

## Standard Form of Agreement for the Sale, Supply Provision and Use of Telecommunications Services and Products

Miracom Telecommunications Pty Ltd (ABN 99 112 299 457) ('We', 'Us' or 'Our') will supply you Our customer ('You' or 'Your') with goods and services on the terms and conditions set out below and overleaf ('Agreement').

### 1. Services

1.1 We will provide the telecommunications service(s) that You order and contract for (**Service**) to You in Australia through such carrier or supplier network or networks as We nominate from time to time directly with the carrier, supplier or network operator (**Carrier** or **Supplier**). Where carriage is supplied, the quality of the carriage of the Services will be the same as that of the Carrier or Supplier.

1.2 We will connect Your Service(s) to the network as soon as it is reasonably practicable after Our acceptance of Your order or offer in written form, online internet form or voice recorded application and it's related parts (**Application**) and We will use all reasonable efforts to maintain the Service while You comply with this Agreement and any applicable service level agreements offered and accepted under the Application as published form time to time.

1.3 Where We are providing mobile Services, We will provide You with a SIM card to use in relation to the Services. Notwithstanding clause 17, We retain property in Your SIM card at all times.

1.4 Where We are transferring mobile Services under mobile number portability arrangements, the SIM card provided in relation to the Services will be activated on Your request for activation. If that activation request is not received within 15 business days of dispatch, We will activate the SIM card on Your behalf.

1.5 You must not re-supply any of the Services without Our express written permission.

1.6 Where We are providing an Internet connection Service to You, Your use of it is governed by both the terms of this Standard Form of Agreement and any further terms and conditions in your contract for that Service. Where there is any exclusion or inconsistency between the terms and conditions of your Internet connection and this Agreement, the latter shall prevail to the extent of any such exclusion or inconsistency.

1.7 You will follow Our reasonable and lawful instructions in relation to the provision of the Services and do all things as may be reasonably required to implement and give full effect to the provisions of this Agreement and the transactions to be effected under it.

### 2. Charges and Payment

2.1 Charges for the Services are determined in accordance with the rate plan or in such other manner specified in the Application. We may change the amount of these charges or add new charges from time to time in accordance with clause 6. You will be invoiced for all calls, services, usage or other charges on a monthly basis with 14 days trading terms for payment of accounts. You must pay all invoiced amounts by the date specified on the relevant invoice and comply with all relevant terms specified on the invoice. If you have nominated automatic direct debit, Your bank account or credit card will be charged within 7 days from invoice date. Charges that do not appear on Your monthly invoice may appear on future accounts in accordance with processing procedures.

2.2 Where We are providing mobile Services, You must also pay Us charges for calls You have made to the extent those charges exceed the 'Minimum Monthly Spend' as set out in the Application (**MMS**) and you must also pay for value added Services You have used.

2.3 Our charges to You may involve fees for connection, initiation or cancellation of any Services.

2.4 Overdue accounts will incur a handling charge calculated at the greater of \$5 or 1.5% per month on any amounts outstanding. We may charge You interest on overdue amounts at 3% above the annual Westpac Corporate Overdraft Reference rate applicable at the date of the bill, calculated daily.

2.5 We may, without notice, deactivate or cancel all or part of Your Service if any charge amount is not paid by its due date. We reserve the right to restrict any Service at any time if We reasonably believe that the account has gone over its credit limit or the Service appears fraudulent. Discounts may also be revoked during the overdue period. If any amount has not been paid by the due date We reserve the right to deduct any unpaid amount or part of it from Your credit card or charge card nominated on the application form.

2.6 Bill reprints are charged at \$10 per copy. Bill reprints required from Our debt collection division are charged at \$50.

2.7 If You default under this Agreement, We may use or disclose any personal information collected and recorded in relation to You to assist Us in the process of debt recovery. Personal information includes personal identifying details such as Your name, address, date of birth, employers and drivers license details and status of any of Your accounts or

related bodies corporate, Your credit history, and information about Your creditworthiness or capacity.

