

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Terms and Conditions, unless the context indicates otherwise:

ACL means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement means:

- (a) the Business Essentials Agreement signed by the Customer;
- (b) each SOW entered into in accordance with this Agreement;
- (c) any product terms adopted by Arrow VD from time to time in respect of specific services to be provided pursuant to this Agreement (**Product Terms**);
- (d) these General Terms and Conditions; and
- (e) any document by which the parties agree in writing to a variation of the Agreement (**Variation**).

Arrow VD means Australian Telecommunications Pty Ltd (ABN 88 099 741 590), trading as Arrow Voice & Data.

Arrow VD Personnel means any person or persons that Arrow VD designates to perform the Services on its behalf.

Business Day means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

Business Essentials Agreement means the cover page to this Agreement signed by the Customer.

Business Hours means between 8:00am and 6:00pm on a Business Day.

Confidential Information means any information:

- (a) relating to the business of either party;
- (b) of a party which is designated by that party as confidential;
- (c) which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential; or
- (d) which is disclosed by one party to the other party, directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with this agreement, whether that information is in oral, visual or written form or is recorded or embodied in any other medium.

Customer means the Customer named in the Business Essentials Agreement.

End Date means the End Date specified in the Business Essentials Agreement;

Event of Default means an Event of Default as specified in **clause 18.1**.

Fees means the fees and expenses payable by the Customer to Arrow VD for the Services, as specified in the applicable SOW and payable in accordance with **clause 8**.

GST has the meaning given in the GST Act. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the Guarantor(s) named in the Business Essentials Agreement.

Insolvency Event means the happening of any of the following events:

- (a) a receiver, controller, administrator, liquidator, trustee or other external administrator is appointed in respect of a party;
- (b) an application for winding up is presented or an order is made or any effective resolution is passed for the winding up of a party;
- (c) a party enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;
- (d) a party is, or states that it is, unable to pay its debts when they fall due;
- (e) any secured creditor to a party enforces its security; and
- (f) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

IP Rights includes all patents, copyright, rights in circuit layouts, registered designs, trademarks, trade, business or company names, processes, know-how or other like rights and any right to apply for registration of any of the former and the right to have confidential information kept confidential.

Pool of Funds means the Pool of Funds payable by the Customer to Arrow in accordance with **clause 8.2**.

Services means the services to be provided by Arrow VD to the Customer in accordance with a SOW.

SLA means the Service Level Agreement included in a SOW.

SOW means a Statement of Work entered into by the parties pursuant to this Agreement.

Support Start Date means the Support Start Date specified in the Business Essentials Agreement. **Term** means the period commencing on the Commencing Date and expiring on the later of:

- (a) the End Date; and
- (b) the expiry of the last SOW entered into by the parties under this Agreement,

subject to the parties' rights of early termination pursuant to **clause 18**.

1.2 Interpretation

In these General Terms and Conditions, unless the context indicates otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this document;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph or schedule of or annexure to this document;
- (d) a reference to "\$" is to Australian dollars;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture or association;
- (f) a reference to a statute or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document;
- (i) a covenant, agreement, representation or warranty on the part of or in favour of two or more persons binds them or is for the benefit of jointly and severally;
- (j) if an event must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day; and
- (k) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Paramountcy

To the event of any inconsistency between the components of this Agreement, this Agreement shall be read in the following order of precedence:

- (a) a Variation;
- (b) an SOW;
- (c) any applicable Product Terms;
- (d) these General Terms and Conditions;
- (e) the Business Essentials Agreement.

2. SERVICES

- (a) The Customer engages Arrow VD to provide the Services during the Term.
- (b) The Services to be provided by Arrow VD to the Customer under this Agreement will be as specified in an SOW signed by the parties.

