

Aria Telco Management - Standard Terms & Conditions

Aria Telco Management

Standard Terms and Conditions

Aria Telco Management (ABN 66 626 466 373) (we, us, or ATM), will provide you (Customer, with certain Services) in accordance with these terms and conditions (as varied from time to time) and those contained in the Aria Telco Management Application (the "Application") (collectively the "Agreement").

PROVISION OF SERVICES

1.1 Services: We will provide you with the telecommunications services nominated by you on the Application and other services we may agree to provide to you from time to time (the "Services") in the terms of the Agreement. You fail to nominate telecommunications services on the Application, you acknowledge that you will be required to select Aria Telco Management as your default carrier for local, national and international long distance calls and calls to mobile services.

1.2 Provision of Services: We will provide you with the Services for all your local, national and international long distance calls and calls to mobile services (as applicable) unless you do another overall code for your local, long distance, international calls and calls to mobile services (as applicable) on a pay call basis. We will provide the Services using our facilities and services or those of other carriers, telecommunications service providers or equipment suppliers ("Supplier" or "Carrier") nominated by Aria Telco Management and I agree that Aria Telco Management may change Supplier at any time without reference to me.

1.3 Variation: Without notice to you we may change a Supplier or its products or any other charges from time to time. I hereby authorise Aria Telco Management to notify any relevant Supplier to effect any such changes, including authority to charge Suppliers by pre-selection.

2. CHARGES FOR SERVICES

2.1 Invoicing: We will bill you monthly for the Services in accordance with current charges as notified to you from time to time. You may vary invoice frequency at our discretion.

2.2 Method of Billing: Unless otherwise expressly stated in this Agreement, we will generally bill you in advance for pre-paid services, connective and service fees (where applicable) and in arrears for usage charges. This will only apply in certain cases. We will endeavour to bill you within the next normal business period for charges billed in arrears, but we reserve the right to bill you for those charges in later billing periods until we have received payment in full for the due date shown on the invoice.

2.3 When available, we may debit amounts directly from your nominated bank or credit card account as they become owing where you have chosen that method of payment. In any event, if you have provided your bank account or credit card details, where amounts remain outstanding after 30 days we may debit those amounts from your nominated bank or credit card account without further notice unless we have received written notification from you to the contrary. If a direct debit fails or is rejected, we reserve the right to assess on you charges that we may incur due to the failure of receipt.

2.4 Our charges to you, we may impose any charges and/or Supplier charges to us (including increases and special one-off charges) without notice to you.

2.5 Other Charges: You will owe us in accordance with clause 2.5 and any charges of any other Supplier or other person renders to us (a) if you approach that other Supplier or person directly, or otherwise than through us, or (b) in connection or initiation of any Service for or cancellation of any Service.

2.6 Billing: from another Supplier: If you use an override code that access Services offered by another Supplier, you will be billed by that Supplier for charges you incur unless we have a separate arrangement in place for the Supplier to charge us directly, in which case we will pass on the charges to you in accordance with clause 2.5.

2.7 Interest: We reserve the right to charge interest on any amount of the credit not paid to us by the due date, interest, calculated daily, will be charged from the due date until payment at a rate of 5% over our prime lender's overdraft rate published on the first working day of each calendar month.

2.8 Suspension: We reserve the right to suspend provision of Services to you, where charges owing to us or any amount owing under this clause remain outstanding after 30 days, unless we have received written notice from you of a bona fide dispute of other charges. If we suspend or terminate the Services for unpaid charges of any other reason, subsequent reconnection (not incur a reconnection fee).

2.9 Billing: We reserve the right to be provision of Services to you, where charges remain outstanding after the due date as stated on your invoice, your unlabelled calls exceed your credit limit of us, or we become aware of unpaid calling patterns.

2.11 Costs Incurred in Recovery of Overdue Amounts: We incur costs in recovering overdue amounts from you, including (without limitation) mercantile agents' costs, disbursement of services costs, costs incurred in commercial legal action such as service fees and search fees, we reserve the right to recover these amounts from you on an indemnity basis in addition to the overdue amounts.

2.12 Dishonoured cheques: Aria Telco Management reserves the right to terminate the Agreement without notice to us in the event (a) you have not paid amounts owing to us in accordance with this clause; and (b) a cheque provided by you in payment of that invoice is dishonoured without a valid explanation being provided by you. We will also charge you a dishonour fee if a cheque used to pay a bill is dishonoured.

2.13 Account Bounce: We may require you to lodge a security bond as a condition of our provided Services to you. You authorise us to deduct from that bond any amounts remaining owing to 10 days after the date of an invoice. If you have paid all of our invoices on time for 12 consecutive months, we may either return the bond or credit it to your account. The amount of that bond will not be greater than the credit limit described in clause 2.14.

2.14 Credit Limit: We may limit from time to time a credit limit for the provision of the Services to you, which will be notified to you in writing and any variation thereof.

