

1. APPLICATION

These Terms apply to any Agreement between You and Us which includes the rental of DaaS Equipment.

2. DEFINITIONS AND INTERPRETATION

2.1 (Definitions) In this Agreement, unless a contrary intention appears:

Agreement means the agreement comprised of:

- (a) the Application;
- (b) the Specifications;
- (c) these Terms; and
- (d) any other document that is expressed to be or that We agree in writing forms part of this Agreement.

Application means any application (howsoever named) completed by you in respect of DaaS Equipment.

Business Day means any day (other than a Saturday, Sunday or Public Holiday) we are open for business in Sydney.

Customer or **You** means the person or persons named on the Application as the Customer and if there is more than one, means each of them jointly and severally and includes their successors and assigns.

DaaS means 'Device-as-a-Service'.

DaaS Equipment means the goods and other property listed in the Specifications, including all software licenses, associated documents, manuals, installation certificates, maintenance records, spare parts and accessories and includes any replacement DaaS Equipment.

DaaS Fee means the DaaS Fee payable for the DaaS Equipment as set out in the Specifications.

DaaS Fee Instalment means for the duration of the Term and any Extended Term, the amount of a monthly instalment of the DaaS Fee (inclusive of stamp duty) plus GST payable in relation to that amount, as set out in the Specifications.

Encumbrance means any interest in, right or any form of security over the property, including, but not limited to:

- (a) any mortgage, pledge, lien or charge; or
- (b) any other security or preferential interest or arrangement of any kind with any creditor but not limited to have its claim satisfied in priority to other creditors.

Event of Default means an Event of Default as specified in **clause 11.1**.

Extended Term has the meaning given in **clause 9.2(a)**.

GST has the meaning given in the GST Law.

GST Law means the *A New Tax System (Equipment and Service Tax) Act 1999* (Cth) and all related and auxiliary legislation.

Initial Term means the terms specified in the Application or the Specifications as the Initial Term in accordance with **clause 9.1**.

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

- (a) a receiver, controller, administrator, liquidator, provisional liquidator, trustee, inspector, official manager, or similar person is appointed to, or exists in relation to a party's undertaking or any part of its undertaking;
- (b) an application for winding up or similar process of a party 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, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (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.

Payment Date means the dates for payment of DaaS Fee Instalments specified in the Specifications for the duration or the Term and any Extended Term.

Replacement Value of the DaaS Equipment means the cost of replacing the affected Equipment (as defined in **clause 9**) with new goods having specifications as nearly as possible the same as, but at least equal in all material respects to, those of the affected Equipment.

Specifications means any document (howsoever named) which sets out the specifications of this Agreement.

Term means the Initial Term and any Extended Term of this Agreement.

Terms means these Arrow 'Device-as-a-Service' (DaaS) Terms.

We, Our or **Us** means Australian Telecommunications Pty Limited (ACN 099 741 590) trading as Arrow Voice & Data.

2.2 (Interpretation) In this Agreement, unless a contrary intention appears:

- (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) an expression importing a natural person includes a body corporate, partnership, joint venture or association;
- (e) a reference to a statute or regulation includes all amendments, consolidations or replacements thereof;
- (f) a reference to a party to a document includes that party's successors and permitted assigns;
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document;
- (h) 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;
- (i) 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
- (j) 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.

3. OWNERSHIP OF THE DAAS EQUIPMENT

3.1 (Ownership) You acknowledge and agree that the DaaS Equipment remains our property at all times and you do not have any right, interest or claim in or over the DaaS Equipment except the rights expressly set out in this Agreement. Nothing in this Agreement is intended to result in any transfer of ownership of any hardware or software from Us to You.

3.2 (Identification)

- (a) Our DaaS Equipment is identified by appropriate lettering and numbering, which you must not change or obscure in any way unless we give you permission in writing to do so.
- (b) Subject to **clause 3.2(a)** above, you may add other markings as may be required, provided these markings are removed by you without damaging the DaaS Equipment prior to the return of the DaaS Equipment to us.
- (c) If you fail to remove any markings you may have added to the DaaS Equipment, we may do so at your cost.

4. DELIVERY, ACCEPTANCE, INSTALLATION AND RELOCATION

4.1 (Delivery and Acceptance) By signing a receipt acknowledgment for the DaaS Equipment that you rent, you acknowledge delivery and acceptance of the DaaS Equipment in good condition and working order.