- (c) The parties may enter into any number of SOWs during the Term.
- (d) Arrow VD agrees to provide the Services to the Customer:
 - (i) during Business Hours, unless otherwise specified in writing;
 - (ii) at the location(s) specified in an SOW, or if no location is specified, at the location(s) Arrow VD determines to be most appropriate.
 - (iii) with professional skill and care, using appropriately qualified personnel; and
 - (iv) otherwise, in accordance with the terms and conditions of this Agreement.

3. SERVICE STANDARDS

- (a) Arrow VD does not warrant that Services will be uninterrupted or error free.
- (b) If SLAs are specified in the applicable SOW, Arrow VD will use all reasonable efforts to meet or exceed those SLAs.
- (c) Arrow VD does not guarantee that SLAs will be met. If an SOW specify that credits or rebates will apply, those credits or rebates are your sole remedy in respect of service level failure.

4. THIRD PARTY MATERIALS

- (a) The Customer acknowledges and agrees that in providing the Services, Arrow VD may supply it with materials (including software) licenced by third parties.
- (b) The Customer:
 - (i) must comply with the terms of any third party licence applicable to a Service; and
 - (ii) indemnifies Arrow VD against any loss, damage, claim, liability or demand incurred by Arrow VD if the Customer fails to comply with a third party licence applicable to a Service.
- (c) Any remedial work required as a result of the Customer's failure to comply with this clause 4 is deemed to not form part of the Services and will only be carried out by Arrow VD upon the parties first entering into a Variation pursuant to **clause 11** below.

5. SOFTWARE

- (a) For the purposes of this **clause 5**:
 - (i) **defect** means a reproducible failure of the software to work substantially as described in the documentation that accompanies it.
 - (ii) **warranty period** means 90 days from the date of delivery, unless otherwise specified by Arrow VD at the time of delivery.
- (b) Subject to **clause 5(c)**, to the extent that an SOW requires Arrow VD to provide or licence to the Customer any software under this Agreement:

- (i) Arrow VD warrants that the software will operate substantially in accordance with its accompanying documentation during the Warranty Period;
- (ii) Arrow VD will use its reasonable efforts to correct any defect provided that:
 - (A) the Customer notifies Arrow VD of the defect during the warranty period;
 - (B) the Customer has used the software in accordance with its accompanying documentation and Arrow VD's recommendations;
 - (C) the software has not been used on or in conjunction with equipment or software not approved by Arrow VD;
 - (D) the software has not been modified by anyone other than Arrow VD;
 - (E) the defect is not due to a change in the Customer's IT or physical environment after delivery of the software; and
 - (F) the Customer is not in breach of this Agreement or any SOW.
- (c) Arrow VD provides no warranty on:
 - (i) the integrity of software released by any third party vendor, including but not limited to patches, hotfixes, updates and device drivers. As such:
 - (A) Arrow VD will not be liable for any damages caused by an application (automated or otherwise) of any software provided under this Agreement; and
 - (B) any remedial work required is deemed to not form part of the Services and will only be carried out by Arrow VD upon the parties first entering into a Variation pursuant to **clause 11** below.
 - (ii) the effectiveness of anti-virus and anti-malware products or services. As such:
 - (A) Arrow VD will not be liable for any damages caused by any failure of anti-virus or anti-malware provided under this Agreement; and
 - (B) any remedial work required is deemed to not form part of the Services and will only be carried out by Arrow VD upon the parties first entering into a Variation pursuant to **clause 11** below.

6. REMOTE ACCESS

- (a) The Customer acknowledges that some Services may require that it provides Arrow VD with remote management of or access to the Customer's network.

- (b) In the event that either an SOW specifies or Arrow VD gives the Customer written notice that Arrow VD will require remote management of or access to the Customer's network:
 - (i) the Customer authorises Arrow VD to install any remote management tools as it deems necessary to supply the relevant Services;
 - (ii) remote management and/or access to the Customer's network will occur via a secured management link service supplied by Arrow VD for this purpose.
 - (iii) The Customer authorises Arrow VD's access to the Customer's network for the purpose of providing the Services.

