

TELARUS PTY LTD – GENERAL TERMS

Definitions

1. In this Agreement, the following terms have the following meanings: **"Agreement"** means the agreement between Telarus and the Customer for the provision of Services, which comprises these General Terms, the Application Form, any applicable Service Schedule(s) and any service level agreement agreed between the parties; **"Application Form"** means any application in a form approved by Telarus, made by the Customer for provision of Services by Telarus; **"Business Hours"** means 08:30 to 17:30 Monday to Friday, excluding days which are bank holidays in Melbourne; **"Charges"** means any and all charges for the Services as notified to the Customer, and as may be amended by Telarus in accordance with this Agreement; **"Customer"** means the customer named in the Application Form; **"Customer Equipment"** means any equipment or facility in the possession, ownership or control of the Customer other than Service Equipment; **"Defined Abuse"** includes misuse of the Service including without limitation: (a) giving an unauthorized person the Customer's account and password details; (b) deliberately or recklessly disrupting Telarus' service; (c) using the Service in an unlawful manner; (d) using the Service to menace or harass others; (e) using the Service to obtain unauthorized access to any network; or (f) as otherwise reasonably determined by Telarus; **"General Terms"** means the terms contained in this document; **"GST"** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its related impositions; **"Purchased Equipment"** means the equipment (and associated software), as set out in the Application Form or a Service Schedule, to be supplied by Telarus to the Customer and includes additional equipment (and associated software) which Telarus agrees to supply to the Customer; **"Service"** means a service to be provided by Telarus pursuant to this Agreement, as set out in the Application Form and a Service Schedule and includes any additional service which Telarus agrees to supply to the Customer; **"Service Equipment"** means any equipment, facility or associated software used by Telarus or any of its suppliers in relation to a Service and may include equipment leased to the Customer; **"Service Schedule"** means any schedule relating to any Service; and **"Telarus"** means Telarus Pty Ltd ACN 099 202 721, its successors and assigns.

Services

2. This Agreement commences when Telarus accepts (in its sole discretion) the Customer's Application Form and continues for the period specified in the Application Form (or, where applicable, a Service Schedule in respect of a particular Service) or until terminated in accordance with its terms. Telarus shall be under no liability to the Customer or any other person for any delay in the commencement of the Services.

3. Telarus agrees to perform the Services on the terms of this Agreement in consideration for the Charges.

4. Telarus will provide a fault reporting service for the Service, accessible during Business Hours (or otherwise as notified by Telarus from time to time). Unless instructed by Telarus, the Customer may only contact Telarus (but not its suppliers) concerning faults related to the Service. The Customer shall promptly report any faults to Telarus and Telarus may take any action (or non-action) which it considers reasonable.

5. The Customer acknowledges that Telarus is a reseller of the Service provided by one or more wholesale providers.

6. To the extent required by law, the telecommunications customer service guarantee applies to the Services. Further information regarding this matter may be found at www.aca.gov.au.

Purchased Equipment and installation

7. The Customer shall purchase Purchased Equipment from Telarus.

8. Subject to agreement between the parties as to which Services and/or Purchased Equipment Telarus will install, Telarus shall install such Services and/or Purchased Equipment at a site nominated by the Customer. Telarus may charge the Customer its then current rates (including travel and accommodation expenses) for installing the Purchased Equipment and/or a Service. Telarus shall use reasonable endeavours to install the Purchased Equipment and/or a Service on or around the installation date requested by the Customer but will not be liable for any loss or damage for failure to do so.

9. The Customer agrees to acquire and Telarus agrees to supply the Purchased Equipment in consideration for the price set out in the Application Form or as otherwise notified by Telarus to the Customer.

10. The Customer shall prepare the installation site in accordance with the site preparation requirements reasonably required by Telarus. Telarus may refuse to install Purchased Equipment and/or a Service if the installation site not been prepared in accordance with this clause.

11. The parties may agree from time to time to change the installation site, in which case Telarus shall be entitled to impose an additional charge. To avoid doubt, the provisions of this Agreement shall apply in respect of the new installation site.

12. Title in and over the Purchased Equipment remains with Telarus until payment in full is received. Without limiting the last preceding sentence, if the Purchased Equipment is sold or otherwise transferred to another person, the Customer must account to Telarus for all outstanding amounts.