4.2 (Location of Equipment)

- (a) You must keep the DaaS Equipment at the location at which it was delivered and installed by us or such other location as we agree to in writing.
- (b) You must not:
 - (i) attach the DaaS Equipment to any land or property; or
 - (ii) relocated the DaaS Equipment to any location other than a location referred to in **clause 4.2(a)** above, without our prior written consent.
- (c) If the DaaS Equipment is affixed to land, it does not become a fixture and may be removed by us at your cost.

4.3 (Change/Cancellation of Scheduled Dates)

- (a) Changes or cancellation by you of the scheduled dates of installation, as agreed by us, at any time less than 2 weeks from the commencement of the installation program will incur a fee of \$350.
- (b) Re-scheduled installation and/or training will be charged at the full daily rate; any previously agreed discounts on such rates will not apply.
- (c) Changes by you in the scheduled dates of installation and/or training may involve additional travel costs.
- (d) Changes during the installation program may require additional training days to be scheduled for re-training purposes.

5. DAAS FEE AND OTHER PAYMENTS

5.1 (DaaS Fees Payable)

- (a) Subject to **clause 5.1(b)**, you agree to pay to us the DaaS Fee for the Term, no later than 10 Business Days prior to the proposed date the DaaS Equipment is to be delivered to you.
- (b) Provided an event of default has not occurred, you are not in breach of your obligations under this Agreement or this Agreement is not terminated prior to the end of the then current Term for any reason, you may pay the DaaS Fee by paying the DaaS Fee Instalments to us each month in advance on the Payment Date for the duration of the Term and any Extended Term, in accordance with the terms of this Agreement.

- (c) Your obligation to pay to us the first DaaS Fee Instalment under this Agreement commences on the day that the DaaS Equipment is delivered to you in accordance with **clause 4.1**.

5.2 (Other Charges Payable by You) In addition to the DaaS Fee, you must also pay any applicable statutory duties (including stamp duty), fees, taxes or charges in connection with this Agreement or the DaaS Equipment.

5.3 (Payments)

- (a) All payments due to us must be made in Australian dollars by direct debit using a bank account or credit card acceptable to us.
- (b) You must pay the invoiced amount, without deduction, set-off or counterclaim.

5.4 (Late Payment)

- (a) If any amount due to us (including the DaaS Fee or any DaaS Fee Instalment) and any costs and charges that you are liable to pay under this Agreement) is not paid on the due date, you will pay interest on the amount not paid (**Overdue Amount**).
- (b) Interest on any Overdue Amount will be calculated monthly, at 10% per annum, from and including the due date to and including the date that we receive the Overdue Amount plus interest in full.
- (c) You expressly authorise us to set off against any moneys held by us on your behalf any Overdue Amount without prior notice to you. For the avoidance of doubt, this includes any amount held as a "Pool of Funds" under an 'Arrow VD Business Essentials Agreement'.

5.5 (Fundamental Term) The provisions of this **clause 5** are fundamental terms of this Agreement.

6. USE, CARE AND SERVICE OF THE EQUIPMENT

6.1 (Maintenance and Support) In addition to any general obligations we have under this Agreement, we will:

- (a) install the DaaS Equipment at the premises specified;
- (b) provide the Support Services detailed including initial training to your nominated staff on how to use the DaaS Equipment at the time of installation;
- (c) provide maintenance services as detailed; and
- (d) provide operation manuals and literature and other material to you which in our opinion are required for the use and operation of the DaaS Equipment.

6.2 (Acts of employees and agents) You will be liable to us for, and be bound by, any act of your agents, employees, contractors or any other person acting as your representative or gains access to the DaaS Equipment whilst the DaaS Equipment is in your care and control including without limitation:

- (a) any damage to the DaaS Equipment; or
- (b) the receipt and delivery of the DaaS Equipment.

6.3 (Your general obligations) At all times during the Term of this Agreement you must:

- (a) provide us with access to your premises to install and service the DaaS Equipment;
- (b) keep the DaaS Equipment in good working order and condition;
- (c) only use the DaaS Equipment in its business operation and for the purpose for which the DaaS Equipment were designed;
- (d) provide (at your own expense) adequate supervision, management and control of the use of the DaaS Equipment including ensuring that employees are adequately trained in the use and operation of the DaaS Equipment;
- (e) comply at your own cost with any laws relating to the use, operation, maintenance and possession of the DaaS Equipment, including obtaining any necessary licenses, permits or registration; and
- (f) use the DaaS Equipment in accordance with any instructions on use supplied by us or the manufacturer.