2.8 All payments made using credit cards will be subject to a surcharge as specified on the bill.

2.9 Where We are providing mobile Services, 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. Failure to notify Us of the loss or theft will result in You being liable for all charges from the date the SIM card was lost or stolen up to the date We were notified.

### **3.0 GST**

Unless expressly stated otherwise, the charges payable for the Services under this Agreement are inclusive of GST. If any charges are expressed as exclusive of GST, You must pay to Us, in addition to the charges for the Services, an amount equal to any GST payable on the supply of the Services. That additional amount is payable at the same time any part of the charges for the Services is payable. We will issue a valid tax invoice to You for the supply of those Services at or before that time.

### **4.0 Transfer to Us**

4.1 In providing the Services, We need to change Your arrangements with Your current supplier and then We will do so in accordance with this clause.

4.2 By signing the Application or any other agreement for the provision of Services by Us:

- (a) You authorise Us to sign on Your behalf and in Your name forms of authority to Your current supplier of Services to transfer the Services into Our name;
- (b) You will on request give written instructions to Your current supplier to transfer the Services from Your name to Ours; and
- (c) You 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.

4.3 If You or Your nominee applies for Services through Our online applications portal that application constitutes Your agreement to our terms and conditions including this Agreement. You should ensure that both You and Your nominee have read and understood all of Our terms and conditions.

### **5. Transfer from Us**

5.1 If in the future You ask Us or another provider to transfer any of the Services to another supplier, then You remain responsible to Us for the amount payable for the Services up to the time when We transfer those Services to another supplier and You will immediately pay Us the amount on receipt of Our invoice.

5.2 The provision of Services ceases when We transfer those Services to another supplier. We will bill You for those Services within the next normal billing period.

5.4 If after We become aware of any other proper charges (including fees payable to any other supplier) for those Services up to the date of transfer, then You will immediately pay Us all such amounts on receipt of Our invoice.

### **6.0 Amendments**

These terms and conditions (including charges for Services) and the Carrier or Supplier, or the Carrier's or Supplier's products may be varied, altered, replaced or revoked at any time, except where changes are to your detriment in which case we will provide you personally with detailed information on the change we are proposing (including details of how it would affect you) and a period of at least 42 days in which to terminate the contract without incurring any additional costs or charges.

### **7.0 Privacy**

We adhere fully to the *Privacy Act*. Our privacy policy sets out the way in which We collect, use and disclose information about You. For a full copy of Our privacy policy please visit Our website at [www.miracom.com.au](http://www.miracom.com.au) and click on the privacy link.

### **8.0 Information**

8.1 You consent to Us and Our Carriers or Suppliers exchanging Your information and/or details and the Carrier or Suppliers, We and Our respective related bodies corporate may all use Your details for Our own internal purposes.

8.2 You authorise the Carrier or Suppliers to disclose to Us all records, and in particular exchange line, mobile or network details, telephone usage or accounts information, communication usage records and call event records.

### **9.0 Credit check**

9.1 You will supply without delay all the necessary information to enable us to check the worthiness of Your credit rating.

9.2 If We consider it relevant to assessing this application, You agree to Us obtaining from a credit-reporting agency a credit report containing personal information about You.

9.3 You agree that We may give to any credit provider and/or credit-reporting agency any information contained in the Application. You also agree that We may seek from any credit provider and/or credit-reporting agency any credit report (whether commercial for any named business entity, or consumer for any named individual) on all parties named in the Application. You acknowledge and understand that such information can 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*.

9.4 You authorise and permit Us to make 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.

## **10. Limitation of liability**

10.1 To the full extent permitted by law and subject to clause 10.2, We will not be liable in any circumstances, however arising, to You or any person claiming through You in contract, tort, or otherwise (including negligence) for:

- (a) any economic loss or damage and in particular (without limitation), any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings of profits; or
- (b) any indirect or consequential loss; or
- (c) the acts of omissions of the Carrier or any of Our servants, officers, agents, contractors or subcontractors or 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
- (d) Our failure to continue to provide the Service to You for any reason whatsoever. You acknowledge that We do not guarantee continuous fault free provision of the Service.

