

# World Without Wires PTY LTD - Standard Form of Agreement

## 1 Introduction

- 1.1 This document is the World Without Wires PTY LTD Standard Form of Agreement (SFOA), it is a living document and is subject to change. It is the contract that applies when we supply you with data transmission services (including, but not limited to Internet access, access to our email, online games, FTP or news servers, or hosting or configuring your web site). It also applies when we supply you with ancillary services (i.e. managed filtering of Internet access and consultancy, or registering or hosting a domain name for you). It also applies when we supply you with goods that can be used in connection with data transmission or ancillary services (such as software, modems or routers).
- 1.2 Under Part 23 of the Telecommunications Act (1997), suppliers of telecommunications services may register with the Australian Communications Authority a Standard Form of Agreement (SFOA) that governs the supply of such Internet services. A copy is available on request.
- 1.3 Under Australian law, the SFOA applies whether or not you read it or sign it. If you and we have expressly agreed to different terms in a particular case, the SFOA still applies, but subject to those terms.
- 1.4 This document governs all Internet Access and similar services provided by World Without Wires PTY LTD will remain in force until revoked or by operation of law. This document replaces all previous contracts and Acceptable Use Policies and applies to all World Without Wires PTY LTD customers. It is governed by the laws of the Commonwealth of Australia.

## 2 Definitions & Interpretation

- 2.1 In this agreement, certain words and phrases are capitalised and defined for the purpose of accuracy.
- 2.2 Singular definitions include the plural and vice versa, a reference to a person includes a partnership and a body, whether corporate or otherwise; and monetary references are references to Australian currency.

"Acceptable Use Policy" means our Policy which specifies our requirements in relation to your use of the Services; "Agreement" means this agreement for the provision of the Services by us to you, which includes all Policies; "Anniversary Date" means the date on which World Without Wires PTY LTD notifies You that the Service is ready for use; "FGP" means World Without Wires PTY LTD's Fair Go Policy; "Charges" means the charges payable by you to us pursuant to this Agreement including, but not necessarily limited to, access, usage and consulting fees; "Service Termination Charge" means the charge levied by World Without Wires PTY LTD to allow a user to terminate their commitment on a given service prior to its expiry "Denial-of-Service Attacks" means behaviour that results in disruption of World Without Wires PTY LTD's Service, disruption of other people's Internet Access, which includes but is not limited to computer viruses, email bombardment and damage to Internet-connected resources; "Due Date" means the recurring date on which you are required to pay the Charges for the Services, which will occur each month, quarter, year or other period as agreed (the relevant period will be agreed with us when you commence the Services) "Internet Access" means connection to the global network of networks known as "The Internet" using software protocols supported by the Internet Service Provider (ISP) to connect Your computer equipment to the ISP's network. This includes access to e-mail and the world wide web; "Legal Obligations" means obligations arising under any State or Federal legislation, by order, direction or request of a government agency or semi-government agency (including any emergency services organisation), any order of a court, or to comply with any industry

code of conduct; "Open Third-Party Mail Relay" means the use of a mail server which allows a mail message to be delivered by an unauthorised person; "Policy" means any policy published by us from time to time and notified to you, including without limitation the Acceptable Use Policy, the Fair Use Policy and the Privacy Policy; "POP" means a Point of Presence, that is, a site from which you may connect to the Services (usually by dialling a particular telephone number linked to that site); "Privacy Policy" means our Policy which specifies our rights and requirements in relation to our collection, use and disclosure of your personal information "Prohibited Activities" means misuse of the Internet Access including:

- i. deliberately or unintentionally disrupting the Service, or engaging in any activity likely to disrupt the Service
- ii. engaging in Spamming;
- iii. misusing the Internet Access in a manner identified by a competent law enforcement official as unlawful such as copyright violations, defamation or fraud;
- iv. using Your Internet Access to menace or harass others;
- v. Denial-of-Service Attacks on other users or networks;
- vi. using Your Internet Access to unlawfully obtain access to other networks;
- vii. using Your Internet Access to make offensive, inappropriate or off-topic posts to moderated Usenet News;
- viii. operating any server as an Open Third-Party Mail Relay; or
- ix. engaging in any other form of activity that in World Without Wires PTY LTD's opinion does, or could reasonably be expected to, adversely affect World Without Wires PTY LTD's commercial reputation or interests, World Without Wires PTY LTD's network or users of World Without Wires PTY LTD's network.

