost – currently an administration fee of \$62.00 (ex GST) per service in relation to the application is payable) and a new agreement is signed if there is a change of control (as referred to in **clause 8.1(d)**).

**9.0 Suspension and cancellation of Services**

- 9.1 **(Restriction and suspension)** We may restrict or suspend the services or any of them at any time without notice if any of following occur:
- (a) We are not satisfied with Our credit assessment of You;
- (b) You commit an event of default;

(c) We are unable, for any reason including the default of a third party carrier or supplier, to provide the whole or part of the service;

(d) If the account or the customer presents an unacceptably high credit risk to Us, the account has greatly surpassed the preceding monthly invoiced amounts or You, the Service or account appears fraudulent. This we are entitled to do as set out in the Communications Alliance Ltd, Telecommunications Consumer Protections Code C628:2007, (section 7.4.8)

9.2 **(Reactivation)**

(a) If You request reactivation of Services that have been suspended due to lack of payment: (i) We reserve the right to request a bond up to \$500.00 for the Term of this Agreement, which is to be applied to the first account issued following reactivation and payable by the due date of that invoice; and (ii) You must pay Us a fee of \$75 (GST Inc) per Service to reactivate each service.

(b) Any bond held by Us will be refunded (less any amount owing to Us) by cheque within 14 days of Your final account being available.

9.3 **(Your obligations continue)** If We restrict or suspend any Services provided to You, You will remain liable for all money due to Us under this Agreement, during the period of such restriction or suspension.

9.4 **(What happens on termination)** If this agreement is cancelled by You, or terminated by Us:

(a) You must pay to Us all costs and expenses incurred by Us in relation to the Agreement being cancelled or terminated (including without limitation legal costs, administrations costs and any costs incurred by Us to a third party).

(b) If you do not pay the account by the due date we reserve the right to place the outstanding amount due in the hands of a Registered Collection Agency for debt recovery. At this time they will assume the responsibility for collection of the outstanding amount and such amount owing will be liable to a 25% surcharge or actual legal costs to cover recovery charges.

(c) Where We are providing **mobile** services: (i) all of Your rights to receive the Services from Us will end and You must return to Us the SIM card that We provided to You; (ii) You must pay amounts due at the time the agreement was cancelled or terminated, including the balance of the Minimum Monthly Spend amounts for all months up to the end of the Agreed Term; and (iii) You must pay an administration fee of \$275 (GST inc) per Service.

(d) Where We are providing **Data and/or DSL services**, You must pay amounts due at the time

the agreement is cancelled or terminated, including the balance of the Monthly Service Fees as set out on the application, for all months up to the end of the agreed term.

(e) Where We are providing **Fixed term services**, if You cancel or terminate the Services before the expiry of the agreed contract term or Your services are terminated by Us due to non compliance of these Terms & Conditions before the expiry of the agreed contract term, You must pay all charged amounts due up to and including the date the agreement is cancelled or terminated, plus the balance of the Monthly Line Rental per service and any associated products monthly rental (such as Line Hunt rental) per service for all months up to the end of the agreed contract term (**Early Termination Fees**).

(f) All cancelled Services will continue to incur line rental charges, call charges and payouts until the actual cancellation date, being 30 days from the date We receive notice of Your cancellation.

(g) You must pay an administration fee of \$275 (GST included) per account, on top of any incurred Early Termination Fees.

10.0 **GUARANTEE AND INDEMNITY**

10.1 **(Guarantee)** In consideration of Our agreement to enter into this Agreement with the Customer at the request of the Guarantor, the Guarantor hereby guarantees to Us the due and punctual performance of the Customer's monetary and other obligations under this Agreement (**Guaranteed Obligations**).

10.2 **(Indemnity)** As a separate and independent obligation the Guarantor agrees to indemnify Us and hold Us harmless against all losses, costs, liabilities or damage which We may suffer or sustain as a result of non payment of any money or the non performance of any obligations under this Agreement by the Customer or the Guarantor, whenever and as often as such events occurs.

10.3 **(Principal Obligations)** The obligations of the Guarantor under this Guarantee and Indemnity are principal obligations imposed upon the Guarantor as principal debtor, and We have the right to make a claim or demand against the Guarantor pursuant to this Guarantee and Indemnity without having first taken any proceedings against the Customer or any other person.

10.4 **(Satisfaction of obligations)** This guarantee and indemnity is not to be considered as wholly or partly discharged unless and until all of the Guaranteed Obligations have been received in full by Us.