10.2 We accept liability to You in respect of any rights conferred on You by the *Trade Practices Act 1974* and similar legislation where if we did not, it would be illegal or would make any part of this clause 10 void or unenforceable.

Otherwise, 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 or (ii) the repair of the goods or (iii) the payment of the cost of replacing the goods or acquiring equivalent goods.

10.3 You agree to indemnify and keep Us indemnified from and against liability and all loss and damages caused directly or indirectly by any breach of this Agreement by You or from any claim or action arising directly or indirectly out of any negligence, fraud or wilful act whatsoever, whether by You or any of Your servants, officers, agents, contractors or subcontractors.

10.4 To the extent permitted by law, You agree that Your indemnity shall survive the termination of this Agreement, against any actions, claims, expenses, demands, costs, damages, proceedings or any other liability whatsoever suffered by Us in connection with You using the services or CPE (as defined under clause 17) including, without limitation, You using or incorporating the services or CPE in other products used by You or supplied to You.

10.5 To the extent permitted by law, the provisions of this clause 10 also apply for the benefit of the Carrier.

## **11. Term of the Agreement, suspension, cancellation, or part cancellation of a product, or termination**

11.1 In respect of each Service set out in the Application, this Agreement will commence on the date it is countersigned by us and will continue in relation to that Service until expiry of the contract term (listed on Your Application) selected for the Service on the Application (**Term**).

11.2 The period in which the Agreement is effective in accordance with clause 11.1 shall be the Term.

11.3 For Services not under fixed-period contracts or where the contract term has expired, You may cancel the Service by calling Us or writing to Us. Your call or letter will be a notice to cancel the Service and will be effective on the date on which We receive that request.

11.4 For fixed-period contracts, in some circumstances You may cancel Your Service immediately and without incurring any additional charges if

- (a) You are unable to use the Service because of a continuing event that is reasonably outside Your control; or
- (b) We breach an essential clause of this contract which isn't resolved within 14 days of Your requesting Us to do so or which is unable to be resolved; or
- (c) We become bankrupt, insolvent or unable to pay Our debts when due; or
- (d) Your Service has been suspended for one week where there is no fault on Your part, except where clause 11.4 applies; or
- (e) We make a change to this contract that would result in a detriment to You.

11.5 You may cancel your Service by giving Us 30 days notice if:

- (a) the minimum fixed-period listed on Your Application has ended, and You have continued to use the Service; or
- (b) any steps are taken to appoint a receiver or administrator for Us.

11.6 In addition to these rights to cancel Services, You have a general right to cancel Services at any time, at Your convenience. However, if you do so, a disconnection or cancellation fee described in clause 11.11 will apply.

11.7 We may terminate this Agreement if You breach any term or condition of this Agreement or if a receiver or receiver and manager or any insolvency administrator is appointed over any of Your property or assets, or if a liquidator or provisional liquidator is appointed to You or if You enter into any arrangement with Your creditors or You assign or otherwise deal with Your rights under this Agreement without Our prior written consent or, in the case of an individual, You die.

11.8 We may 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; or
- (b) You breach any of the terms and conditions of this Agreement and if You have failed to remedy the breach within 10 days of Us providing written notice to You of the breach Your Service will be terminated; or
- (c) You fail to pay amounts owing to Us by the due date; or
- (d) We are unable, for any reason including the default of a Carrier, to provide the whole part of the Service; or
- (e) You become subject to any form of insolvency administration.

11.9 If We suspend the Services, You will still remain liable for all monies due to Us under this Agreement, during the period of such suspension.

11.10 If Your Service has been suspended by Us due to non compliance with terms and conditions of the Agreement a reasonable reconnection fee nominated by Us may be payable to re-activate Your Services.