7. DELAY

- (a) Arrow VD will use its reasonable efforts to meet any deadlines or milestones that it promises to meet but will not be liable for any delay or failure to meet these.
- (b) To the extent that Arrow VD's provision of a Service is impaired by:
 - (i) the Customer;
 - (ii) a third party;
 - (iii) a failure or defect (not caused by Arrow VD) in hardware or software (not supplied by Arrow VD); or
 - (iv) an event beyond Arrow VD's reasonable control,
 - then Arrow VD's obligation to provide the Service is suspended and Arrow VD will not be liable to the Customer in respect of any delay or failure to provide the Service.
- (c) Where Arrow VD's personnel are delayed from performing a Service due to a delay caused by the Customer, Arrow VD may invoice the Customer for the costs of that delay based on the hourly rate for the relevant member of Arrow VD's personnel for the duration of the delay, subject only to Arrow VD agreeing to make reasonable efforts to reallocate its personnel to other chargeable duties.

8. FEES AND PAYMENT

8.1 Fees

- (a) In consideration of the provision of the Services, the Customer will pay Arrow VD the Fees.
- (b) Where any Fee is charged based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.
- (c) The Customer acknowledges that the Fees will be exclusive of any GST that may be charged by Arrow VD to the Customer, and therefore, Arrow VD will be entitled to add on GST.

8.2 Pool of Funds

- (a) If specified in an SOW, the Customer will advance to Arrow VD at the time(s) specified in the SOW the amount(s) specified in the SOW to be held by Arrow VD as a Pool of Funds.

- (b) The Pool of Funds may be drawn on by Arrow VD for any proactive work to be carried out by Arrow VD under the SOW.
- (c) For the purposes of this **clause 8.2, proactive work** means any Service to be carried out by Arrow VD under the relevant SOW which requires monitoring by Arrow VD, including but not limited to:
 - (i) Network Maintenance;
 - (ii) Ad hoc fault fix;
 - (iii) Anti-virus and patch management;
 - (iv) Back-up management; and
 - (v) Hardware deployment and replacement.
- (d) Any amount held by Arrow VD as a Pool of Funds is non-refundable. However, Arrow VD will allow the Customer to pay for Services from the Pool of Funds until the earlier of:
 - (i) the Pool of Funds having been exhausted; and
 - (ii) 2 years having passed since the Pool of Funds was advanced (upon which any remaining amount will be forfeited to Arrow VD).

This **clause 8.2(d)** will survive termination of this Agreement and/or the relevant SOW.

8.3 Payment

- (a) Arrow VD will issue the Customer with a monthly tax invoice in accordance with the GST Act in relation to remuneration payable under this clause. Payment must be made by the Customer to Arrow VD within 14 days following receipt of such invoice.
- (b) Fees or charges that do not appear on a monthly invoice may appear on future accounts due to processing procedures.
- (c) Monthly invoices will include details of any amounts paid from the Pool of Funds
- (d) The Fees may include fees for connection, initiation or cancellation of any services, as specified in the applicable SOW.
- (e) All Fees must be paid in Australian dollars by direct debit using a bank account or credit card acceptable to Arrow VD or by any other method agreed by Arrow VD from time to time. If any direct debit is dishonoured or rejected, Arrow VD will charge the Customer a dishonour fee of \$29.
- (f) If at any time the Customer cancels a direct debit option, Arrow VD will charge the Customer a monthly manual payment surcharge of \$20.

- (g) All payments made using Credit or Debit cards will be subject to a % surcharge which varies based on the type of card used. To review the current surcharge rates, please refer to our customer information webpage at <https://arrowvoice.com.au/about-us/customer-information>.
- (h) The Customer must pay the invoiced amount, without deduction, set-off or counterclaim.

9. DISPUTED AMOUNTS

9.1 General

In the event that the Customer disputes an invoice, the Customer must pay the undisputed amount by the due date of the invoice and provide Arrow VD with detailed written notice of the reasons for disputing the disputed amount.