10.5 **(Saving Provisions)** This Guarantee and Indemnity is not impaired or discharged by:

(a) any variation (with or without the consent of the Guarantor) whenever made to this Agreement;

(b) any breach, willful or otherwise, of any of the Customer's obligations under this Agreement with or without the consent or knowledge of the Guarantor;

(c) the granting of time, credit, forbearance, indulgence or concession to the Customer or to any other Guarantor;

(d) any compromise, abandonment, waiver, release, variation or redemption or compounding by Us of any rights under the Agreement or against any other Guarantor;

(e) the unenforceability in whole or in part of the Agreement or this Guarantee and Indemnity against the Customer or any other Guarantor or that any other Guarantor has not executed this agreement;

(f) the fact that all or any part of the money owing by the Customer may not or may cease to be recoverable from the Customer or any other person liable for any reason (other than the same has been fully paid or satisfied);

(g) the liquidation, death, insolvency or bankruptcy (as the case may be) of the Customer or Guarantor;

(h) the avoidance for any reason by statute or otherwise of any payment by or on behalf of the Customer or any Guarantor;

(i) the transfer or assignment of the benefit of the Rental Agreement to any person or corporation; You being under any legal liability;

(j) any other matter or thing which but for this provision could or might operate to abrogate the effect of provisions of this Guarantee and Indemnity.

10.6 **(Joint and Several Liability)** If there are two or more Guarantors then the obligation under this Guarantee and Indemnity binds them jointly and each of the severally.

#### 11.0 Transfers to Us

11.1 **(Change arrangements with Supplier)** In providing the Services to You, We may need to change Your arrangements with Your current supplier. If We need to change those arrangements, You agree that We may do so in accordance with the provisions of this clause.

11.2 **(Your obligations)** By signing this Agreement or any other Agreement for the provision of the Services by Us, You:

(a) will on request by Us give written instructions to Your current supplier to transfer the services from Your name to Our name; and

(b) will immediately pay to Your current supplier all amounts owing to it for the services being transferred up to the time of transfer to Our name.

11.3 **(Authority to sign on Your behalf)** You authorise Us to sign on Your behalf and in Your name, forms of authority to Your current supplier of telecommunications services to transfer the Services into Our name.

#### 11.4 (Arrow Online Application)

(a) You agree that for Us to provide Services to You through Our online application (ARROW) You or Your nominee will constitute agreement by both Yourself and Your nominee to Our terms and conditions.

(b) You and Your nominee agree to use ARROW solely as provided by these terms and conditions. You should ensure that both You and Your nominee have read and understood these terms and conditions.

#### 12.0 Transfers from Us/Relocation

12.1 **(Obligation for Services Transferred)** If You transfer Your Services from Us to another service provider, You remain responsible to Us for the payment of all fees and charges payable by You for the Services, up to and including the date the transfer is confirmed as completed by Your new service provider including any Early Termination Fees / Local Number portability fees.

12.2 **(Our obligation ceases)** Our obligation to provide the Services to You ceases when the transfer away from Us is completed in its entirety, including call types (such as calls to mobiles and long distance) that may be transferred away from Us on dates that are different to the transfer away of the line rental dates.

#### 12.3 (Invoice for Services after transfer request)

(a) We will bill You for any remaining fees and charges for Services that You have transferred to another supplier in the next billing period (including any line rental credits that may be applicable).

(b) This bill and all prior bills to this are to be paid by the due date.

12.4 **(Minimum Length)** If Your services are under Agreement and You relocate Your premises with Arrow the minimum length of Your Agreement will recommence from the date of the relocation being completed.

12.5 **(Relocation to Non Access Area)** If You relocate to an area not covered by Our Services You will pay Us all amounts referred to in clause 9.4.

12.6 **(Vacating premises)** If You vacate the premises where Services are connected to Arrow without cancelling the Services, transferring the Services away to another service provider or relocating the Services to new premises with Arrow, We will continue to bill You for these Services and You remain liable to pay them until such time as You authorise Us to cancel or relocate the Services to new premises. You must promptly notify Us in writing of any cancellation or transfer of the Services We provide.

12.7 **(Suspension of Services when not notified of relocation)** If We are notified that You have vacated the premises without transferring Your services to a new provider or without giving Us notice that You intend to do so, We are entitled to suspend Your Services without notice to avoid other occupants using the Services. You are liable for any charges used by other occupants until the Services have been suspended.

### 13.0 Amendments to the Terms & Conditions

13.1 **(Notice of changes)** These terms and conditions, including charges for Services and/or method of calculation may be varied, altered, replaced or revoked at any time by Our giving a minimum of 21 days notice to You or will apply from 21 days when such terms have been revised on Our website: [www.arrowvoice.com.au/rate-variations](http://www.arrowvoice.com.au/rate-variations)

13.2 We may also notify You of any changes either by bill message, direct mail or e-mail within the period allowed by law.

### 14.0 Communications & Content

14.1 **(Your obligation)** You are responsible for the content of the messages You communicate when using Our Services and for the consequences of those messages.

14.2 **(Legal use)** You must not use Our Services to engage in activities that are illegal, obscene, threatening, defamatory, invade privacy, infringe intellectual property rights, or otherwise injure third parties or are objectionable.

14.3 **(False Identity)** You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead others or Us as to Your identity.

