

## **Rights and Obligations**

### **1. Legal Document**

- 1.1 This Agreement is a legal document and it is presumed to have been read and understood by the Client and the Guarantor and may be used by Us to prove Your obligations under the Agreement including in a Court of Law.
- 1.2 The client and the Guarantor confirm that they are each jointly and severally bound by this Agreement.

### **2. Current Price List and Phone Usage Charges**

- 2.1 All purchases and Services rendered under this Agreement is charged as per Our current price list and phone usage charges (Price List) available on Our website and can be found at <http://www.satellitephonesales.com.au/>
- 2.2 You acknowledge that You have read and agree to Our Price List as set out on Our website at the date of this Agreement.
- 2.3 Our Price List may increase or decrease from time to time.
- 2.4 We will keep You informed of any changes in Our price list and phone usage charges.
- 2.5 In the event You wish to discontinue Your Services You must inform us within 3 days of receiving such notice You must pay Us all outstanding charges, fees and any monies outstanding including the whole of the amount payable under any ongoing and fixed term contracts with Us.

### **3. Pay Us**

- 3.1 You must pay Us any money payable by You under this Agreement or otherwise without set off or deduction.
- 3.2 Any invoice rendered by Us to You under this Agreement is payable:
  - a. within 30 days of the date of the invoice if You are a current corporate client; or
  - b. on or within 7 days of the date of the invoice for non corporate clients by automatic payment via Your Authorised Credit Card.
- 3.3 No trust applies to any money received by Us from You under this Agreement.

### **4. When Your Obligations to Us are discharged**

- 4.1 Notwithstanding any to the contrary Your obligations to pay Us any money due to us is only discharged on payment in full to Us but is otherwise a continuing obligation.
- 4.2 Your obligations to Us are not to be construed as being limited to amounts we invoice You for.

### **5. Term and Grant**

- 5.1 This Agreement runs for a minimum initial term of 12 months from the date of this Agreement.
- 5.2

### **6. Irrevocable Authorisation**

- 6.1 You irrevocably authorise us to deduct any money due to Us from Your nominated credit card on or after the date of invoice or notification of money due to us.
- 6.2 In the event Your Authorised Credit Card is no longer in use, You must within 7 days of the cessation of the Authorised Credit Card inform Us and provide us with an irrevocable authority to deduct money from a replacement credit card.

### **7. What we can ask You to pay**

- Reference to any money due to Us by You under this Agreement includes any amounts which we are or might become liable for to any third party as a result of Us entering into this Agreement including but not limited to Our Lawyer's Costs.

**8. GST**

- 8.1 All prices listed for purchase of hardware are exclusive of GST.
- 8.2 All sums and prices for Our Service are exclusive of GST.

**9. No limit of Charges for Use by You of Equipment and Services**

- 9.1 You are solely responsible for monitoring Your usage of any service We provide to You under this Agreement or otherwise.
- 9.2 This agreement is entered into strictly on the basis of User pays. Charges that are incurred for any Equipment or Service provided to You by Us are Your responsibility.
- 9.3 We are not required to monitor Your Phone Usage Charge.
- 9.4 We may but are in no way obligated to inform or alert You once You have reached a pre-determined limit on the phone and or BGAN Usage Charge.
- 9.5 We are no way obligated to ensure that any alerts we send to You are received by You.
- 9.6 All charges incurred following any alert by Us remains the sole responsibility of the User.

**10. Ownership of anything We provide to You**

- 10.1 Unless You purchased an item of Equipment from Us outright and have paid for the item in full You agree and acknowledge that We retain title in any and all Equipment and Service.
- 10.2 You have no proprietary rights whether legal or beneficial in the Service or the Equipment other than equipment purchased outright from Us.
- 10.3 You must clearly mark any Equipment not purchased outright from us as Our property.
- 10.4 Unless You have paid for any Equipment or item in full You must not allow any matter or thing we give You to mix with anything else You have in Your possession or control.
- 10.5 If in breach of this Agreement You sell encumber or otherwise dispose of anything We rent or provide to You, We will charge the current full retail price of the item to Your nominated credit card or bank account. If we are unable to receive full payment for the item for any reason, a trust applies to the proceeds of any such sale or encumbrance or disposition.

**11. Acknowledgement as to condition**

- 11.1 You agree and acknowledge that You have examined the Equipment at delivery and unless You have informed Satellite Phone Sales of any fault or damage with the Equipment verbally within 24 hours and in writing within 3 days of receiving the Equipment from Satellite Phone Sales of any faults or damage, You acknowledge receipt of the Equipment in full working order and condition.
- 11.2 In addition to any other provision in this Agreement You acknowledge and agree that You have relied solely on Your own judgment in entering into this Agreement or any other agreement with Us and /or accepting the Equipment or Services.