11.11 If this Agreement is cancelled by You, or terminated by Us:

- (a) any right which We have in respect of Your obligations under the Agreement that are not fulfilled when the Agreement is ended, will continue to exist;
- (b) You must pay Us all reasonable costs and expenses incurred by Us in relation to the Agreement ending;
- (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 ends, including the balance of the Minimum Monthly Spend (MMS) for all months up to the end of the Term; and
  - (iii) You must pay an administration fee of \$275 (GST inclusive);
- (d) where We are providing data and/or data access services, such as DSL, ADSL, SHDSL, Ethernet, Wireless Broadband, Personal Broadband, Unwired, Fibre (**Broadband Services**), You must pay amounts due at the time the Agreement ends, including the balance of the 'Monthly Service Fees' as set out on the Application or agreed by Us, including any amount for Service or CPE that was spread over a term, for all months up to the end of the Term, that remain unpaid at the date of Your cancellation. You will be charged for a full months Service or access fees for the month in which you cancel Your Service; and
- (e) in addition to any liabilities arising under this clause and where We are providing fixed wire Services, if You terminate the Services before the expiry of the Term or such lesser time as is agreed in writing by You and Us, then You will pay Us a genuine pre-estimate of the loss We will incur from the early termination of this Agreement. The amount of the loss will be calculated as being the difference between the charges billed to You up until the date of termination and the charges that would have been billed to You for the Services supplied to You until the date of termination under an applicable standard rate or pricing plan.

11.12 If We agree to provide a Service for a fixed Term, then the amount payable for the whole of that Term is a debt owing to Us at the time of entering into the Agreement for which We may bill You even if You cancel the Service or terminate the Agreement before the Term ends.

11.13 Where You have entered into an Agreement to purchase two or more of the following products from Us: Mobile GSM, Mobile CDMA, Fixed Wire (Inbound, Long Distance and Local), Fax Broadcast, Video and Voice Conferencing or Broadband Services and during the Term of Your Agreement You cancel the supply of one of the aforementioned products, the pricing of the remaining product(s) or service(s) will revert to the non-bundled (or non- discounted), and thus adjusted, rate for the Service that We continue to supply to You for the remainder of the Term.

11.14 Where We are providing Data Services if this Agreement is terminated in accordance with this clause, the Carrier may arrange for You to be supplied by the Carrier with the Carrier's services that had been supplied by Us but You acknowledge that the Carrier may not be able to make those arrangements immediately and once the Carrier makes those arrangements, those services acquired by You will be acquired on the Carrier's current rates and terms and conditions and the Carrier will charge You accordingly.

11.15 Where We have provided a Technology Fund and You cancel the Service or terminate the Agreement before expiry of the Term, then You will be liable to repay the full amount of the Technology Fund provided by Us for the Service. We will bill You for the amount of the Technology Fund provided to You for the Service.

## **12. Removable discount**

Notwithstanding the provisions of clause 11, if We provide a Service at a discount on payment over a fixed Term and You cancel the Service or terminate the Agreement before that Term ends, then You will be liable to pay the full undiscounted amount for the Service for the period prior to cancellation and termination. We will charge You for the amount of the discount allowed to You during the elapsed period on Your next bill.

## **13. Confidentiality**

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

## **14. Force majeure**

We will not be liable for any delay in the 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.

## **15. Entire Agreement**

15.1 With the exception of any service level agreements (as published from time to time) offered in addition to this 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. You acknowledge that You have not entered into this Agreement in reliance upon any statement made by Us, other than as expressly contained in this Agreement.

15.2 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 shall retain its full force and effect.

15.3 To the extent that any Service specific term or condition conflicts with any other term or condition in this Agreement, the term or condition specific to the Service will apply.

## **16. Assignment**

We may assign the benefit of this Agreement at any time to a person or corporation nominated by Us, including a Carrier, and, in such event, that assignee or nominated Carrier shall deal directly with You for the purposes associated with the provision of Services under this Agreement.

## **17. Customer premises equipment**

17.1 Customer premises equipment means PABX, telephone or key system, telephone handset, satellite dish and/or mount, indoor access router, modem, sim-box, software, block-up converter and any mounting (**CPE**).

17.2 Any CPE You use not provided by Us in relation to the Services must comply with applicable standards and specifications, including those set by the Carrier or Supplier.