6.4 (Service of DaaS Equipment) You must allow us to provide the maintenance and support services specified in the Specifications and you must not in any way change or service the DaaS Equipment without our prior written consent.

6.5 (Access) If access to the DaaS Equipment is required for any purpose by us (including to ensure that you are complying with your obligations under this Agreement or to exercise any of our rights), you will allow (and where necessary procure approval for) us and our employees, agents and representatives reasonable access to the DaaS Equipment and the premises where the DaaS Equipment is located, any related equipment or peripherals as may be necessary, for us to repossess, diagnose, service and repair the DaaS Equipment or otherwise provide the services covered by this Agreement.

6.6 (Limitation of Liability for Maintenance Services) 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 DaaS Equipment, except to the extent caused or contributed to by the wilful or negligent act or omission of us or our employees, agents and representatives;
- (b) interference with the DaaS Equipment by you or your employees, servants, agents or a third party;
- (c) misuse or intentional damage to the DaaS Equipment by you or your employees, servants, agents or a third party;
- (d) circumstances beyond our control; or
- (e) any changes to the DaaS Equipment or modification by a third party.

6.7 (Additional Service Charges) If you require us to do any service or repairs to the DaaS Equipment as a result of any of the matters referred to in **clause 6.6**, you agree to pay for such services and work at our charge rates applicable at the time.

6.8 (Suspension of Maintenance and Support Services) In addition to our right to terminate this Agreement and any other rights at law or equity we may have, if you breach this Agreement (including not paying any amount when due) we may elect to suspend the maintenance and support services we provide until you have rectified the breach to our satisfaction.

6.9 (Exclusion of Conditions and Warranties) You acknowledge and agree that:

- (a) this Agreement contains all the terms and conditions of this Agreement of whatever nature; and
- (b) all other express or implied terms, conditions or warranties are excluded except to the extent any warranty or condition cannot be excluded by law.

7. INSURANCE

7.1 (Insurance) You must, at all times:

- (a) adequately insure against public liability for bodily injury or damage to property arising in connection with the DaaS Equipment for no less than \$20 million per accident or event; and
- (b) insure against loss, theft, destruction or confiscation of, or damage to the DaaS Equipment up to the greater of the Replacement Value or the Termination Value of the DaaS Equipment.

7.2 (Nature of Insurance) Any insurance effected by you must be satisfactory to us and note our interest in the insurance policy as the owner of the DaaS Equipment.

7.3 (Proof of Insurance) You agree to provide us with a copy of any insurance policy you have entered into in relation to the DaaS Equipment and such other information concerning the insurance as we reasonably request.

8. LOSS OR DAMAGE OF THE DAAS EQUIPMENT

8.1 (Loss) If during the Term the DaaS Equipment is lost, stolen, destroyed or damaged (such that in our reasonable opinion it cannot be repaired), you must:

- (a) immediately notify us in writing of the occurrence of such event;
- (b) continue to pay the DaaS Fee Instalments to us until the end of the Term; and
- (c) at the end of the Term pay to us the Replacement Value for the DaaS Equipment.

8.2 (Damage) If the DaaS Equipment is damaged and can be repaired, you must immediately contact us to repair the DaaS Equipment to good working order and condition.

8.3 (Insurance Payments) Where you have not complied with **clause 8.1** or **8.2**:

- (a) we are entitled to receive all amounts which are payable by an insurer or person as a result of an event in **clause 8.1** or **8.2** occurring;
- (b) if you receive those amounts, you hold them in trust for us; and
- (c) where the cost incurred by us for the replacement of the affected DaaS Equipment, or for repair and restoration of the damaged DaaS Equipment, is or will be in excess of any amounts held on trust by Us pursuant to **clause 8.3(b)**, you must pay that difference to us upon demand by us.

9. TERM

9.1 (Initial Term) Unless terminated earlier in accordance with **clause 10**, the term of your rental is as specified in the Specifications together with the period of any extension pursuant to **clause 9.2**.

9.2 (Extension of Term)

- (a) Subject to **clause 9.2(b)**, at the end of the Initial Term, the term of this Agreement will be automatically extended for a further 3 calendar months (**Extended Term**) unless you advise us in writing, no earlier than 90 days and no later than 30 days, prior to the expiry of the Initial Term that you do not want to extend the Term of this Agreement.

- (b) If this Agreement is extended in accordance with **clause 9.2(a)**, it will continue to be automatically extended for additional Extended Terms of 3 calendar months, until such time as the Agreement is terminated by either party upon written notice to the other party given at least 30 days before the expiry of the then current Extended Term.
- (c) Despite **clause 9.2(a)**, if we advise you prior to the expiry of the Initial 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 Initial Term.