14.4 **(Our Right to Suspend)** We reserve the right to suspend or terminate any Service without notice in the event of a breach of this clause and in such cases You will be responsible for any costs associated with suspension or termination of the service.

### 15.0 Network Security

15.1 **(Your obligation)** You agree to:

(a) accept responsibility and liability for the security of and or access to Your networks and related systems;

(b) take reasonable and appropriate precautions to prevent any violations of Your network and or related systems security; and

(c) ensure that adequate security in the form of virus protection or firewalls exist to protect Your electronic data or the electronic data of Your business against unauthorised or unwarranted intrusion.

15.2 **(Exclusion of liability)** We do not take responsibility or are liable in any way for any violations of Your network and or related systems security, however caused.

### 16.0 Privacy

16.1 **(Privacy Act Compliance)** We comply with the Privacy Act (Cth). Our privacy policy sets out the way in which We collect, use and discloses information about You.

16.2 **(Copy of Privacy Policy)** For a full copy of Our privacy policy please visit Our website at [www.arrowvoice.com.au](http://www.arrowvoice.com.au) and click on the privacy link.

16.3 **(Use of Personal information)**

(a) You acknowledge and agree that if You default under this Agreement, We may use or disclose any of Your personal information collected & recorded to third parties to assist Us in the process recovering any money You owe Us.

(b) For the purposes of **clause 16.3(a), Personal information** includes personal identifying details such as Your name, address, date of birth, employers, driver's license details and status of any of Your accounts or related bodies corporate, Your credit history, and information about Your creditworthiness or capacity.

(c) You authorise and consent to Us and Our third party carriers or suppliers exchanging Your personal information (including all records, and in particular exchange line details, telephone accounts information, call charge records and call event records ) for and in connection with the provision of the Services or any other services to You from time to time.

**17.0 Credit Check**

17.1 **(Provision of information)** You agree to promptly supply Us with all the necessary information in order for Us to conduct a check of Your credit worthiness and credit rating.

17.2 **(Authority and permission to obtain report)** If We consider it relevant to assessing Your Application for Services, You agree to Us:

(a) obtaining from a credit-reporting agency a credit report containing personal information about You (which may include any information regarding Your commercial or consumer credit worthiness, credit history or credit capacity that credit providers and or credit reporting agencies are allowed to give or receive under the *Privacy Act*); and

(b) making independent enquiries of third parties concerning Your financial standing and for this purpose, authorise and permit third parties to supply such information regardless of any confidentiality or privilege which applies to the information sought.

17.3 **(Provision of Information)** You agree that We may give to any credit provider & or credit-reporting agency any information contained in the Application.

17.4 **(Security Deposit)** You agree that if at any time required by Us, You will pay Us a security deposit for the provision of the Services at Our discretion.

**18.0 EXCLUSION OF LIABILITY**

18.1 **(Specific Warranties Excluded)** Without limiting clause 18.2, We make no express or implied warranty in relation to (i) the fitness of the Service for any particular purpose; (ii) the merchantability of any Equipment; or (iii) the description, state, or quality or condition of the Service.

18.2 **(Limitation of Liability)**

(a) To the full extent permitted by law, You agree that if You suffer a loss (including economic loss), damage, cost, expense or claim howsoever arising from: (i) the use of the Services, Our liability to You is limited to the resupply of the Services; (ii) the acts of omissions of the third party carrier or supplier or any of their servants, officers, agents, contractors or subcontractors; or (iii) the failure of, or fault or defect, in any contractors or subcontractors or the failure of, or fault or defect, in any telecommunications service, network, facilities, equipment or service, used by Us in supplying telecommunications services; or (iv) Our failure to continue to provide the Services to You for any reason beyond Our control.

(b) We are not liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature that You may suffer from the use of the Services.

18.3 **(Trade Practices Act)** We accept liability to You in respect of any rights conferred on You by the Trade Practices Act 1974 and similar legislation where not to do so would be illegal, or would make any part of this clause void or unenforceable.

18.4 **(Exclusions)** Except as required by law, We exclude all conditions and warranties implied into the agreement and limit Our liability for any non-excludable conditions and warranties, where permitted by law to do so, at Our option, to:

(a) in the case of services: (i) the supply of the services again or (ii) the payment of the cost of having the services supplied again; and

(b) in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; or (iii) the payment of the cost of replacing the goods or acquiring equivalent goods.

18.5 **(Network Outages)** In the event that a Network Outage is not restored within the relevant period as specified in Our Service Level Agreement, reimbursement will not exceed the daily charge for that service divided by the number of days the service was unavailable.

**19.0 Indemnity**

19.1 **(Indemnity)** You agree to indemnify and keep Us and any third party carrier or supplier indemnified from and against liability and all loss and damages caused directly or indirectly by any breach of this agreement by You or any claim or action arising directly or indirectly out of any negligence or wilful act of Yours or any of Your servants, offices, agents, contractors or subcontractors.