17.3 We may substitute any component of the CPE or part of any component of the CPE prior to delivery without consultation with You and may in any respect modify the CPE if, in Our reasonable opinion, the substitution or modification:

- (i) will not adversely affect the performance or capacity of the CPE in any material respect; and
- (ii) will not alter the configuration of the CPE in any material respect; and
- (iii) will not otherwise materially affect Our obligations or prejudice Your rights under this Agreement.

17.4 Risk in any CPE provided to You by Us passes to You upon delivery.

17.5 Title to any CPE does not pass to You until all amounts owing have been paid in full to Us and the cost of such CPE will be held by You in a fiduciary capacity as bailee for Us.

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

17.7 You irrevocably grant to Us, Our agents and servants, leave and license without the necessity of giving any notice, to enter at any time on and into premises occupied by You using reasonable force if necessary to inspect, search for and re-take possession of any CPE in respect to which payment is overdue.

17.8 On the termination of this Agreement for any reason, You will immediately return all of Our CPE.

17.9 (a) We will use Our best endeavours to deliver the CPE to You on the agreed delivery date at the agreed site during Your normal business hours.

(b) If You wish the CPE to be delivered to a location other than the site, You may make a request in writing to Us not later than 14 days (or such other period as is agreed between Us and You) prior to the Delivery Date. We may at Our sole

discretion determine whether to agree to such a request and what conditions, if any, shall apply in the event of agreeing to such a request.

(c) If You request delivery of the CPE to be made in advance of the delivery date or postponed beyond the delivery date, We shall use reasonable endeavours to re-schedule delivery accordingly but shall otherwise be under no obligation to comply with Your request.

(d) In the event that We accede to a request made by You pursuant to clauses (b) and (c) of clause 17.9, We may make such additional charge as We reasonably consider to be appropriate to reflect the direct impact upon Our resources in complying with such request.

(e) If We request permission to deliver the CPE prior to the Delivery Date, You shall use Your best endeavours to prepare the site and to do all other things reasonably necessary to enable Us to comply with the request and to accept early delivery.

17.10 (a) an approved contractor or We shall install the CPE at the site on the agreed installation date. In the absence of agreement to the contrary, the installation shall be effected during Our normal business hours.

(b) You shall at Your own expense prepare the site, and access to the site, prior to delivery. In doing so, You shall comply with any directions or specifications issued by Us.

(c) Without limiting the foregoing, You shall provide at the site:-

(i) adequate electric current for the continuous use of the CPE;

(ii) adequate electrical and mechanical fittings;

(iii) appropriate environmental conditions;

(iv) a secure location for the CPE, including (if required) a suitable point for mounting an external satellite dish without obstructions;

(v) all relevant facilities for the location of the CPE;

(vi) access to all relevant personnel including Your technical personnel; and

(vii) where relevant, permission from the owner and/or lessor for Us and Our representatives and agents to enter the site and install the CPE, including making any minor physical modifications contemplated for the purposes of providing the Service(s). You warrant to Us that at the date of installation You will have notified the relevant party and obtained all relevant consents and You indemnify Us against any claim made against Us or loss incurred (including legal costs on a full indemnity basis), by another person in connection with such entry and installation.

(d) We shall, upon request from You, supply such information and assistance as We consider reasonable and necessary to enable You to prepare the site.

(e) Notwithstanding the foregoing, We shall, if requested by You and at Your expense charge as an additional charge, inspect the site prior to delivery for the purpose of providing an opinion as to whether the site is suitable for delivery and installation of the CPE.

(f) Where We reasonably determine the requirements for installation exceeds reasonable expectations for any Installation Fee quoted or agreed with You, We will not be bound to provide the installation at the installation fee previously quoted or agreed and We agree to discuss and use Our respective reasonable endeavours to agree a new installation fee and subject to:

(i) Our completing the assessment in clause (e) to Our satisfaction;

(ii) You and Us agreeing to any installation fee or change to the installation fee previously agreed; and

(iii) payment of the installation fee,

We will install and configure the CPE at Your premises including making any necessary minor physical modifications deemed necessary by Us to Your Premises in order to install the CPE. You are responsible for all other things not included within the installation.