10. TERMINATION

10.1 (Termination) This Agreement will terminate on the earlier of:

- (a) the last day of the Initial Term or, if applicable, any Extended Term; or
- (b) the date on which a party terminates this Agreement pursuant to **clause 10.2**.

10.2 (Right to Terminate)

- (a) Either party may terminate this Agreement by written notice to the other party in the event that another party commits an Event of Default.
- (b) In addition, in the event that:
 - (i) any clause, provision or right that we have under this Agreement is or becomes void or unenforceable; or
 - (ii) any other agreement between the parties is terminated earlier than its expiry or termination date or is not extended for any reason,

either party may terminate this Agreement by giving written notice to the other party provided that (A) such termination will not affect the rights of the parties accrued as at the date of termination; (B) such termination relieve you from your obligation to pay to us the DaaS Fee; and (C) the provisions of **clause 11** will apply as if an event of default had occurred in respect of you.

11. END OF THE TERM

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

- (a) in your case, you fail to pay us 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 2 Business Days of the date that we notify you of your failure;

- (b) that party fails to perform any obligation under this Agreement or any other agreement that you have entered into with us (other than your obligation to pay us any amount payable as referred to in **clause 11.1(a)** above), and does not remedy that failure within 10 Business Days of being given written notice to do so; or
- (c) an Insolvency event occurs in respect of that party.

11.2 (Consequences of an Event of Default or termination of this Agreement) If an Event of Default occurs in respect of:

- (a) you, 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:
 - (i) terminate this Agreement;
 - (ii) declare the balance of the DaaS Fee due and payable by you;
 - (iii) retake possession of the DaaS Equipment; and
 - (iv) remedy any default that you commit under this Agreement (at your cost);
- (b) us, and you terminate this Agreement, you must:
 - (i) pay the DaaS Fee up to and including the date of termination; and
 - (ii) return any DaaS Equipment in your possession as at the date of termination to us.

11.3 (Right to use the DaaS Equipment cease) In the event that this Agreement is terminated by either party for any reason, you will no longer be in possession of the DaaS Equipment with our consent and you must immediately return the DaaS Equipment to us in accordance with the terms of this Agreement.

11.4 (Right to recover DaaS Equipment)

- (a) You hereby irrevocably authorise us to enter upon any property occupied by you for the purpose of removal of any DaaS Equipment if and when this Agreement expires, terminates or is terminated.
- (b) In the event that we are not given access to any property upon which the DaaS Equipment is located for the purposes of recovering the DaaS Equipment and as a consequence incur any costs in gaining such access, you will be liable to pay us for all such costs.
- (c) We are not liable to make good any premises upon which the DaaS Equipment was located unless the damage caused to the premises occurred was not reasonably foreseeable from the removal of the DaaS Equipment by us.

11.5 (Property attached to the DaaS Equipment) Without limiting your indemnity obligations under **clause 14.1**, in the event that we retake possession of all or any part of the DaaS Equipment, you hereby irrevocably authorise us to take possession of any property in, on or attached to the DaaS Equipment which is not our property, and you acknowledge and agree that we are not liable for its care or safekeeping.

11.6 (Replacement of non-returned DaaS Equipment) If you do not return any DaaS Equipment within 20 Business Days of the termination of this Agreement, you must pay to us an amount equal to the Replacement Value (such amount will not include depreciation).

11.7 (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.

12. RETURN OF THE DAAS EQUIPMENT

12.1 (Return) On the termination or expiry of this Agreement, you must immediately allow us to repossess the DaaS Equipment.

12.2 (Delay in return) If the DaaS Equipment is not returned on the day it was due to be returned, you must pay to us an amount equal to 2 days' rental for each day during which the DaaS Equipment was not returned unless we otherwise agree in writing.

12.3 (Payment for damage) Except for normal wear and tear, you agree to pay to us on demand for all damage to, loss, destruction of, the DaaS Equipment that occurs after delivery of the DaaS Equipment to you and prior to its return to us.

12.4 (Assessment of Damage) Upon the return or recovery of the DaaS Equipment on termination or expiry of this Agreement, we will inspect the DaaS Equipment and assess any damage to the DaaS Equipment for which you are liable under **clause 12.3**.

12.5 (Removal of Third Party Software) Prior to the return of the DaaS Equipment you must (at your own cost) removal any third party software or information contained on the DaaS Equipment which was not supplied by us with the DaaS Equipment on its delivery to you.