2.15 GST: Unless expressly stated otherwise, the charges payable for the Services under this Agreement are inclusive of GST. Where the charges are expressed to be exclusive of GST, the Customer must pay and Aria Telco Management 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 time any amount is paid for the charges for the Services is available. Aria Telco Management will issue a tax invoice to the Customer for the supply of those Services or at a later date than time.

3 PERIOD OF AGREEMENT

3.1 Commencement of Agreement: This Agreement starts when you sign the Application, complete a voice recording, or when you first receive our Services after receipt of those terms and conditions and continue until terminated.

3.2 Commencement of Services: The provision of Services commences when your accounts are transferred from your current Supplier to us or when you complete installation and/or when you complete any and other arrangements with another Supplier for the provision of the Services have been completed.

4 TRANSFER OF SERVICES TO US

4.1 Changing your current arrangements: If in providing the Services, we need to change your current arrangements in order to transfer to us all telecommunications services relating to the telephone numbers transferred to us, and it will remain responsible for all amounts owing to your current Supplier of telecommunications services for any services they supply, you have assumed to you.

4.2 Transfer to us: By signing this Agreement you (a) authorise us to sign your own behalf and in your name forms of authority to your current Supplier to transfer your accounts into us and (b) authorise our current Supplier of telecommunications services to transfer to us all telecommunications services relating to the telephone numbers transferred to us, and it will remain responsible for all amounts owing to your current Supplier of telecommunications services for any services they supply, you have assumed to you.

4.3 Credits: If your current Supplier credits us with any amount concerning services provided before the date of transfer, we will credit that amount to your account.

4.4 Changes for Transfer: If your current Supplier raises a credit or credit charge relative to a service it provided to you before the commencement and Service under clause 3.1, we will advise you accordingly, and you must pay your current Supplier that amount. If you dispute the amount claimed, you must notify us in writing.

4.5 Indemnity: We will not accept any liability for any amounts owing to you to your current Supplier for services which your current Supplier provides to you prior to the commencement of Services under clause 3.2. You indemnify us against any claims made by your current Supplier to us in relation to any such amounts.

5 TRANSFER OF SERVICES FROM US TO ANOTHER SUPPLIER

5.1 Transfer: If in the future you ask us to transfer any of the Services to another Supplier, then you remain responsible to us for all amounts payable to the transferor, and you will indemnify us for that amount on receipt of our invoice.

5.2 Your consent: You elect to use any of our Services by the use of an override code, you agree to owe us any charges incurred for those Services.

5.3 Our consent: Our requirement to provide the Services ceases when we transfer those accounts to another Supplier.

5.4 Indemnity: We will not be responsible for any amounts owing to you to your current Supplier for services which your current Supplier provides to you prior to the termination of Services under clause 3.2. You indemnify us against any claims made by your current Supplier to us in relation to any such amounts.

5.5 Disputes: If we become aware of other proper charges billed payable to any other Supplier for those Services up to the date of transfer, we will remain liable to pay that amount to that Supplier. Services is quantified, then you will indemnify us with all such amounts on receipt of our invoice.

5.6 Credits: We will credit you with any amount credited to us by another Supplier for those Services provided up to the date of transfer.

PERSONAL INFORMATION

6.1 We may collect personal information about you ("your personal information") to (a) acknowledge and agree that (a) we may collect your personal information from you or (subject to the requirements of Part 13.6 of the Privacy Act) from a credit provider or credit reporting agency, if we do not collect your personal information we may not be able to provide the Services to you (b) we may use your personal information: (b) to assess any application you have made for credit or commercial credit to be provided by you (c) to collect payments that are overdue in respect of any credit or commercial credit provided by you (b) to provide the Services to you (including the investigation and resolution of disputes relating to any services provided to you) and to provide credit or commercial credit to you in respect of the Services; (b) as otherwise authorised or required by law; at any time, we may disclose your personal information to a credit reporting agency (b) to obtain a consumer or commercial credit report about you; (c) to allow the credit reporting agency to create and maintain a credit information file concerning information about you. The information we disclose to a credit reporting agency will be limited to identify particulars about you, the fact that we are a current credit provider to you, the amount, the fact that we are a current credit provider to you, loan repayments that are more than 30 days overdue and by which default collection action has started, information that in our opinion you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations), and (where drawn by you for \$100 or more which have been dishonoured more than once) (d) we may also disclose your personal information to other entities (b) for the purpose of enabling us to provide the Services to you (including the investigation and resolution of disputes or complaints concerning the provision of the Services); (c) government agencies or individuals authorised by a government (including the Telecommunications Industry Ombudsman and Australian Communications Authority) responsible for the investigation and resolution of disputes or complaints concerning your use of the Services for the purpose of enabling them to investigate and resolve those disputes or complaints; (d) other entities with whom we have established or will establish an affinity program to enable you to participate in the affinity program; (e) other entities who provide services to us related to the provision of the Services to you (including SMS, a mobile and resellers or contractors engaged by us to enable them to provide services to you); (f) our service administrator (wherever arranged) in connection with the Services you engaged.