(g) You agree to 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.

(h) You warrant that 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.

(i) You warrant that that Your premises are suitable and have the requisite approvals to support the CPE, including specifically a satellite dish and outdoor unit using standard installation practices.

(j) In the event that You are relocating Your premises and as a result, Your CPE, We may upon Your request, allow You to move the CPE from the premises to new premises during the Term so that You can continue using the data service(s) at the new premises, subject to:

(i) Our being able to provide the Service(s) at the new premises;

(ii) You agreeing that these terms and conditions apply to the provision of the Service(s) at the new premises; and

(iii) You paying all costs incurred by Us as a result of You having the CPE moved.

17.11 (a) You acknowledge that the CPE does not include any goods and services specified as excluded or "not included" in the Quotation.

(b) You may upon request to Us, ask that We supply additional services including without limitation, inspection, repairs, adjustment and replacement of unserviceable or defective parts not subject to the limited warranty given in clause 17.12 in respect of the CPE.

(c) 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.

(d) 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.

17.12 (a) We warrant that the CPE is new.

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

(c) You may during the Warranty Period notify Us in writing of any defect or suspected defect in the CPE. We shall, 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.

(d) We shall not be liable under clause (c) of clause 17.12 if the defect is the result of:-

(i) Improper use or mismanagement of the CPE by You; or

(ii) Operation of the CPE other than in accordance with the instructions given by Us; or

(iii) Use of the CPE in a manner not reasonably contemplated by Us; or

(iv) Modification of the CPE not authorised by Us; or

(v) Use of the CPE in a manner contrary to law; or

(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; or

(viii) Use of the CPE by a person other than You; or

(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.

(e) If You provide a notice of a defect or suspected defect pursuant to clause (c) of clause 17.12 and any subsequent inspection of the CPE by Us reveals no defect, the direct and indirect costs and expenses associated with such inspection shall be borne by You as an Additional Charge.

(f) You agree that the warranty in this clause 17.12 may, at Our option, be varied, replaced or superseded by specific warranty conditions issued in respect of the CPE.

17.13 A CPE provided to You as part of Our Broadband Service may be configured for use with only Our Broadband network. You may not be able to use the CPE with another network or provider.

17.14 Where as part of Our Service We supply You with a Broadband router, modem, mobile handset or mobile accessory and You cancel the data or mobile Service within the first 5 working days of the Term and

a) the Service has not as yet been activated and the Broadband router, modem, mobile handset or mobile accessory is in its original packaging a full refund will apply; or

b) the Service has been activated and the Broadband router, modem, mobile handset or mobile accessory is in its original packaging a disconnection fee of \$100 will be charged to You; or

c) the Service is not activated and the Broadband router, modem or mobile handset or packaging is not in original condition, a reconditioning fee will be charged to You up to the value of the Broadband router, modem, mobile handset or mobile accessory when it is returned by You; or

d) the Service has been activated and the Broadband router, modem, mobile handset or mobile accessory is not in original condition a disconnection fee of \$100 dollars in addition to a reconditioning fee, up to the value of the Broadband router, modem, mobile handset or mobile accessory will be charged to You.

17.15 We are not liable for faulty CPE provided to you by a 3<sup>rd</sup>-party manufacturer. Where You are experiencing CPE fault, You should contact the manufacturer direct, of whose contact details may be on Our website [www.miracom.com.au](http://www.miracom.com.au).

## **18. Disputed amounts**

18.1 In the event that a bill is disputed by You, You agree to pay to Us all the total amount as indicated on the disputed bill without deduction or set-off and We agree to refund any monies found to be charged incorrectly after reasonable and proper investigation.

18.2 If a billing dispute is not raised within 12 months of the bill issue date, charges will be deemed correct and payable by You and any backdate/credit of these charges if required will not exceed a 12-month period prior to the date the dispute was raised.

## **19. Communications and content**

19.1 You are responsible for the content of the messages You communicate when using Our Services as well as the consequences of those messages. You agree that You will 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. You may not use a false email address, impersonate any person or entity, or otherwise mislead others or Us as to Your identity. We reserve the right to suspend or terminate the Service 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.