**12. Your Obligations in respect of the use of the Service**

- 12.1 You must not do anything that may endanger, prevent or disrupt the Service.
- 12.2 If the Service is cancelled or disrupted in any way, You must notify Us immediately.
- 12.3 You must not use or cause to be used or permit the Equipment or the Service to be used:
  - a. in violation of any law or regulation of the place where used.
  - b. for any other illegal or immoral purpose.
  - c. contrary to provisions of any insurance policy in respect of the Equipment; and
  - d. in contravention of the provisions of this Agreement.

**13. Service and Equipment failure**

- 13.1 You acknowledge and agree that the Service and or the Equipment may experience down time or failure from time to time.
- 13.2 We are not responsible for any of Your losses in the event of any temporary Service and Equipment failures including but not limited to any consequential losses.
- 13.3 You must inform Us immediately:
  - a. of any Service and Equipment failure as soon as You are aware of such failure.
  - b. in the event the Equipment or Service or any part of each is damaged, destroyed, interfered with in any way or is not in proper working condition including where there is a malfunction;

13.4 Irrespective of any Notification You give or might give Us We may but are not required to take any remedial action.

13.5 You must advise Us in the event that anyone attempts to remove the Equipment that it is Our property and does not belong to the You.

#### **14. Limited Liability on Our Part**

14.1 We make no warranty about the working condition of the Equipment.

14.2 You acknowledge and agree that Our liability to You and any one through You is limited to the repair and where appropriate the replacement of any Equipment or Service for the duration of this Agreement only.

14.3 It is Our decision at Our discretion if we will repair or replace any Equipment or Service.

14.4 If any Equipment or Service or part of it has been damaged by You or anyone through You, You must pay for the cost of the replacement or repair of the Equipment or Service at our prevailing rates from time to time.

14.5 In the event we decide to replace any Equipment under this clause, we may substitute the Equipment with any such type or model of the Equipment which in Our complete and unfettered opinion is a suitable substitution.

14.6 Any replaced or substituted Equipment is subject to the terms of this Agreement.

a. We are not liable to You or any third party for any loss in connection with use of Our Equipment or Service or any failure of Our Equipment or Service.

b. "Loss" means any loss or damage, however caused (including through negligence) which may be directly or indirectly suffered including consequential losses.

#### **15. How this Agreement comes to an end**

15.1 This Agreement comes to an end automatically without the need to give notice on Our part and with discharging You from any obligations that survive this Agreement when:

a. You have failed to pay Us any money due to Us under this agreement or otherwise within seven (7) days of such money becoming due and payable

b. You or the Guarantor (if any):

(i) goes into liquidation or bankruptcy

(ii) has a receiver or administrator appointed

(iii) enters into a voluntary arrangement with his, her or its creditors

(iv) have Judgment entered against You or the Guarantor;

(v) die or suffer from a legal disability, or if You are a corporate entity, You cease to exist or cease carrying on business; or

(vi) have committed an act of insolvency.

c. We give You written notice that in Our reasonable opinion we take the view that You will be unable to pay Your obligations to Us in full;

d. We, in Our complete and unfettered discretion and for any reason whatsoever, decide to terminate the Agreement by giving You fourteen (14) days notice.

#### **16. What happens in the event this Agreement ends**

16.1 When this Agreement comes to an end the following must happen:

a. You must return the Equipment to Us at Our usual business premises within 24 hours or according to Our demand in writing;

b. You, including Your receiver or administrator, irrevocably gives Us access to enter into Your premises or any other premises You have the right to be on to remove any Equipment during normal business hours unless otherwise agreed between the parties;

c. You must take all available steps to protect and keep safe Our rights and the Equipment, until We remove the Equipment and from Your premises;

d. You must return all of the Equipment and must not withhold any of the Equipment from Us for any reason whatsoever.

16.2 Where termination is due to Your fault You are responsible for Our costs (including direct or indirect costs such as legal costs to the highest extent) involved in recovering the Equipment.  
16.3 We are not liable for any costs incurred by You in complying with this Agreement whether or not termination is due to Our fault.

#### **17. Service**

17.1 The Service will be available to You within 24 hours of the date of this Agreement and will continue until such time as this Agreement is suspended, terminated or comes to an end under this Agreement.