13. Risk of loss or damage to the Purchased Equipment shall pass to the Customer upon delivery.

Service Equipment

14. In respect of any Service Equipment: (a) the Service Equipment remains the property of Telarus or its supplier; (b) to the extent possible under the terms of the Customer's occupation of the premises where the Service Equipment is located, the Customer will allow Telarus to and, where applicable, will ensure that the landlord allows Telarus to, access such premises for the purposes of this clause; (c) Telarus may remove the Service Equipment upon reasonable notice to the Customer; (d) the Customer will not part with possession of the Service Equipment, except to Telarus; (e) the Customer must provide Telarus and its nominees with access to the Customer's premises upon reasonable notice to install, inspect, test, modify, maintain, repair, change or recover the Service Equipment; (f) the Customer must ensure that the Service Equipment is not handled, used, maintained, tampered or interfered with by any person, except Telarus or its nominee; (g) if requested by Telarus, the Customer must insure the Service Equipment for an amount and on terms reasonably required by Telarus; and (h) the Customer must return the Service Equipment to Telarus within 14 days of the expiry or termination of this Agreement and, if the Customer does not do so, the Customer shall immediately pay to Telarus the full retail price of the Service Equipment (including the cost of acquiring or renewing any necessary software licences). This clause shall survive termination of this Agreement.

The Customer's Responsibilities

15. The Customer must: (a) ensure that the Customer's computer system and the Service are used solely for their intended purpose; (b) ensure there is no unauthorized access to Telarus' computer system by the Customer's computer system; (c) notify Telarus immediately of any security breach (suspected or otherwise) of the Service, or the Customer's confidential password or the Customer login; (d) not interfere with the normal operation of the Service or make it unsafe; (e) ensure that a suitable power supply is available for the use of the Services; and (f) promptly inform Telarus of any change to the Customer's billing or address details.

16. The Service shall be personal to the Customer and the persons authorized on the Application Form. The Customer must not permit any other person to use the Service and must not re-sell or purport to re-sell the Service.

17. For the duration of this Agreement, the Customer shall provide Telarus free of charge with all assistance, information, access, facilities and services reasonably required by Telarus to enable it effectively to perform its obligations under this Agreement, including use of Customer Equipment (including PABX and key system equipment) and telecommunications facilities if required.

18. The Customer must not commit, cause or allow any breach (or do anything which might put Telarus or any of its related bodies corporate in breach) of any law, regulation, government direction or industry standard or code.

19. The Customer warrants that the information supplied by the Customer in relation to this Agreement is true and correct.

20. The Customer is responsible for insuring and maintaining any equipment or facility owned or provided by the Customer (including without limitation Customer Equipment and Purchased Equipment).

Charges and Billing

21. All fees and charges which are known in advance (including without limitation recurring or fixed fees or charges) may be invoiced in advance. All other fees and charges may be invoiced monthly in arrears. The Customer shall make all payments within 14 days of the date of invoice.

22. The Customer shall pay accounts either by credit card standing authorisation, or on account, which may be paid by credit card, BPAY, electronic funds transfer, cheque or money order.

23. Payments made by credit card standing authorisation with Visa, Bankcard or Mastercard will not be subject to a surcharge to cover merchant fees. Payments made by credit card standing authorisation with AMEX or Diners Club will be subject to a surcharge of 1.5%. Ad-hoc payments made by credit card (not standing authorisation) will be subject to a surcharge of 2.5%.

24. The Customer shall pay a fee of \$20 in addition to any other costs or charges (such as financial institution charges) for each dishonoured transaction.

25. Telarus reserves the right to enforce payment by credit card standing authorisation in the event that a Customer's monthly charges on a given account are or are reasonably expected to be below \$250 per month, or in the event that the Customer is consistently late in making payment.

26. Failure by the Customer to pay any outstanding amount within 30 days of the date of invoice will, without prejudice to Telarus' other rights: (a) be deemed a terminating event or, at Telarus' sole discretion, shall entitle Telarus to suspend all or any of its obligations under this Agreement; and (b) entitle Telarus to charge interest on the unpaid amount at a rate equal to 5% per annum above the overdraft rate of the ANZ Bank on the first Working Day following the due date for payment.

27. Where the Customer has failed to pay any amount owing to Telarus, Telarus may, in addition to any other fees or charges under this Agreement, charge the Customer Telarus' then current fee for suspension, disconnection and/or re-connection of a Service. In addition, the Customer shall indemnify Telarus for the cost of exercising and/or pursuing Telarus' right to payment under this Agreement.