19.2 We believe that any correspondence or emails from Us or its related parties are a valuable part of Our service as they enable You to keep up-to-date with matters regarding Internet security, viruses, useful tools, promotions, sites of interest and other related matters. The correspondence and emails do not constitute Spam as We have a continuing business relationship with You. However, if You do not want to receive such commercial communication from Us please contact Us to unsubscribe, otherwise We will continue sending You relevant information until You request Us to remove

Your email address (this does not affect other electronic communications specifically regarding the provision of the service of Your account).

## **20. Use of mobile phone or SIM**

20.1 Where We are providing mobile Services, if You use a roaming service overseas in connection with Your mobile phone, You agree to pay all call charges in connection with the provision and use of the roaming services, including local taxes and surcharges. We may require You to pay a \$500 security deposit prior to making roaming facilities available.

20.2 Where We are providing mobile Services, if You fail to comply with the terms and conditions outlined herein, We may use the security deposit or any part thereof to meet any costs, loss or liability incurred as a result. Where appropriate providing that You have met the provisions of terms and conditions of this Agreement, We will return the outstanding balance of the security deposit, without interest to You.

20.3 Where We are providing mobile Services, You understand that while roaming an overseas network will provide some of the Services. There may be limitations to the overseas networks, which may have not been advised to You or Us.

20.4 Where We deem that You are using in excess of 2,000 minutes of a flat charge call offer or free time per month per mobile phone SIM card, We will charge any usage in excess of 2,000 minutes per month at the standard mobile call rate under Your plan and may at Our option immediately disconnect that mobile Service.

20.5 We may at Our option immediately disconnect a mobile Service that:

- a) transits, refiles or aggregates domestic or international traffic on the mobile network; or
- b) without Our express permission uses Our mobile Service (including any SIM card) in connection with a device that switches or reroutes calls to or from the mobile network.

## **21. Installation and programming of equipment**

21.1 Where We are providing fixed wire Services, You will 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.

21.2 Where We are providing data and/or Broadband Services, You will assist Us in ensuring that any equipment necessary for You to receive the Services and access Our network is installed and maintained.

## **22. Conditions of fax broadcast Service**

22.1 You must adhere to Miracom's Privacy Policy available on Our website at [www.miracom.com.au](http://www.miracom.com.au). Additionally, by proceeding to use Our Service You acknowledge that You have read and fully understand Your requirements under the *Privacy Act*.

22.2 You are responsible for the list categories You choose and the information You send. We do not take responsibility for the content of documents delivered by the network. You warrant that the content of all documents You submit will be accurate, relevant and free of any viruses. You agree not to make any defamatory, obscene or illegal statements, which infringe any law, regulations or any industry codes of practice.

22.3 You authorise Us to distribute Your media releases to the chosen list(s) of recipients and further permit those recipients to use the information conveyed in them.

22.4 We will use all reasonable efforts to ensure that Your documents are distributed on time according to Your on-line instructions. However We do not take responsibility or are liable in any way for any errors in transmission, or the selection of distribution lists, or for the information transmitted, or the failure to transmit, or delay in transmission, or failure to provide a broadcast report, however caused. We will not be liable for any consequential, direct or special loss.

22.5 We do not warrant that Your recipients have expressed an interest in receiving Your information either from Your own lists or any distribution lists provided by Our third-party providers or Us.

22.6 We are not responsible for any errors in lists created by You or for the accuracy of lists by Our third-party providers or Us.

## **23. Conditions of voice and video conferencing Service**

23.1 You are responsible for maintaining the confidentiality of Your owner number and any personal identification numbers and passwords (**Account**) and for restricting access to Your Account.

23.2 You agree to accept responsibility and liability for all activities that occur under Your Account whether lawful or unlawful. You are also solely responsible for all uses of Your Account, whether or not actually or expressly authorised by You.

23.3 We do not sell products or services to children. If You are under 18, You may use Our Services only with involvement of a parent or guardian.

23.4 We reserve the right to refuse Service, terminate accounts, remove or edit content, or cancel orders at Our sole discretion.