17.2 We may vary all or part of the Service at any time at Our complete and unfettered discretion.

17.3 You must follow Our instructions to enable any change to Our Service.

17.4 You must not do anything or refrain from doing anything which would prevent us from changing Our Service.

17.5 Any change in Our Service does not in any way constitute a breach of this Agreement.

#### **18. Suspension of service**

18.1 We may but are not required to suspend the Service with no notice or liability to You:

- a. in the event You fail to pay any money in accordance to this Agreement within 7 days of the due date of payment; or
- b. in the event You commit any breach of this Agreement other than non-payment and where the breach is capable of being remedied, fails to remedy the breach within 7 business days after being required by written notice to do so;
- c. during any recalibration, upgrade or any maintenance of the Services and or Equipment by Us or Our suppliers;
- d. during the time any of Our suppliers require the Service or Equipment use to be suspended for any reason whatsoever;
- e. in the event the Service is unable to be provided for any reason whatsoever.

#### **19. Access and Permission**

19.1 You must provide Us with access to Your premises and vehicles at reasonable times to enable Us to install, maintain, inspect, remove or replace the Equipment upon reasonable notice by Us to You.

19.2 You must meet Our reasonable requirements about the safety of any of Our personnel, agents or contractors who perform this work.

19.3 You must have a building structure and internal fit-out deemed acceptable by Us for the installation of all necessary Equipment so that the Service can be operated effectively.

19.4 You agree and acknowledge that You have obtained all necessary permission or authorisation for the installation, maintenance, removal and inspection of the Equipment and Service, including any permission or authorisation to Us to enter the premises.

19.5 You agree and acknowledge that the matters described in the preceding paragraphs of this clause will not result in legal or beneficial ownership of the Equipment passing to any third party.

#### **20. Guarantee**

20.1 In consideration of Us supplying the Equipment and or Services to the Guaranteed Party, the Guarantor agrees:

- a. to guarantee all of the Guaranteed Party's obligations to Us including but not limited to making payment to Us under this Agreement on the terms and conditions as provided for under this Agreement; and
- b. to indemnify Us in respect of all obligations on the part of the Guaranteed Party including but not limited to making payment to Us under this Agreement.

20.2 The Guarantor's guarantee and indemnity under this clause:

- a. is a continuing guarantee and indemnity and continues for any and all other payments and obligations due and owing by the Guaranteed Party under this Agreement; and
- b. will survive any insolvency on the part of the Guaranteed Party including but not limited to payments recovered under the Voidable Transaction provisions under Division 2 of the Corporations Act 2001 or other like payments.

20.3 In the event of a liquidator, official manager or official receiver in bankruptcy of the Guaranteed Party or the Guaranteed Party or its liquidator, official manager or official receiver recovering from Us any payment made by the Guaranteed Party in discharge of their obligations to Us, the Guarantor will remain liable in relation to the amount recovered as if this Guarantee has never been discharged.

20.4 If a payment is made to Us by or on behalf of the Guaranteed Party and is subsequently avoided by a statutory provision, such payment will not have discharged the Guaranteed Party's liability to Us under this Agreement and in such event We will be restored to the position in which We would have been and We will be entitled to exercise all the rights which the We would have had if such payment had not been made.

#### **21. Costs**

You must reimburse Us for all costs charges duties or imposts arising out of or incidental to this Agreement.

#### **22. Confidentiality and intellectual property**

22.1 You must keep confidential all of Our Confidential Information confidential at all times and must not disclose any Confidential Information to any third party without Our prior approval;

22.2 Our Intellectual Property, including but not limited to Our trade marks (if any), belong to Us.

22.3 You acknowledge that any Service, products, logos and company names mentioned, shown or in any way described on any of Our Equipment may be third parties' trade marks.

22.4 You must not use any of Our Intellectual Property and third parties' trade marks which does not belong to You in any way, involving but not limited to:

22.5 In or as the whole or part of Your own trade marks;

- a. In connection with activities, products or service which are not Our activities, products or services;
- b. In a manner which may be confusing, misleading or deceptive;
- c. In a manner that disparages Us or Our information, products or services.

#### **23. No Representation**

You agree and acknowledge that in entering into this agreement, You have not relied on any representation, warranty, undertaking or other provisions made or given by Us except as expressly provided for in this Agreement.

#### **24. Waiver**

24.1 No failure or delay by either party in exercising any of their rights under this Agreement shall be deemed to be neither a:

- a. waiver of that right;
- b. waiver by either party of any breach of this Agreement; nor
- c. waiver of any subsequent breach of the same or any other provision.