13. SOFTWARE AND OTHER RIGHTS

13.1 (Use of Third Party Software) You must not install or use any third party software with the DaaS Equipment without our prior written consent.

13.2 (Third Party Licences) If we consent to the installation and use of any third party software on the DaaS Equipment, you must ensure that you hold all necessary rights and licences to use any third party software installed on the DaaS Equipment from time to time and that such software is compatible with the DaaS Equipment manufacturer's software installed or used with, the DaaS Equipment.

14. INDEMNITY

14.1 (Your indemnity) Without prejudice to any other right we have under this Agreement, you agree to indemnify and hold us harmless for any loss, cost, damages, expense or liability we incur or may incur (including legal costs on a full indemnity basis, charges, taxes, penalties, levies and expenses) (**Loss**) as a direct or indirect result of:

- (a) our exercise of a right under this Agreement or doing something you should have done under this Agreement;
- (b) a breach of your obligations under this Agreement;
- (c) a person being injured or killed or property being damaged directly or indirectly by the DaaS Equipment in their use, design or operation;
- (d) a claim by any person that the use of any software install or used by you on the DaaS Equipment infringes that person's intellectual property rights including without limitation in relation to trade mark, copyright, patent or other intellectual property right;
- (e) any loss, destruction, damage or seizure of the DaaS Equipment during the Term; or
- (f) this Agreement terminating in relation to some or all of the DaaS Equipment before the end of the Term,

except to the extent that such Loss is caused or contributed to by a wilful or negligent act or omission by us or our employees, agents and representatives.

14.2 (Our indemnity) We agree to indemnify and hold you harmless for any loss, cost, damages, expense or liability you incur or may incur (including legal costs on a full indemnity basis, charges, taxes, penalties, levies and expenses) (**Loss**) as a direct or indirect result of:

- (a) our breaching a material obligation under this Agreement;
- (b) a person being injured or killed or property being damaged directly or indirectly by the DaaS Equipment so long as the DaaS Equipment is being used in accordance with our instructions;
- (c) a claim by any person that your use of the DaaS Equipment infringes that person's intellectual property rights including without limitation in relation to trade mark, copyright, patent or other intellectual property right so long as the DaaS Equipment is being used in accordance with our instructions;
- (d) any loss, destruction, damage or seizure of the DaaS Equipment during the Term due to any default by us; or

- (e) this Agreement terminating in relation to some or all of the DaaS Equipment before the end of the Term due to any default by us,

except to the extent that such Loss is caused or contributed to by a wilful or negligent act or omission by you or your employees, agents and representatives.

15. EXCLUSION OF LIABILITY

15.1 (State of DaaS Equipment) You acknowledge and agree that you have inspected the DaaS Equipment prior to its delivery to you and accept it in its current state.

15.2 (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.

15.3 (Specific Warranties Excluded) Without limiting **clause 15.2**, we make no express or implied warranty in relation to:

- (a) the fitness of the DaaS Equipment for any particular purpose;
- (b) the merchantability of the DaaS Equipment; or
- (c) the description, state, quality or condition of the DaaS Equipment. You acknowledge that you have relied upon your own inquiries in this regard before requesting that we supply you with the DaaS Equipment.

15.4 (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 the use of the DaaS Equipment or the maintenance and support supplied by us, our liability to you is limited to the repair or the replacement of the relevant Equipment.
- (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 DaaS Equipment.

16. PRIVACY

16.1 (Privacy Act Compliance) We comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles prescribed under that Act.

16.2 (Customer Privacy Policy) We will collect, use and disclose personal information about You in accordance with our Customer Privacy Policy, which may be viewed at www.arrowvoice.com.au/customerprivacypolicy.

16.3 (Use of Personal information) Notwithstanding any other provision of this Agreement, You expressly acknowledge and agree that:

- (a) if You default under this Agreement, We may disclose personal identifying details such as Your name, address, date of birth, employer details, driver's licence details and the status of any of Your accounts or those of related bodies corporate, Your credit history, and information about Your creditworthiness or capacity to third parties to assist Us in recovering any money You owe Us; and
- (b) we may disclose records such as exchange line details, telephone accounts information, call charge records and call event records to Our third party carriers or suppliers from time to time for and in connection with the provision of Services to You.