28. If Telarus has agreed to provide a Service for a particular term, then to the extent permitted by law: (a) the whole amount payable for the whole of the term that that

Service is to be provided is a debt owing to Telarus as at the time of entering into this Agreement for which Telarus may bill the Customer even if the Customer cancels the Service before the term ends; and (b) if the Customer cancels the Service before the end of the term, the Customer will be liable for the remaining monthly service fees.

29. If Telarus provides a Service for a particular term and allows the Customer a discount on payment over that term and the Customer cancels this Agreement before that term ends, then the Customer will be liable to pay the full undiscounted amount for the period which has elapsed and Telarus will bill the Customer for the amount of the discount allowed to the Customer during the elapsed period on the Customer's next bill.

30. In the event the Customer's payment of Telarus' charges under this Agreement remains outstanding for 45 days or more, Telarus reserves the right to vary or remove any discount previously communicated or provided to the Customer.

31. The Customer shall pay the Charges in full without any deduction or set-off whatsoever (including whether the Service is used by the Customer or any other person).

32. Unless expressly stated otherwise, all references to consideration (including Charges) relating to this Agreement are exclusive of GST.

33. The Customer shall if requested by Telarus provide security to Telarus for an amount, in a form and within a timeframe reasonably required by Telarus, in relation to the Customer's obligations under this Agreement. Without limiting the last previous sentence, such security may take the form, at Telarus' discretion, of a security bond, bank guarantee, parent company guarantee or director's guarantee. If Telarus requests that the Customer provide security pursuant to this clause, then the provision of such security shall become a condition precedent to Telarus' remaining obligations under this Agreement.

34. Telarus may impose an additional charge on the Customer in respect of any services which are in addition to the Services (and which Telarus agrees to supply), or in any other reasonable circumstances.

35. The Customer may not dispute an invoice or claim a refund for overpayment under this Agreement more than 12 months after date of the invoice to which the disputed amount or alleged overpayment relates.

Limitations, Exclusions and Indemnities

36. The Customer acknowledges that: (a) faults related to the provision of the Service may occur; (b) Telarus does not warrant that the Service will be uninterrupted or error free; (c) Telarus shall not be liable or responsible for faults outside Telarus' control; and (d) any restoration targets which Telarus provides to rectify faults may be subject to the performance of third parties.

37. Subject to any service level agreement offered by Telarus with respect to the Services, Telarus accepts no responsibility for the performance of any third party which may be relevant to the provision of the Service. However, Telarus will use its best endeavours to ensure that any relevant third party co-operates in order to deliver the Service in a timely manner, provide and maintain the Service in a responsible fashion and rectify any faults in relation to the Service a timely manner.

38. The Customer acknowledges and agrees that: (a) Telarus shall not be obliged to supply any goods or services on any terms more favourable to the Customer than the terms on which such goods or services are supplied to Telarus; (b) Telarus may at any time impose on the Customer any term, condition, warranty, limitation or exclusion which Telarus' upstream supplier imposes on Telarus; (c) if Telarus' upstream supplier increases the price at which it supplies any necessary or relevant goods or services to Telarus, Telarus may immediately alter any applicable charges to reflect such increase; and (d) Telarus may immediately suspend or terminate this Agreement without any liability to the Customer if for any reason Telarus no longer acquires any necessary or relevant goods services from an upstream supplier (including without limitation if an upstream supplier suspends or terminates its arrangements with Telarus, even if it is due to Telarus' breach or default).

39. The Customer must indemnify and save harmless Telarus and its related bodies corporate and their respective officers, employees, contractors and agents (the "Indemnified Persons") from any loss, injury, damage, liability, costs or expenses whatsoever suffered or incurred by an Indemnified Person arising from or in connection with: (a) any breach of, or failure to comply with the terms of, this Agreement by the Customer; (b) any physical damage to an Indemnified Person's network or other physical damage to property or persons caused by the Customer or any person having access to its use of the Services (a "permitted user"); (c) the use of the Services by the Customer or a permitted user; (d) the reproduction, broadcast, use, transmission, communication or making available of any material by the Customer or a permitted user, using the Services; (e) any alleged breach of a person's rights (including, but not limited to, defamation and intellectual property rights) by a communication, broadcast or transmission, made available by means of the Services by the Customer or a permitted user; or (f) any Customer Equipment which causes a fault in, or interferes with, the operation of any system owned or operated by Telarus (including without limitation Telarus' systems or network).