9.2 Fixed Terms

If Arrow VD agrees to provide a Service for a fixed term, the Customer agrees to pay Arrow VD the amount payable for the whole of that term on the date of the applicable SOW, unless Arrow VD agrees in writing that the Customer may pay that amount by instalments.

9.3 Late Payment Fees

Without relieving the Customer of its obligation to pay amounts when due, if an invoice is not paid by the due date, the Customer must pay Arrow VD the following additional fees and charges:

- (a) if the invoice is not paid within 14 days of the due date, \$30;
- (b) if the invoice is not paid after the period referred to in **clause 9.3(a)** a further \$50;
- (c) interest on the amount outstanding at the rate of 12% per annum calculated daily from the due date for payment until the date for payment in full.

9.4 Deactivation

Arrow VD may (but is not obliged to) suspend, deactivate or cancel (as applicable) all or part of the Services if any amount is not paid by its due date.

10. GOODS AND SERVICES TAX

- (a) In this clause **input tax credit, recipient, supplier, tax invoice** and **taxable supply** have the meanings set out in the GST Act.
- (b) A recipient of a taxable supply made under the Proposal must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.
- (c) The recipient must pay the GST to the supplier:
 - (i) if there is a due date for the consideration for the taxable supply, on the same day as the due date for the consideration in respect of the relevant taxable supply; or

- (ii) if there is no due date, within 7 days of receiving a written request for a tax invoice from the supplier.
- (d) A party's obligation to reimburse another party for an amount paid or payable to a third party (eg a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

11. VARIATION OF SERVICES

- (a) The parties may by mutual written agreement vary any Services to be provided under an SOW (**Variation**) or the Fees payable for such Services.
- (b) Any Variation must include sufficient details to clearly identify the SOW to which the Variation relates.

12. INSURANCE

- (a) Arrow VD must take out and maintain for the entirety of the Term the following policies of insurance:
 - (i) public liability insurance for a minimum of 10 million for each occurrence;
 - (ii) public indemnity insurance for a minimum of 10 million for each occurrence; and
 - (iii) worker's compensation insurance as prescribed by law.
- (b) At the request of the Customer, Arrow VD will supply a copy of certificates of currency of each insurance policy taken out pursuant to **clause 12(a)** to the Customer.

13. NO EMPLOYMENT RELATIONSHIP

Nothing in this agreement constitutes the relationship of employer and employee between the Customer and Arrow VD or between the Customer and Arrow VD's Personnel. It is the express intention of the parties that any such relationships are denied.

14. CONFIDENTIALITY

- (a) Each party agrees to keep the Confidential Information of the other party confidential and to use such information only for the purpose of performance of its obligations under this Agreement.
- (b) Both parties must:
 - (i) not disclose any Confidential Information to anyone else except as permitted under this Agreement;
 - (ii) limit the disclosure of Confidential Information within its own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of this Agreement and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause.

- (c) The obligations of confidentiality in **clause 14(b)** will not apply to information which:
 - (i) is generally available in the public domain except where such availability is as a result of a breach of this agreement;
 - (ii) was known prior to the disclosure of the information by the other party; or
 - (iii) is required to be disclosed by an applicable law or court order.
- (d) The obligations imposed under this clause will survive the termination of this Agreement.

15. IP RIGHTS

- (a) Unless otherwise specified in writing, Arrow VD exclusively owns all IP Rights in material, including software, that it designs, creates, modifies, supplies or licences, even if it was created or modified for or suggested by the Customer.
- (b) To the extent necessary for the Customer to receive the benefit of a Service, Arrow VD grants you a non-exclusive, non-transferable, licence to use such materials.
- (c) If any of the Customer's materials becomes combined with Arrow VD's materials with the Customer's knowledge and without its objection, then Arrow VD will have a perpetual, royalty-free, irrevocable, non-exclusive licence to copy, use, adapt and distribute and sub-license those materials in the course of its ongoing business.