19.2 **(Survival of Indemnity)** To the extent permitted by law, You agree that Your indemnity shall survive the termination of this agreement.

19.3 **(Benefit of Indemnity)** You agree that We hold the benefit of this indemnity for ourselves and for the benefit of the third party carrier or supplier.

**20.0 ACKNOWLEDGEMENTS**

You acknowledge that:

(a) You have not relied on Our skill or judgment in deciding to enter into this Agreement but on Your own skill and judgment;

(b) We are entitled to insert dates and such other information into this Agreement where no dates or such information has been inserted by You;

(c) We may assign any of its rights under this Agreement or in connection with the Equipment without Your consent and any amounts payable by You to such assignee must continue to be paid without set-off, counterclaim or deduction;

(d) We may (but We not obliged to) do anything which should have been done by You under this Agreement but which We consider You have not done or have not done properly; and

(e) We do not guarantee continuous fault free provision of the Service.

## 21.0 CONFIDENTIALITY

You will keep confidential all information supplied by the carrier or Us.

## 22.0 GENERAL PROVISIONS

22.1 **(Notices)** All billings, payments and written notices from either party to the other must be given to the address shown in this Agreement, or to such other address as may be designated in writing by either party to the other.

22.2 **(Binding)** This Agreement is binding upon the parties, their successors and assigns and will be governed by the laws of New South Wales. If You take possession of or retain any Equipment after the provision of this Agreement, then this Agreement is valid and binding on You whether or not You have signed it.

22.3 **(Costs)** You must pay Our costs and legal fees for any action brought to enforce any of the provisions of this Agreement or any right granted to Us under this Agreement.

22.4 **(Waiver of rights)** No failure to exercise nor delay in exercising any right, power or remedy by Us operate as a waiver.

22.5 **(Cumulative rights)** Our rights under this Agreement are in addition to, and do not exclude, any right at common law, equity or any other agreement between You and Us.

22.6 **(Variation of terms and conditions)** We may amend the terms and conditions of this Agreement upon twenty one (21) Business Days written notice to You of the proposed changes.

22.7 **(Taxes)** You are responsible for the payment of all taxes and levies, duties or charges which might arise under or in connection with this Agreement (including, if any, stamp duty payable in respect of the execution, delivery and performance of this Agreement) but excluding taxes on Our net income.

22.8 **(Demand)** Any amount payable by under an indemnity is payable on demand by Us.

## 22.9 (GST)

(a) The prices shown for the Equipment in this Agreement do not include GST.

(b) If We become liable to pay GST in respect of the hire or supply of the Equipment, the Rental Fee payable under this Agreement will be increased by the amount of the GST payable by Us in respect of that hire or supply (being GST on the increased price including the GST).

(c) The GST amount will be notified by Us to You and must be paid by You to Us in the same manner and at the same time as the rest of the Rental Fee.

(d) This clause is an essential term of this Agreement.

22.10 **(Further Assurances)** You agree to execute and deliver any instruments and do such other things, as We may at any time request in connection with the enforcement of Our rights under this Agreement.

22.11 **(Assignment)** You may not assign or otherwise deal with Your rights under this Agreement without our prior written consent.

22.12 **(Force Majeure)** We will not be liable for any delay in the disconnection or connection of or failure in the operation of services due to any occurrence reasonably beyond Our control including failure of any link provided by the carrier.

22.13 **(Entire Agreement)** This agreement contains Your and Our entire understanding to the exclusion of any and all prior or collateral agreement of understanding relating to the services provided whether oral or written.

22.14 **(Invalidity)** If any part of this agreement is found to be invalid or of no force or effect this agreement shall be construed as though such part had not been inserted and the remainder of the Agreement will retain its full force and effect.

22.15 **(Inconsistency)** To the extent that any term or condition in this Agreement conflicts with any other term or condition, the term or condition will have the following order of priority:

- (a) the Proposal;
- (b) the Schedules relevant to the particular service;
- (c) these general terms and conditions; and
- (d) Your Application.



**Schedule – Specific Terms and Conditions**

costs and charges payable by You), accept or reject Your request.

**Part A Installation & Programming of Equipment**

**A4.0 Installation**

**The following terms and conditions apply in relation to installation & programming of Equipment**

**A4.1 (Installation Date)** We or an approved contractor will install the CPE at the Premises during normal business hours commencing on the Delivery Date or such other the date that We mutually agree.

**A1.0 (Provision of CPE)** Subject to the payment of the CPE, We will provide it and any associated documentation to You at the Premises, to use with the relevant access (using satellite, data, PSTN or other telecommunication access medium) service(s).

**A4.2 (Preparation of Premises)** You must at Your own expense prepare the Premises, and access to the Premise, prior to delivery and in doing so, comply with any directions or specifications issued by Us.