"Purchased Equipment" means any equipment to be purchased by You from World Without Wires PTY LTD; "Service" means the service described in the Service Schedule selected by You; "Service Schedule" means the schedule to the Service for Internet Access as varied from time to time "Software" means any software provided by World Without Wires PTY LTD to You for the purposes of World Without Wires PTY LTD providing the Service to You; "Spamming" means unsolicited bulk electronic messages sent by You which in World Without Wires PTY LTD's opinion, having regard to prevailing industry practices constitutes a breach of acceptable use of the Internet Access; "Standard Form of Agreement (SFOA)" means the terms and conditions set out in this document; "Tax" means any taxes (including goods and services taxes), levies, imposts, deductions, charges, withholding's and duties (including stamp and transaction duties); "Supplier" means a third party supplier which supplies us with goods and services that are necessary for our provision of the Services to you; "Usage" means the measurement of time or data generated by Your Internet Access; "Usenet News" means the hierarchy of newsgroups; "You" and "Your" refer to the account holder of the Service, and includes any person authorised by the password;

### 3 Service Agreement

- 3.1 In accordance with the terms and conditions set out in this SFOA, the World Without Wires PTY LTD Service Schedule, Your application, and the World Without Wires PTY LTD FGP, You (the customer) agree to acquire, and World Without Wires PTY LTD agrees to supply You with the required Services for Internet Access
- 3.2 If deemed necessary, World Without Wires PTY LTD may vary the terms of agreement in this SFOA. However, where such variation will be of detriment to You, World Without Wires PTY LTD will publish a summary of the proposed variation on our website at least 21 days prior to the variation taking effect. In addition, World Without Wires PTY LTD will include a notice on Your next bill stating that a variation has been made within 1 month of the variation taking effect.
- 3.3 World Without Wires PTY LTD will provide you with standard configuration information in order to facilitate your access to the Service.
- 3.4 You are responsible for the use of Your Service. World Without Wires PTY LTD cannot and will not protect You against computer viruses and/or other possible security problems. World Without Wires PTY LTD cannot and will not control or censor the material that is available to You on the global Internet. If You are confronted with material which You believe to be illegal, You can report it to the Australian Broadcasting Authority.
- 3.5 Your password is the means by which You control the security of Your Internet account and protect it from any unauthorised usage. You are responsible for Your password and must take due care not to disclose it to any unauthorised person. As Your password is the authority for and means of protecting Your Service, World Without Wires PTY LTD recommends You change Your password regularly to protect Your security online.
- 3.6 Under this agreement World Without Wires PTY LTD may:
  - 3.6.1 delete any transitory data stored on World Without Wires PTY LTD servers for a duration exceeding 90 days;
  - 3.6.2 reject any email (including attachments), which exceeds 5mb (including encapsulation) and is sent to You via any of World Without Wires PTY LTD mail servers.
  - 3.6.3 where it is deemed necessary in order to comply with World Without Wires PTY LTD's Legal Obligations, World Without Wires PTY LTD may monitor data accessed or transmitted by You while using the Service;
  - 3.6.4 take any steps deemed necessary to comply with World Without Wires PTY LTD's Legal Obligations under the relevant State or Federal legislation, industry code of practice or under direction from a relevant regulatory authority or court order;
  - 3.6.5 increase the amount You are charged for Your Internet Service (Charges of the Service) by providing You with 21 days notice;
  - 3.6.6 vary the conditions of the Service by providing You with 21 days notice;
  - 3.6.7 remove Service by providing You with 21 days notice.
- 3.7 Prior to entering into this Agreement, World Without Wires PTY LTD may make enquires into your credit history with a credit reporting agency. If Your credit history is deemed to not be acceptable based on World Without Wires PTY LTD's prudent business standards, World Without Wires PTY LTD may reserve the right to refuse to enter into this Agreement with You.

### 4 Term of Agreement

- 4.1 This Agreement commences on the date of commencement of the provision of the Services to you and will continue until expiry of your commitment period or termination by either party in accordance with the applicable provisions and notice period.
- 4.2 If you terminate this Agreement you will be liable for a once-off Service Termination Charge

## 5 Notices

- 5.1 Notices under this Agreement are sent by prepaid ordinary post, by facsimile or by electronic mail and will be deemed given:
- 5.1.1 in the case of posting, three days after dispatch; or
- 5.1.2 in the case of facsimile and electronic mail, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.
- 5.2 Any notice of cancellation of the Services must be confirmed in writing, by ordinary post or facsimile, to the World Without Wires PTY LTD Accounts department.

## 6 Governing Law

- 6.1 This Agreement is governed by the law in force in the State of Queensland, and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Queensland and courts of appeal from them for determining any dispute concerning this Agreement.

## 7 Obligations to you

- 7.1 In accordance with the terms and conditions of this Agreement, we will use all reasonable commercial endeavours to provide you with the Services, and any necessary access information required to use the Services.
- 7.2 It is not our responsibility to provide training in the use of the Services pursuant to this Agreement.
- 7.3 We will make all reasonable efforts to ensure continuity of the Services, but we make no guarantee that the Services will be either uninterrupted or error-free.
- 7.4 While we take great care with information that you deposit with us we cannot and do not guarantee that all such information will reach its intended destination (including electronic mail) inside or outside our network.