16. WARRANTIES AND INDEMNITIES

- (a) Arrow VD warrants that:
 - (i) it shall perform the Services in an efficient and professional manner and that it will observe standards generally observed in the industry for similar services;
 - (ii) it shall use its best endeavours to provide the Services in conformity with the applicable SOW and any SLAs included in the SOW;
 - (iii) Arrow VD's Personnel have the necessary skills, professional qualifications and experience to perform the Services in accordance with the applicable SOW;
 - (iv) it has full capacity and authority to enter into this Agreement;
 - (v) it has obtained all necessary and required licences, consents and permits to perform the Services; and
 - (vi) it is responsible for all costs, fees, expenses and charges for training necessary or required to enable Arrow VD's Personnel to perform the Services.
- (b) The Customer acknowledges that Arrow VD does not warrant that the Services will or can be provided error free.

- (c) If Arrow VD performs the Services (or any part of them) negligently or in breach of this Agreement, then if requested by the Customer, Arrow VD will re-perform the relevant part of the Services. The Customer must make any such request within 6 months of the date on which Arrow VD completes performing the relevant Services.
- (d) Arrow VD covenants that it will be solely responsible for the payment to Arrow VD's Personnel of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefits to which they are entitled as Arrow VD's employees or agents and to otherwise comply with legislation applicable to Arrow VD's Personnel.
- (e) Throughout the Term, Arrow VD must:
 - (i) comply at Arrow VD's own cost and expense with all Acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, state and local government departments, bodies, and public authorities or other authority so far as the same may affect or apply to Arrow VD or to the Services; and
 - (ii) indemnify the Customer from and against all actions, costs, charges, claims and demands in respect of the agreement.
- (f) Arrow VD is responsible for and will indemnify the Customer against liability for all loss, damage or injury to any person or property caused by Arrow VD, or Arrow VD's Personnel in the course of providing the Services as the result of the negligent conduct of Arrow VD or Arrow VD's Personnel.
- (g) Each of the parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

17. LIMITATION OF LIABILITY

- (a) Except in relation to liability for personal injury (including sickness and death), property damage or an infringement of confidentiality or IP Rights, the liability of Arrow VD in damages (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) in respect of any act or omission of Arrow VD in connection with its obligations under this agreement will not exceed the Fees payable by the Customer under the applicable SOW in the 12 month period preceding the liability arising, even if Arrow VD has been advised by the Customer as to the possibility of such losses being incurred.
- (b) Subject to **clause 17(c)**, any condition or warranty which would otherwise be implied in this agreement is hereby excluded.
- (c) Pursuant to section 64A of the ACL, this clause applies in respect of any goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this subclause will not apply if the Customer establishes that reliance on it would not be fair and reasonable. Liability for breach of a guarantee conferred by the ACL (other than those conferred by sections 51 to 53 of the ACL) is limited:
 - (i) in the case of goods, to any one of the following as determined by Arrow VD:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of Services, to any one of the following as determined by Arrow VD:
 - (A) the supply of the Services again; or
 - (B) the payment of the cost of having the Services supplied again.

18. TERMINATION OF AGREEMENT

18.1 Event of Default

A party commits an Event of Default under this Agreement if:

- (a) in the case of the Customer, the Customer fails to pay any amount payable to Arrow VD under this Agreement on the due date and does not remedy that failure within 2 Business Days of being given written notice to do so;

- (b) that party fails to perform any obligation under this Agreement (other than the Customer's obligation to pay Arrow VD any amount payable under this Agreement as referred to at **clause 18.1(a)** above), and does not remedy that failure within 10 Business Days of being given written notice to do so;
- (c) an Insolvency Event occurs in respect of that party; or
- (d) in the case of the Customer, there is a change in the ownership or control of the Customer's business, including a change of director/s or a change in the beneficial ownership of the Customer by 51% or more, without Arrow VD's prior written consent.

18.2 Termination by either party

- (a) Either party may terminate this Agreement by written notice to the other party in the event that the other party commits an Event of Default.
- (b) In the event that this Agreement is terminated for any reason, Arrow VD will cease providing Services on the date of termination or any later date specified in the notice.