**A1.1 (Override Code)** We may program an override code into Your phone system or PABX, that directs call traffic across Our network. If You transfer the Service to another service provider, We may continue to charge You for any calls over Our network until You or Your new service provider (at Your cost) has removed or changed the over-ride code. In this situation You are liable to Us for all related call costs and it is Your sole responsibility to remove or change the over ride code so calls can go through to Your new provider. Any costs associated with the reprogramming are also Your responsibility.

**A4.3 (Specific Obligation Concerning Preparation)** Without limiting the foregoing, You must ensure

**A2.0 (Components of CPE)** You acknowledge and agree that We may:

(a) substitute any component of the CPE or part of any component of the CPE prior to delivery without consultation with You;

(a) where We provide fixed wire services, You assist Us in ensuring that any equipment necessary for You to receive the services and access Our network is installed and programmed so that calls to destinations nominated by Us from time to time are, as far as possible, carried by Our preferred switched services network.

(b) modify in any respect the CPE,

(b) where We are providing Data and or DSL services, You assist Us in ensuring that any equipment necessary for You to receive the services and access Our network is installed and maintained (We supply all modems preconfigured to work on the relevant ARROW Data service and any alterations of these settings will leave You liable for charges at \$180 per hour for resetting or reconfiguring of the modem by Us);

if, in the reasonable opinion of Us, the substitution or modification will not (i) adversely affect the performance or capacity of the CPE in any material respect and (ii) alter the configuration of the CPE in any material respect; and (iii) otherwise materially affect the obligations of Us or prejudice the rights of You under this agreement.

(c) the supply at the Premises of adequate and appropriate (i) electric current for the continuous use of the CPE; (ii) electrical and mechanical fittings; (iii) environmental conditions; and (iv) security for the CPE;

**A3.0 Delivery**

(d) there are relevant facilities for the location of the CPE at Your Premises;

**A3.1 (Time of Delivery)** We will use Our best endeavours to deliver the CPE to You on the Delivery Date at the Premises during Your normal business hours.

(e) We have access to all relevant personnel including Your technical and other personnel;

**A3.2 (Alternate place of delivery)**

(a) If You would like Us to deliver the CPE to a location other than the Premise or to vary the Delivery Date, You must provide Us with no less than 14 days (or such other period as is agreed between Us and You) written notice prior to the Delivery Date.

(f) You obtain and maintain, at Your expense, any and all permits, licences, approvals, authorisations, including local council planning approval required for the installation and operation of the CPE;

(b) We may at Our sole discretion, and on such terms as We consider fit (including without limitation whether there will be any additional

(g) You give written notice to the owner of the Premises (if not owned by You) and obtain its written permission for Us and Our representatives and agents to enter the Premises and install the CPE, including making any minor physical modifications contemplated for the purposes of providing the telecommunication or data service(s).

A4.4 **(Provision of information)** We will, upon request from You, supply such information and assistance as We consider reasonable and necessary to enable You to prepare the Premises for the installation of the CPE.

A4.5 **(Inspection of Premises)** Despite any other provision, We will, if requested by You and upon payment of an addition charge by You to Us, inspect the Premises prior to the Delivery Date for the purpose of providing an opinion as to whether the Premises are suitable for delivery and installation of the CPE.

A4.6 **(Variation to Cost of Installation)** Where We reasonably determine the costs of installation exceeds the estimated Installation Fee quoted to You:

(a) We will not be bound to provide the installation at the Installation Fee previously quoted or agreed; and

(b) the parties will in good faith negotiation a new Installation Fee.

A4.7 **(Payment of Installation Fee)** You agree to pay Us the Installation Fee or any variation to it pursuant to **clause A4.6** on demand.

A4.8 **(Relocation)** You must not relocate the CPE without Our prior written consent and without limiting Our right to refuse such consent, such consent may not be granted if:

(a) We are un able to provide the service(s) at the new premises;

(b) You do not agree that these Terms and Conditions apply to the provision of the service(s) at the new premises; and

(c) You do not pay all costs incurred by Us as a result of having to mover the CPE to the new premises.

A4.9 **(Warranty)** You warrant to Us that:

(a) at the Delivery Date You will have fully complied with Your obligations under **clause A4.3**;

(b) Your location in respect of an installation of a satellite dish has a clear and uninterrupted view of the satellite used in the provision of the data service(s) from Your Premises and the actual location of the CPE; and

(c) Your Premises are suitable and have the requisite approvals to support the CPE, including specifically, if applicable, the dish and outdoor unit using standard installation practices.

#### A5.0 Exclusions

You acknowledge that the CPE does not include the goods and services specified as excluded or "not included" in the quotation.

#### A6.0 Maintenance services

A6.1 **(Request)** You may upon request to Us, request Us to supply additional services including without limitation, inspection, repairs, adjustment and replacement of unserviceable or defective parts.

A6.2 **(Basis of provision of additional services)** If agreed to by Us, additional services will be provided on a time and materials basis charged at Our standard rates in effect from time to time and on terms agreed to between Us and You.