40. Advice and information given by Telarus are given on an "as is" basis but Telarus is not required to provide such advice under this Agreement. Subject to this Agreement, Telarus shall not be responsible for any loss or damage occasioned by the Customer in reliance thereon.

41. The Customer uses the Services and any software or equipment supplied by Telarus at its own risk.

42. Subject to this Agreement: (a) all conditions, warranties and representations which are not expressly provided or included in this Agreement are excluded from

this Agreement; and (b) Telarus' maximum aggregate liability to the Customer in contract, tort (including negligence), under statute or otherwise is limited to the maximum extent possible.

43. Telarus' liability is entirely excluded for any indirect or consequential loss or damage whatsoever including without limitation loss of profits, loss of business or anticipated savings and loss, corruption or destruction of data.

44. This Agreement includes terms implied by any statute which cannot be lawfully excluded, including those implied by the *Trade Practices Act 1974* (Cth) and corresponding state and territory legislation. However, in relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Telarus' liability for breach of those terms (other than section 69 of the *Trade Practices Act* and corresponding state and territory legislation) will be limited, at its option, to any one or more of: (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.

45. Notwithstanding any provision in this Agreement or any condition, warranty or representation otherwise made by Telarus, Telarus limits to the maximum extent possible all liability to the Customer in relation to the problem known as the year 2000 problem, including without limitation the ability of any equipment or service supplied by Telarus to perform date related functions correctly and accurately.

Suspension and Termination

46. Notwithstanding any provision in this Agreement, all or any part of this Agreement may be immediately suspended or terminated (in Telarus' sole discretion) by Telarus: (a) in the event of the Customer in Telarus' reasonable opinion committing Defined Abuse; (b) if the Charges are not paid in accordance with this Agreement or if the Customer's payment is refused or dishonoured by the Customer's nominated financial institution; (c) if there is a significant change or likely significant change in the Customer's financial position including without limitation bankruptcy, insolvency, a winding-up application or the appointment of a receiver or administrator; (d) if the Customer breaches any provision of this Agreement; (e) if the Customer (being a natural person) dies or (being a company) is wound up or (being a partnership or association) is dissolved; or (f) if the Customer (or any related body corporate or any associate of the Customer) breaches any other agreement with Telarus (or any related body corporate or any associate of Telarus).

47. Telarus may suspend the Service while investigating any complaint or reasonable suspicion of illegal behaviour or Defined Abuse and may monitor or limit the Customer's Service if permitted by law or required by direction of a competent law enforcement official or authority.

48. Telarus reserves the right to suspend the Services in an emergency if Telarus considers it necessary to do so to safeguard the provision of services to other customers or for any other reasonable reason.

49. Telarus may immediately terminate this Agreement if this Agreement is suspended for a continuous period of 14 days or more.

50. For the avoidance of doubt, any recurring or fixed fees or charges under this Agreement shall continue to accrue during the pendency of any suspension of this Agreement.

51. Telarus is not required to suspend or give a notice of suspension under this Agreement before exercising its right to terminate all or any part of this Agreement.

52. The exercise by Telarus of its right to suspend all or any part of this Agreement shall be without prejudice to its right to terminate all or any part of this Agreement.

Transfer of Services

53. The Customer authorizes Telarus to sign on the Customer's behalf and in the Customer's name any form of authority to the Customer's current supplier of services and to do all other things necessary to transfer the Customer's account into Telarus' name.

54. The Customer shall remain responsible (and the Customer indemnifies Telarus) in relation to all amounts owing to another supplier for any services supplied by that other supplier, to the Customer.

Disclosure

55. The Customer consents to Telarus, its employees and agents making such enquiries as it deems necessary to investigate the creditworthiness of the Customer from time to time including without limitation the making of enquiries of persons nominated as trade referees, the bankers of the Customer or any other credit providers (the "information sources") and the Customer hereby authorises the information sources to disclose to Telarus such information concerning the Customer which is within their possession and which is requested by Telarus. The Customer also consents to Telarus obtaining a credit report from a credit reporting agency containing personal information (as well as information concerning commercial credit worthiness and activities) for the purpose of assessment by Telarus of an Application or for the purpose of the collection of payments which are overdue in respect of any credit provided by Telarus, as permitted under the *Privacy Act 1988* (Cth).