17. ACKNOWLEDGEMENTS

You acknowledge that:

- (a) you have not relied on our skill or judgment in deciding to enter into this Agreement but instead upon your own skill and judgment and based on your own inquiries;
- (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 our rights under this Agreement or in connection with the DaaS Equipment without your consent and any amounts payable by you to such assignee must continue to be paid without set-off, counterclaim or deduction. If we do assign our rights under this Agreement, we will do so on the basis that the assignee agrees to be bound by the terms of this Agreement;
- (d) we may (but are 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 at your cost.

18. PPSA

18.1 (Definitions) In this **clause 18**:

- (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.

18.2 (Consent to registration) You consent to us perfecting any security interest that we consider this document provides for by registration under the PPSA. You agree to do anything we reasonably ask to ensure that the security interest:

- (a) is enforceable, perfected and otherwise effective; and
- (b) has priority over all other security interests.

18.3 (Waiver of notices and information requests)

- (a) To the extent the law permits, you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent us from giving a notice under the PPSA.
- (b) You agree not to exercise your rights to make any request of us under section 275 of the PPSA. However this does not limit your rights to request information other than under section 275.

18.4 (Enforcement of security interest)

- (a) To the extent the law permits, we need not comply with, and you may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (b) If we exercise a right, power or remedy in connection with this document 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 we state 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.

18.5 (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. You 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.

18.6 (Dealings with DaaS Equipment)

- (a) You must not do any of the following in relation to any of the DaaS Equipment:
 - (i) create or allow any interest in, or dispose or part with possession of, the DaaS Equipment;
 - (ii) allow the DaaS Equipment to be taken outside Australia;
 - (iii) allow the DaaS Equipment to become an accession to or commingled with any other property.
- (b) You must notify us if anything mentioned in **clause 18.6(a)** occurs immediately upon your becoming aware of it.

18.7 (Changes in your details)

- (a) You must notify us at least 14 days before you do any of the following:
 - (i) change your name;
 - (ii) change your place of registration or incorporation;
 - (iii) change or apply for an ACN, ABN, ARBN or ARSN under which an interest in any of the DaaS Equipment is or will be held.
- (b) You must notify us if anything mentioned in **clause 18.7(a)** occurs immediately upon your becoming aware of it.

19. GUARANTEE AND INDEMNITY

19.1 (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**).

19.2 (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.

19.3 (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.

19.4 (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.

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

- (e) any compromise, abandonment, waiver, release, variation or redemption or compounding by us of any rights under the Agreement or against any other Guarantor;
 - (f) 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;
 - (g) the fact that all or any part of the money owing by the Customer may not or may cease to be recoverable from the renter or any other person liable for any reason (other than the same has been fully paid or satisfied);
 - (h) the liquidation, death, insolvency or bankruptcy (as the case may be) of the Customer or Guarantor;
 - (i) the avoidance for any reason by statute or otherwise of any payment by or on behalf of the Customer or any Guarantor;
 - (j) the transfer or assignment of the benefit of this Agreement to any person or corporation;
 - (k) You being under any legal liability; or
 - (l) 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;
- 19.6 (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.

20. GENERAL PROVISIONS

- 20.1 (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.
- 20.2 (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 DaaS Equipment after the provision of this Agreement, then this Agreement is valid and binding on you whether or not you have signed it.
- 20.3 (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.
- 20.4 (Inconsistency)** If there is any inconsistency between these Terms and the terms of the Specifications, the terms of the Specifications will prevail but only to the extent of the inconsistency.
- 20.5 (Waiver of rights)** No failure to exercise or delay in exercising any right, power or remedy by us shall operate as a waiver.

20.6 (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.

20.7 (Variation of terms and conditions)

- (a) Subject to **clause 20.7(b)**, this document may not be varied except in writing signed by all of the parties.
- (b) You acknowledge that in order for us to comply with our obligations under this Agreement, we may be required to enter into contracts with third parties. You agree that in the event that any such third party agreement is amended in a way which affects our ability to comply with our obligations under this Agreement, We may amend the terms and conditions of this Agreement upon written 21 days' notice to you.

20.8 (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.

20.9 (Continuing Indemnity) The indemnities referred to in this Agreement are continuing obligations, and survive the termination or expiry of this Agreement.

20.10 (Demand) Any amount payable by you under an indemnity is payable upon demand by us.

20.11 (GST)

- (a) Unless specified otherwise, the DaaS Fees and any other amounts payable under this Agreement do not include GST.
- (b) If we become liable to pay GST in respect of the hire or supply of DaaS Equipment, the DaaS 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 DaaS Fee.

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

20.13 (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.

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