A6.3 **(No modification of existing terms)** Unless agreed in writing, any subsequent agreement to provide additional services between You and Us will not modify or vary the terms and conditions of this agreement.

#### A7.0 Title and risk

##### A7.1 (Retention of Title)

A7.2 (a) in the CPE that We sell to You will not pass to You until We receive in full all money owing by You to Us in relation to the CPE; and

(b) in all intellectual property rights including without limitation, copyright and trade marks in and to any manuals or user documentation supplied with the CPE will at all times remain Our property.

A7.3 **(Return of CPE)** You must return the CPE to Us on demand, at any time prior to payment in full of the money owing to Us in relation to the CPE and immediately following the making of a demand We are hereby authorised to enter Your premises for the purpose of retaking possession of the CPE and We may resell the CPE to another person.

A7.4 **(Risk)** Despite **clause A7.1**, risk of loss or damage to the CPE passes to You upon delivery of the CPE to the Premises.

#### A8.0 Warranties

A8.1 **(Limited Warranties)** We warrant that:

(a) the CPE is new; and

(b) at the date of this Agreement We believe the CPE to be free from defects in materials and workmanship.

**A8.2 (Warranty)**

(a) **(Claim during Warranty Period)** You may during the Warranty Period notify Us in writing of any defect or suspected defect in the CPE.

(b) Subject to these terms and conditions, We will, to the extent necessary, inspect, replace or repair the CPE at no additional charge and as soon as practicable after receiving written notice from You.

**A8.3 (Exclusion of Warranties)** To the full extent permitted by law, We exclude all express or implied terms, conditions and warranties other than those expressly set out in this Agreement.

**A8.4 (Specific Warranties Excluded)** Without limiting clause **A8.2**, We make no express or implied warranty in relation to (i) the fitness of the Equipment for any particular purpose; (ii) the merchantability of the Equipment; or (iii) the description, state, quality or condition of the Equipment.

**A8.5 (Limitation of Liability)**

(a) Without limiting any general limitation contained in this Agreement, to the full extent permitted by law, You agree that if You suffer a loss (including economic loss), damage, cost, expense or claim howsoever arising from the use of the CPE, the maintenance or support supplied by Us, Our liability to You is limited to the repair or the replacement of the relevant CPE.

(b) We are not liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature that You may suffer from the use of the CPE.

(c) We will not be liable under **clauses A8.1** and **A8.2** if the defect is the result of (i) improper use or mismanagement of the CPE by You; (ii) operation of the CPE other than in accordance with the instructions given by Us; (iii) use of the CPE in a manner not reasonably contemplated by Us; (iv) modification of the CPE not authorised by Us; (v) use of the CPE in a manner contrary to law; (vi) subjecting the CPE to unusual or not recommended physical, environmental or electrical stress; (vii) reinstallation or moving of the CPE by a person other than Us; (viii) use of the CPE by a person other than You; (ix) Your failure to comply with any terms of this agreement; or (x) Your failure or refusal to install engineering changes or enhancements recommended by Us.

**A8.6 (Cost of inspection)** If You provide a notice of a defect or suspected defect and Our inspection of the CPE reveals no defect, the direct and indirect costs and expenses associated with such inspection will be paid by You as an additional charge.

**A8.7 (Specific warranties)** You agree that the warranty provisions in this clause may, at Our option, be varied or replaced by specific warranty conditions issued in respect of the CPE.

**A8.8 (Limitation of Liability for Maintenance Services)** Without limiting any other limitation contained in this Agreement, to the full extent permitted at law, We are not liable or responsible to You for any damage, loss, cost or expense incurred by You or a third party caused by:

- (a) malfunctioning of the CPE;
- (b) interference with the CPE by You or Your employees, servants, agents or a third party;
- (c) misuse or intentional damage to the CPE by You or Your employees, servants, agents or a third party;
- (d) circumstances beyond Our control; or
- (e) any changes to the CPE or modification by a third party.

**Part B - Mobile Services**

**The following terms and conditions apply to the provision of mobile services**

**B1.0 Notification of problems**

You must notify Us immediately if there is any problem with the service or SIM card, or if Your mobile phone or SIM card is lost or stolen.

**B2.0 Use of Mobile Phone Overseas**

**B2.1 (Charges for roaming services)** If You use a roaming service overseas in connection with Your mobile phone, You agree to pay:

- (a) all call charges in connection with the provision and use of the roaming services, including local taxes and surcharges; and
- (b) if required by Us, a \$500 security deposit prior to making roaming facilities available.

**B2.2 (Refund of Security Deposit)** The security deposit, if any, less any costs, losses or liabilities deducted from it by Us as a result of any breach of these terms and conditions by You, will be returned to You on the termination of the service.

**B2.3 (Acknowledgement)** You acknowledge and agree that while roaming an overseas network will provide some of the services and that as a result of this there may be limitations to the overseas networks, which may have not been advised to You or Us.