6.2 If you request your file, we will provide you with access to your personal information within 30 days.

6.3 If you request any address or other billing contact details, you must notify us within 14 days.

YOUR COMPLIANCE

7.1 Compliance: You will ensure that you comply with all laws and regulations, including telecommunications legislation, applicable to the Services and their use.

7.2 We will not use the Service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any law, and you will indemnify us for any loss or expense we suffer as a result of you doing so.

8 EQUIPMENT SUPPLIED TO US

8.1 Maintenance: You are responsible for maintaining any equipment supplied by us or a Supplier. You indemnify us to the Supplier against any loss or damage to the equipment unless it is due to our fault and/or

8.2 Interference: You will ensure that any equipment supplied to you, facilities and connections used in providing the Services, are not altered, dismantled, repaired or connected to any other equipment from any power source or line except by a person approved by us.

8.3 Access: Use, or a person approved by us, may require access to your premises from time to time to inspect, install, maintain, repair and maintenance of the equipment or Services. If you do so under the premises, you must obtain the owner's permission for access and warrant to us that you have such permission. You indemnify us, or any person approved by us, against a claim by the owner of the premises in relation to such entry on the premises. If you do not provide access as we reasonably request, we may limit, suspend or cancel the Services.

8.4 Return: On the termination of this Agreement for any reason, you must return any equipment to us or the relevant Supplier, or make it available for collection, in accordance with our instructions. If you fail to return the equipment or make it available for collection: (a) if the equipment is ours, we may recover the value of the equipment; and the cost of recovering the equipment; from you as a debt due; or (b) if the equipment is a Supplier's, you must indemnify us against any claims made by the Supplier in relation to the equipment.

9 TERMINATION

9.1 Termination: Unless specifically provided for in the Application, either of us may terminate the Agreement by 30 days written notice. (a) you have breached this Agreement; (b) a professional liquidator, liquidator, receiver or receiver and manager or any other administrator of your business or assets is appointed or if you enter into a composition with your creditors; or (c) you charge your business or assets in a way that nothing in accordance with clause 6.1.4.

9.2 You remain liable for all charges payable under this Agreement in respect of Services up to the time of termination.

9.3 If the Customer is an individual, the event of the Customer's death, Aria Telco Management reserves the right to terminate this Agreement without notice as soon as Aria Telco Management becomes aware of the Customer's death. All outstanding charges under this Agreement must be paid to the Customer's estate.

10 LIMITATION OF LIABILITY

10.1 Performance: Because the performance of some Services may be affected by third party acts, the levels of use of other users and of facilities available to you, we do not warrant that Services will be free of blockages, delays or faults of this kind and will not be responsible for any loss or damage which may result.

10.2 Warranties: Except as provided in clause 10.1 and as required by law, and subject to clause 10.3, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating to the provision of any of the Services are excluded, and will not be under any other liability in respect of any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of the Services.

10.3 Limitation of Liability: Our liability for any breach of any term, condition, warranty or order is hereby limited by law (which cannot be excluded), will be limited at our option to the repair or re-supply of equipment or Services or the payment of the cost of having the equipment or Services reinstalled.

10.4 No Liability: We have no liability to you or any other person for: (a) acts or omissions of our Suppliers; (b) faults or defects in Services which are caused to any material extent by your own conduct or misuse; or (c) faults or defects that arise in connection with the Services not provided under this Agreement. If it is caused by our own fault or our consent, or Services which we have arranged under this Agreement) which is due to incompatibility with the Services.

11 FORCE MAJEURE

11.1 We are not liable for (a) any failure in installing any Service, (b) any delay in commencing any Service, (c) failure or intermittent operation of any Service, or (d) any failure to attend or default in performance under this Agreement. If it is caused by our own fault or our consent, or Services which we have arranged under this Agreement) which is due to incompatibility with the Services.

11.2 You will not assign, charge or otherwise vary your rights under this Agreement except with our prior written consent.

11.3 We may, on 30 days' written notice, assign all our rights and obligations under this Agreement.

12 GENERAL

12.1 Governing Law Agreement is governed by the law of Western Australia.

12.2 Entering into this Agreement constitutes the whole understanding between you to the exclusion of any prior or collateral Agreement or understanding of any kind relating to the Services.

12.3 No Release: You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not wish any statement, representation or promise by us or our staff not expressly set out in this Agreement.

12.4 Release: You accordingly release us and each of our officers, agents and advisers from all claims, suits and demands of every kind (including negligence) arising from the relationship of the parties concerning this Agreement before it was signed, and with the notification of the leading to it.

12.5 Waiver: The failure by either party to exercise its right or remedy under this Agreement in a timely manner does not constitute acceptance of such acts which give rise to the right to remedy, nor that party's waiver of such right or remedy.