18.3 Termination of SOW

- (a) Arrow VD may terminate an SOW (or any Service forming part of an SOW) if:
 - (i) the Customer fails at any time to satisfy any prerequisite for supply of a Service;
 - (ii) prior to providing the Service, Arrow VD reasonably determines that provision of the Service is not technically or operationally feasible or it is not commercially viable for it to supply the Service to the Customer;
 - (iii) Arrow VD can no longer provide the Service or ceases to provide the Service generally; or
 - (iv) it is required to do so by law.
- (b) The Customer may terminate an SOW (or any Service forming part of an SOW) upon 60 days prior written notice to Arrow VD.

18.4 Consequences of Termination

- (a) Termination of this Agreement will not relieve or discharge the parties from any liabilities or obligations incurred prior to termination.
- (b) Upon termination of this Agreement:
 - (i) the Customer must pay to Arrow VD any Fees payable for any period prior to the date of termination (**Termination Date**) within 14 days of the Termination Date.
 - (ii) Arrow VD may draw upon the Pool of Funds to pay any Fees payable for the period prior to the Termination Date and any other amount payable by the Customer as at the Termination Date.

- (iii) Arrow VD must either, as directed by the Customer, deliver or destroy any Confidential Information or other property of the Customer which is in the possession or control of Arrow VD as at the Termination Date.

19. SUB-CONTRACTING

- (a) The Customer acknowledges and agrees that Arrow VD may subcontract the performance of any of its obligations under this Agreement to any other person.
- (b) Arrow VD will be responsible for the work of any of subcontractors.
- (c) Any work undertaken by any subcontractor engaged by Arrow VD must be undertaken to at least the same standard as required under this Agreement.

20. DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to this Agreement, then either party must deliver by hand or send by certified mail to the other party a notice of the dispute in writing identifying and providing details of the dispute.
- (b) Despite the existence of a dispute, each party must continue to perform its obligations under the Agreement.
- (c) Within 10 days of service of a notice of dispute, a senior representative of each of Arrow VD and the Customer must meet and, in good faith, attempt to resolve the dispute.
- (d) If the dispute is not resolved within 10 days of the date that the representatives meet under **clause 20(c)**, the parties to this document expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (**ADC**). The mediation will be conducted in accordance with the ADC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ADC (**Guidelines**). The terms of the Guidelines, which set out the procedures to be adopted, the process of selection of mediator and the costs involved, are incorporated into this document.
- (e) Neither party may begin legal proceedings in connection with a dispute between the parties arising out of or in connection with or in any way related to this document or refer the dispute to arbitration unless mediation under **clause 20(d)** has taken place. However, this limitation does not apply:
 - (i) if a party wants to apply for equitable relief or urgent interlocutory relief (and **clause 20(d)** does not apply in the circumstances);
 - (ii) to a party who attempts in good faith to comply with **clause 20(d)** but cannot do so because the other party does not comply with that clause; or

- (iii) if the mediation cannot take place within a reasonable time, for reasons beyond the control of the parties.
- (f) Compliance with the procedures in this **clause 20** is a precondition to the entitlement of a party to commence litigation in relation to a dispute (except in relation to applications for urgent interlocutory or declaratory relief).

21. PPSA

21.1 Definitions

In this **clause 21**:

- (a) **PPSA** means the *Personal Property Securities Act 2009* (Cth); and
- (b) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

21.2 Consent to registration

- (a) The Customer acknowledges that by virtue of this Agreement, Arrow VD has a security interest in any goods provided to the Customer by Arrow VD under this Agreement.
- (b) The Customer consents to Arrow VD perfecting any security interest that it considers this Agreement provides for by registration under the PPSA. The Customer agrees to do anything Arrow VD reasonably asks to ensure that the security interest:
 - (i) is enforceable, perfected and otherwise effective; and
 - (ii) has priority over all other security interests.