#### **24. Conditions of data and/or Broadband Service**

24.1 We do not supply a standard telephone service with the Broadband access component and as such the Service is not subject to the "Customer Service Guarantee" standard administered by the Australian Communications 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.

24.2 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 another Carrier or a reseller of another Carrier, depending on the technical and operational requirements of the particular Service.

24.3 In the case of clause 24.2(b) above, You agree:

- (a) that You are the customer of that Carrier or a Carrier's reseller in respect of the standard telephone service; and
- (b) that We can only provide the Service whilst You remain a customer of that Carrier or Carrier's reseller for the standard telephone service; and
- (c) that We will terminate the Service if You cease to be a customer of that Carrier or Carrier's reseller;
- (d) that the installation of the Service may cause temporary disruption to the standard telephone service; and
- (e) that certain incompatible products will not be supplied to You by that Carrier or Carrier's reseller.

24.4 Where a telephone exchange area is shown as being Broadband (i.e. DSL) enabled, there is no guarantee that individual telephone services provided from that exchange will qualify for DSL service provision.

24.5 The performance of the end-to-end service offered over DSL is determined by the quality of the copper line and the distance from the DSL exchange. As such the performance of the end-to-end service can only be estimated until We have qualified the line performance. We will accept a customer order upon appropriate qualification where the line performance meets Our service objectives and the availability of that service.

#### **25. Acceptable use of internet, data and/or Broadband Service**

In addition to the provisions of clause 19 above, You agree to comply with the acceptable use standards which include but are not limited to the following:

25.1 not to send email that may destroy or damage an email recipient's computer; and

25.2 not to knowingly accept email which is unlawful, and violates or infringes upon the rights of any person or corporation; and

25.3 not to reveal confidential information about Us and/or Our suppliers which may result in unauthorised usage of the Services by a third party; and

25.4 not to transmit information which contains viruses or other harmful components; and

25.5 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

25.6 not to store or transmit any unlawful, threatening, defamatory, offensive or pornographic material that constitutes a criminal or civic offence under State and/or Commonwealth laws.

#### **26. Network security**

26.1 You agree to accept responsibility and liability for the security of and/or access to Your networks and related systems. You will take reasonable and appropriate precautions to prevent any violations of Your network and/or related systems security.

26.2 We do not take responsibility or are liable in any way for any violations of Your network and/or related systems security, however caused.

26.3 While We are responsible for the provision of Services, You are responsible for ensuring that adequate security in the form of virus protection and firewalls exist to protect Your electronic data and computer operating system or the electronic data and computer operating system of Your business against and unauthorised or unwarranted intrusion.

#### **27. Data and Satellite Transmission Requirements**

You agree to

- (a) comply with any practices and procedures specified by Us with respect to transmissions to, or from, any satellite used for the purposes of providing the data service; and
- (b) not use any data service in a manner, which would or could be expected to harm or interfere with the use of, or harm any portion of any satellite or transponder; and
- (c) comply with any specifications of people telecom for initiating and terminating any transmissions to any satellite used for the purpose of providing the data service; and
- (d) encrypt, where required by Us, any transmission to any satellite used for the purposes of providing the data service.

### **28. Inaccessibility of Service due to interference**

You agree that 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 equipment that prevents the CPE from transmitting to, or receiving signals from, any satellite used by Us; and which are a result of any changes to the surrounding environment subsequent to the installation of the CPE, 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.

### **29. Notices**

Any notice, demand, consent or other communication required to be given by either party must be delivered personally, or sent by email, prepaid mail, or by facsimile to the address of the other as last notified.

### **30. Governing law**

This Agreement shall be governed and construed in accordance with the law of Victoria and the parties submit to the jurisdiction of the Courts of that State.

### **31. Interpretation**

31.1 These customer terms and conditions are a Standard Form of Agreement for the purposes of Section 479 of the Telecommunications Act 1997.

31.2 Undefined words have the same meaning as in the Telecommunications Act, 1997. Unless specified, these terms and conditions apply to all Services provided by Us.