**Part C - Voice and Video Conferencing Service**

The following terms and conditions apply to the provision of Voice and Video Conferencing Services

**C1.0 Conditions of Voice & Video Conferencing Service**

- C1.1 **(Confidentiality of Account)** You are responsible for maintaining the confidentiality of Your owner number and any personal identification numbers and passwords and for restricting access to Your account.
- C1.2 **(Your liability)** You agree to accept responsibility and liability for all uses and activities that occur under Your Account whether lawful or unlawful and whether or not actually or expressly authorised by You.
- C1.3 **(Termination or suspension of Account)** We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders at Our sole discretion.

(c) We will terminate the Service if You cease to be a customer of Telstra or a reseller;

(d) the installation of the Service may cause temporary disruption to the standard telephone service;

(e) certain incompatible products will not be supplied to You by Telstra or a reseller of Telstra;

(f) where a telephone exchange area is shown as being DSL enabled, there is no guarantee that individual telephone services provided from that exchange will qualify for DSL service provision;

(g) the performance of the end-to-end service offered over DSL is determined by the quality of the copper line & the distance from the DSL exchange and as such the performance of the end-to-end service can only be estimated until We have qualified the line performance;

(h) We will accept a customer order upon appropriate qualification where the line performance meets Our service objectives and the availability of the Service;

**Part D - Data and DSL Service**

The following terms and conditions apply to the provision of Data and DSL Services

**D1.0 Conditions of Data &/or DSL Service**

- D1.1 **(No Customer Service Guarantee)** We do not supply a standard telephone service with the ADSL/SHDSL access component and as such the Service is not subject to the "Customer Service Guarantee" standard administered by the Australian Communications and Media Authority and it may be necessary to terminate the service if You request another carrier to provide a standard telephone service after the date of this agreement.
- D1.2 **(Method of providing Service)** We may, at Our discretion, provide the Service by using either:
  - (a) an existing or new Unconditioned Local Loop Service ('ULLS'); or
  - (b) an existing or new access line that supplies a standard telephone service provided by Telstra Corporation Limited ('Telstra') or a reseller of Telstra, depending on the technical and operational requirements of the particular Service.
- D1.3 **(Conditions)** You agree that:
  - (a) You are a customer of Telstra or a Telstra reseller in respect of the standard telephone service;
  - (b) We can only provide the Service whilst You remain a customer of Telstra or a reseller for the standard telephone service;

(i) for the purpose of measurement of data usage 1000MB = 1GB;

(j) data contracts cannot be backdated or altered retrospectively due to the incorrect selection of usage plan.

**D2.0 ACCOUNT INFORMATION**

**D2.1 (My Account)**

(a) "My Account" online administration tool is available 24 hours a day for monitoring data use on all contracts.

(b) Password and user access codes need to be obtained from Us.

(c) All excess data charges are applicable and payable by the due date.

**D2.2 (Your Obligations)** It is Your responsibility, not Our responsibility, to monitor and notify You of Your current and on going data usage (refer to "My Account" to monitor Your usage regularly).

**D2.3 (Excess data usage)**

(a) In the event that it is noted by Us that there is a significant increase in data usage resulting in excess data charges being incurred by You over and above the contracted data plan, We reserve the right to increase the current plan to a higher inclusive plan to ensure higher excess data charges are minimised.

(b) We will give You seven (7) days notice by email of Our intention to increase Your data plan.

(c) You may at any time change back to the original plan by written notice to Us.

(d) All excess data charges are due to be paid by You to Us on the due date.

**D3.0 Acceptable use of Data and DSL Service**

In addition to the provisions of **clause D1.3**, You agree to comply with the acceptable use standards which include but are not limited to the following:

(a) not to send e-mail or data that may destroy or damage an e-mail recipient's computer;

(b) not to knowingly accept e-mail or data which is unlawful, and violates or infringes upon the rights of any person or corporation;

(c) not to reveal confidential information about Us and or Our suppliers which may result in unauthorised usage of the services by a third party;

(d) not to transmit information or data which contains viruses or other harmful components;

(e) not to interfere, damage or destroy computer systems operations of the Services including disobeying any of Our requirements, procedures, policies or regulations, other users and or third parties; and

(f) not to store or transmit any unlawful, threatening, defamatory, offensive or pornographic material that constitutes a criminal or civic offence under State and Commonwealth Laws.

**D4.0 Inaccessibility due to interference**

You agree that:

(a) any service levels for the data service(s) do not apply where You are unable to access the data service(s) due to any interference with the CPE that prevents the CPE from: (i) transmitting to, or receiving signals from, any network used by Us; and (ii) which are a result of any changes to the surrounding environment subsequent to the installation of the CPE; and

(b) You must either: (i) take all steps reasonably necessary and within its control to ensure that the

interference is removed; or (ii) where it is not possible to remove the interference, You must engage Us to relocate the CPE at Your cost.