21.3 Waiver of notices and information requests

- (a) To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent Arrow VD from giving a notice under the PPSA.
- (b) The Customer agrees not to exercise its rights to make any request of Arrow VD under section 275 of the PPSA. However this does not limit the Customer's rights to request information other than under section 275.

21.4 Enforcement of security interest

- (a) To the extent the law permits, Arrow VD need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (b) If Arrow VD exercises a right, power or remedy in connection with this Agreement or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless Arrow VD states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

21.5 Confidentiality

Neither party may disclose any information of the kind mentioned in section 275(1) of the PPSA, except where disclosure is required by section 275(7) or to its financial, legal or business advisers. The Customer will not authorise the disclosure of any information under that section or waive any duty of confidence that would otherwise permit non-disclosure under that section.

21.6 Dealings with Equipment

- (a) The Customer must not do any of the following in relation to any goods (including software, hardware and equipment) to it by Arrow VD provided under this Agreement:
 - (i) create or allow any interest in, or dispose or part with possession of, the goods;
 - (ii) allow the goods to be taken outside Australia;
 - (iii) allow the goods to become an accession to or commingled with any other property.
- (b) The Customer must notify Arrow VD if anything mentioned in **clause 21.6(a)** occurs immediately upon it becoming aware of it.

21.7 Changes in the Customer's details

- (a) The Customer must notify Arrow VD at least 14 days before it does any of the following:
 - (i) changes its name;
 - (ii) changes its place of registration or incorporation;
 - (iii) changes or applies for an ACN, ABN, ARBN or ARSN under which an interest in any of goods supplied to the Customer by Arrow VD under this Agreement is or will be held.
- (b) The Customer must notify Arrow VD if anything mentioned in **clause 21.7(a)** occurs immediately upon it becoming aware of it.

22. GUARANTEE AND INDEMNITY

22.1 Guarantee

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

22.2 Indemnity

As a separate and independent obligation the Guarantor agrees to indemnify Arrow VD and hold it harmless against all losses, costs, liabilities or damage which Arrow VD 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.

22.3 Principal Obligations

The obligations of the Guarantor under this Guarantee and Indemnity are principal obligations imposed upon the Guarantor as principal debtor, and Arrow VD has 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.

22.4 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 Arrow VD.

22.5 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, wilful 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 Arrow VD 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 this Agreement to any person or corporation;
- (j) the Customer being under any legal liability;
- (k) 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.

22.6 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.

23. GENERAL PROVISIONS

23.1 Severability

- (a) If any clause or part of a clause of this Agreement is invalid, illegal, unlawful or otherwise being incapable of enforcement, that clause or part of a clause will be deemed to be severed from this Agreement and of no force and effect but all other clauses and parts of clauses of this document will nevertheless prevail and remain in full force and effect and be valid and fully enforceable.
- (b) No clause or part of a clause of this Agreement will be construed to be dependent upon any other clause or part of a clause unless so expressed.

23.2 Governing Law and Jurisdiction

- (a) This Agreement is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

23.3 Force Majeure

Neither party shall be liable for any delay in meeting or for any failure to meet its obligations under this Agreement due to any cause outside its reasonable control. If a party is prevented from meeting its obligations under this Agreement due to circumstances beyond its control, it shall notify the other party of the circumstances and the other party shall grant a reasonable extension of time for the performance of the obligations.

23.4 Further Assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

23.5 Amendments

Except where otherwise expressly stated, no provision of this Agreement may be varied except in writing signed by both parties.

23.6 Whole Agreement

This Agreement embodies the whole agreement between the parties relating to the subject matter of this Agreement and supersedes any and all oral and written negotiations and communications by or on behalf of any of them.

23.7 Rights Not Affected by Failure to Enforce

The failure of either party at any time to enforce any of the provisions of this document or any rights in respect hereto or to exercise any election herein provided will not be a waiver of such provisions, rights or elections or affect the validity of this document.