24.2 Any waiver in regard to the performance of this Agreement operates only if in writing and applies only to the specified instance, and must not affect the existence and continued applicability of the terms of it thereafter.

#### **25. Entire Agreement**

This Agreement embodies all the terms binding between the parties and replaces all previous representations or proposals.

#### **26. Amendments**

This Agreement may not be varied except in writing signed by the parties.

#### **27. Reading Down**

If any provision of this Agreement is void or voidable or unenforceable in accordance with its terms but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, that provision must be read down accordingly.

## 28. Severability and Construction

28.1 If, despite the provisions of this Agreement a provision is still void, voidable, unenforceable or illegal:

- a. if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed; and
- b. in any other case the whole provision is severed.

28.2 the remainder of this Agreement will remain in full force and effect.

28.3 A construction of this Agreement that results in all provision being enforceable and effective is to be preferred to a construction that does not.

## 29. Notices

29.1 Any notice to be given under this Agreement must be delivered by hand or prepaid post, or sent by telex or facsimile provided that a communication sent by telex or facsimile must be immediately confirmed in writing by the sending party by hand delivery or prepaid post.

29.2 A communication is deemed to be received if:

- a. hand delivered: on the next following Business Day;
- b. posted: on the second Business Day after posting; and
- c. sent by facsimile: on the next following Business Day unless the receiving party has requested re-transmission before the end of the Business Day.

## 30. Resolution Of Disputes

30.1 If a dispute arises between the parties to this Agreement, the parties agree to first attempt to mediate a resolution.

30.2 In the event litigation ensues first the parties agree to submit to mediation or such other alternative dispute resolution procedure as the relevant forum may prescribe.

## 31. Definitions

a. **Confidential Information** means all information passing from Us to You including but not limited to trade secrets, inventions, designs, drawings, know-how, ideas, techniques, source code and object code, circuit layouts and integrated circuits, business and marketing plans and projections, profit and loss statements, management reports, arrangements and agreements with third parties, customer information of whatsoever nature, formulae, customer lists, concepts not reduced to material form, plans, models.

b. **Corporate Client** means a client who has received prior written credit approval by Us;

c. **Equipment** means all of the equipment supplied by Us including but not limited to satellite telephones handsets, carry cases, chargers, user guides, car antennae or any other equipment used or required to enable satellite telephone coverage and usage and includes any item of equipment which is added or substituted by Us from time to time as contemplated by this Agreement other than the equipment purchased outright and paid in full by You.

d. **Fee** means any payment required to be paid by You to Us under this Agreement.

e. **GST** has the meaning given to that term in the GST Act.

f. **GST Act** means A New Tax System (Goods and Services) Act 1999 (Cth).

g. **Satellite Phone Sales** means the business known as Satellite Phone Sales of Suite 13, 420 Bagot Rd, Subiaco, Western Australia and carried on by Zorro Nominees Pty Ltd ACN 087 843 767.

h. **Satellite Phone Sales Terms and Conditions** means this Agreement in its Entirety which includes the terms under the sections headed Phone Usage Charges and Rights and Obligations.

i. **Service** means any service offered by Us that allows satellite telecommunication from, to and between terminals.

## 32. Interpretation

a. This Agreement is governed by the laws of the State of Western Australia.

b. Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

- c. Words importing the singular or plural number of the masculine gender shall be read as also importing and including the plural or singular number of the feminine gender as the case may require and a covenant proviso or provision in which more persons than one covenant and agree or are deemed to bind and extend to such persons any two or greater number of them jointly and each of them severally and the words "lease" and "agreement" wherever herein appearing shall be read as synonymous.
- d. In the event that any provision of the Service Agreement is held to be invalid in any way or unenforceable it is to be severed and the remaining provisions will not in any way be affected or impaired and the Service Agreement is to be construed so as to most nearly give effect to the intention of the parties as it was originally executed.
- e. Any reference to an amount of money in this Agreement is a reference to the amount in the lawful currency of Australia.
- f. Reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in Perth, Western Australia, even if the obligation is to be performed elsewhere;
- g. reference to the rights, duties, obligations and liabilities of more than one party will in every case be a reference to rights, duties, obligations and liabilities that are several and not joint or joint and several;
- h. except for the purpose of identification headings and underlinings have been inserted in this Agreement for the purpose of guidance only and are not part of this Agreement;
- i. a rule of construction will not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it
- j. the words include, including, for example or such as are not used as nor are they to be interpreted as words of limitation and when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  
- k. the word person includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or a Government Agency; a document (including this Agreement) includes any variation or replacement of it; and
- l. a person named as a party in this Agreement includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.