**Part E Mobile Number Portability**

**The following terms and conditions apply in relation to mobile number portability**

**E1.0 (Mobile Number Portability)**

(a) Mobile Number Porting Switching ("**Porting**") Your mobile Service Number ("**MSN**") from Your current mobile service provider to Us is covered by the Australian Communications Industry Forum. Industry Code – Mobile Number Portability ACIF C570 June 2001 ("**MNP Code**") and bilateral arrangements.

(b) Provided Your MSN is capable of being Ported, You may Port Your MSN from Your current Mobile Service Provider to Us if that MSN is declared Portable under the ACA Numbering Plan 1997 and no exemption has been granted by the ACA.

(c) If the choose to Port Your MSN from Your current Mobile Service provided to Us the terms of Our current terms and condition for that Service will apply as may be varied from time to time.

**E2.0 (Conditions)** You acknowledge and agree with the following:

(a) If Your MSN is ported, only Your MSN switches to Us and no existing value added services with Your current Mobile Service Provider will be transferred, which may result in the loss of (or the loss of access to) these services from Your current Mobile Service Provider, including voice mail, SMS, paging or facsimile services (such services may be provided by Us upon application and payment of any relevant fees).

(b) You may have outstanding contractual obligations and costs to Your current Mobile Service Provider.

(c) You may have an ongoing contract with Your current Mobile Service Provider which requires the payment of cancellation and or termination fees (including an early termination fees) to that mobile Service Provider if You switch to Us.

(d) Your current Mobile Service Provider may or may not disconnect Your existing mobile service and value added services, and Porting Your MSN may result in finalisation of Your existing account for that service.

(e) If You are Porting between GSM and CDMA or any other mobile platform, You may need to purchase a new handset.

(f) If You currently have a prepaid handset, You may need to get any SIM security or network

locking removed by Your current Mobile Service Provider and or have the handset reprogrammed prior to Porting, or get a new handset.

(g) You can only withdraw Your authority to Port to the Port Cutover Notification being received by Us from Your current Mobile Service Provider.

**E3.0 (No Warranty)** We do not warrant that:

(a) We can switch Your number from Your current Mobile Service Provider; and

(b) Your MSN will be switched to ARROW within any specified timeframe.

**E4.0 (Rejection of Request)**

(a) Your current Mobile Service Provider may reject the request to Port, if the information You provide is incorrect or does not match the data held by them.

(b) If Your request is rejected, We reserve the right to correct the information and resubmit the request to switch or dispute the rejection by Your current Mobile Service Provider.

(c) Additionally, in accordance with the MSN Code, a request to Port may be rejected if:

(a) the request is for a non-Portable MSN, (eg. a cancelled MSN);

(b) the MSN Code requires the request to be rejected; or

(c) We cannot otherwise provide Porting for that MSN in the circumstances.

**E5.0 (Limitation of Liability)** Without limiting any general limitation contained in this Agreement, acting in accordance with the MNP Code and any other bilateral arrangements, in the event of a Port to Us, or Port Withdrawal or Port Reversal to Your previous Mobile Service Provider, We are:

(a) not responsible for any period of outage of Your Mobile Service and or any related or ancillary services;

(b) to the extent that any statutory warranties cannot be lawfully excluded, You agree that Our liability to You will be limited in contract, tort or other wise direct or indirect, for or in relation to the Port, or Port Withdrawal or Port Reversal, including any negligent act or omission by Us.

**E6.0 (Porting from Us)** If You wish to Port Your MSN from Us to another Mobile Service Provider, then You must contact the other provider.

**E7.0 (Termination Fees)** If You Port Your MSN from Us to another Mobile Service Provider and Your agreement with Us has not expired, You will be liable for any termination fees, including the remaining Minimum Monthly Spend amounts for the remainder of the Agreement period.

**E8.0 (Charges)** We reserve the right to charge to Port Your MSN to or from ARROW.

**E9.0 (Provision of Information)** You expressly authorise Us to provide information regarding Your MSN, the network type to other telecommunication service providers to enable the transfer of Your mobile service from one mobile Service Provider to another, to allow call routing, for customer network fault management, for preventing of fraud, and for routing of SMS messages to Your MSN after porting activity.

**E10.0 (Further Information)** For further information on the Porting process please refer to the relevant MNP CODE

**Part F Local Number Portability**

**The following terms and conditions apply in relation to local number portability**

**F1.0 (Local Number Portability)** Local Number Portability (LNP) refers to the transfer of a standard telephone service number (for example, a Business Line service or an ISDN 10) between service providers and includes transfers between Telstra and its service providers and between Telstra and other carriers.

**F2.0 (Time)** LNP to, or from, Us takes between 30 and 120 working days.

**F3.0 (Pricing)** Whilst waiting for Your service to port to Us We will charge You at Our Telstra Network prices until the port is completed.

**F4.0 (Further Information)** For further information on the Porting process please refer to the relevant LNP CODE