56. The Customer agrees that Telarus may give to or obtain from another credit provider, any information derived from a report to assess an application for service, its creditworthiness and its continuing creditworthiness. Items of personal information about the Customer (including information in an Application Form and information arising from the conduct of an account) and permitted to be kept on a credit information file, may be disclosed to a credit reporting agency. For the avoidance of

doubt, Telarus may provide to a credit reporting agency details regarding the Customer's refusal or failure to pay accounts in accordance with this Agreement.

57. The Customer authorizes Telarus to provide personal information to its suppliers to the extent necessary to fulfil its obligations under this Agreement.

58. Telarus may also collect the Customer's personal information and use it for the following purposes: (a) to provide information about other goods or services which Telarus or any of its related bodies corporate may offer; (b) to disclose to credit reference associations and credit reporting agencies for the purpose of providing services or other credit providers providing services; (c) for purposes related to or arising out of Telarus' provision of services and credit or commercial credit, to the Customer.

59. The Customer gives its consent to the types of use of information described in these General Terms.

60. The Customer gives its consent to Telarus sending electronic messages (including commercial electronic messages) within the meaning of the *Spam Act 2003* (Cth), to the Customer.

General

61. The terms of this Agreement including without limitation the Charges and the Services are subject to change by Telarus. Telarus shall give not less than 30 days' written notice to the Customer of any changes. In the event that the Services are substantially limited by such changes, the Customer shall be entitled to terminate this Agreement by written notice to Telarus, provided the Customer must pay Telarus for any goods supplied or services performed up to the time of termination.

62. An up-to-date version of these General Terms may be found at Telarus' website, www.telarus.com.au/terms.

63. In the event of a dispute arising under this Agreement, the Customer may have rights under the Telecommunications Industry Ombudsman scheme. Further information regarding this matter may be found at www.tio.com.au.

64. The Customer does not own or have any legal interest or goodwill in any telephone number, IP address, domain name, PIN or other locator or identifier issued to the Customer ("**Public Addressing Identifier**"). The Customer acknowledges and agrees that the terms of use of any Public Addressing Identifier may be subject to regulatory requirements (including requirements relating to changes to or termination of a Public Addressing Identifier) and Telarus shall not be liable or responsible for the operation or consequences of any such requirement.

65. The Customer must treat as confidential, keep secret and not use or disclose any information relating to the trade secrets, know-how, business practices, network or service configuration, operational or procedural information, charges, discounts or clientele, of Telarus. Any such disclosure may only be made with the prior written consent of Telarus. Any confidential information must be returned to Telarus upon demand and/or at the termination or expiry of this Agreement. This clause shall survive termination of this Agreement.

66. Any provision which by its nature would survive termination or expiry of this Agreement (including without limitation any exclusion or limitation of liability or indemnity in this Agreement) shall survive termination or expiry of this Agreement.

67. The forbearance on the part of Telarus from exercising any right under this Agreement (including without limitation any right to suspend or terminate all or any part of this Agreement) on the first date Telarus is entitled to do so shall not constitute any waiver of Telarus' rights under this Agreement.

68. Telarus will not be responsible for any delay or failure to perform its obligations under this Agreement caused by any act beyond its control including without limitation acts of God, wars, strikes, natural disasters, failures of any other provider or network operator's services and interruptions to power supply.

69. This Agreement contains the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations warranties (other than warranties set out in this Agreement), or commitments in relation to the subject matter of this Agreement are superseded by this Agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect to those matters. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this Agreement or constitute a collateral agreement, warranty or understanding between the parties.

70. The Customer must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of Telarus. Telarus may assign or novate any of its rights or obligations under this Agreement and the Customer shall be deemed to have consented to such assignment or novation.

71. In the event of any inconsistency as between these General Terms, any Application Form, Service Schedule, service level agreement or other attachment to these General Terms, the order of precedence shall be as follows: (a) the Service Schedule; (b) the Application Form; (c) any service level agreement agreed between the parties; (c) these General Terms; and (d) any attachment to these General Terms.

72. If any clause or part of this Agreement is held to be void, illegal or unenforceable for any reason, it shall be deemed to be severed from this Agreement without affecting any other clause or part of this Agreement.

73. Telarus may sub-contract its obligations under this Agreement.

74. Each party must do all things necessary to give effect to this Agreement and any thing contemplated by this Agreement.

75. The person purporting to enter into this Agreement on behalf of the Customer warrants to Telarus that he/she is duly authorized to enter into this Agreement in that capacity.

76. The Customer and Telarus agree that the laws of Victoria shall govern this Agreement and each party irrevocably submits to the jurisdiction of Victorian courts and tribunals.