## 8 Your Obligations to us

- 8.1 You must provide us with accurate and truthful information in your application.
- 8.2 You are responsible for all carrier charges (for instance, Telephone) associated with connecting to our Services. You are also responsible in the case of dialup services, for ensuring that you access the World Without Wires PTY LTD POP closest to you. We will not be liable for any loss or damage you suffer as a result of accessing an unsuitable POP.

- 8.3 You are responsible for obtaining, providing and maintaining all telephone access lines, telephone and computer equipment (including modem) or other access device(s) necessary to access the Services.
- 8.4 You are responsible for any collection fees (including legal fees and any other costs) incurred by us as a result of the collection of outstanding monies owed by you to us under this Agreement.
- 8.5 You agree that you will:
  - 8.5.1 not interfere with normal operation of the Services or any equipment used in the provision of the Services, or make either unsafe;
  - 8.5.2 not use or allow the service to be used for any Prohibited activities.
  - 8.5.3 allow or procure for us or any Supplier safe, sufficient and timely access to any premises as required in connection with the provision, maintenance, repair, de-commissioning and removal of the Services or any equipment used in the provision of the Services; and
  - 8.5.4 permit us or any Supplier to modify any equipment used in the provision of the Services if we consider it necessary to do so.

## 9 Third Party Goods & Services

The following provisions apply where the Services include the provision of goods or services acquired from a Third Party Supplier:

- 9.1 Any transmission speeds referred to by us refer to the maximum theoretical speed achievable with the Services under ideal conditions, and you acknowledge that the actual achieved speeds may be different than the theoretical speeds.
- 9.2 Any general statements, maps or other indicators of Service availability are only a guide and you must not rely upon such statements, maps or other indicators as a commitment to provide the Services to a particular physical location.
- 9.3 The Services are provided on an 'as-is' basis and we cannot guarantee the provision of the Services to you to the extent that the Services are reliant upon the provision of goods or services by a Third Party Supplier.
- 9.4 You agree that we may terminate (or suspend in accordance with relevant clauses) the provision of the Services to you if a Third party Supplier ceases to provide the relevant goods or services to us for any reason. Alternatively, we may in our discretion elect to obtain the relevant goods or services from another Third party Supplier and continue to provide the Services to you (we may also increase the Charges to include any additional amounts that we are required to pay to the new Third party Supplier).

## 10 Technical Support

- 10.1 World Without Wires PTY LTD operates a Support Helpdesk. Should you require support with your Internet Access, fill out the support request form found at [wwwwires.com/support/](http://wwwwires.com/support/), or call 1300 662 825.
- 10.2 Our Services include free technical support services in the commissioning of the Service(s). Once you have successfully connected to the Internet through us and/or gained the additional service(s) you have purchased from us, we have fulfilled our "free" support obligations to you.
- 10.3 Additional support may be provided, but it would be at an additional cost to you in the event that the reported problem is due to faults in your software or hardware. We cannot provide free support for faults that are outside our system.

- 10.4 You may contact us by email, telephone, post or facsimile. We may contact You by email, telephone, post or facsimile.
- 10.5 Advice from World Without Wires PTY LTD staff is given in good faith and with the best of intention, however World Without Wires PTY LTD does not represent that its staff are experts in the operation of your computer hardware or software. You undertake to act on any advice given by any World Without Wires PTY LTD staff member at your own risk.
- 10.6 World Without Wires PTY LTD makes reasonable efforts to ensure that the information on the World Without Wires PTY LTD website is correct and up to date. However, World Without Wires PTY LTD does not warrant the accuracy of that material.
- 10.7 The Customer agrees that if World Without Wires PTY LTD is asked to investigate a breakdown in the service at the Customer's premises and upon investigation it is found that the fault is not due to World Without Wires PTY LTD's equipment then the Customer agrees to pay \$88 per hour during normal business hours (minimum charge is 1 hour) and \$150 per hour outside normal business hours for time and travel.

## 11 Charges and Billing

- 11.1 All quotations issued by us in respect of the Services, unless otherwise stated, are valid for fourteen (14) days from date of issue and are subject to these terms and conditions.
- 11.2 We offer different fee structures for the use of our Services and you are liable for those fees. Some Services may have additional conditions as outlined on our pricing schedules (available on request or on our home page – <http://www.wires.com>).
- 11.3 Regular Invoice/Statement notifications will be delivered via electronic mail ONLY, on the Due Date. You may also contact us at any time to verify the current financial status of your account with us. An invoice presented by us shall be deemed to be a correct statement of all Charges contained in that invoice.
- 11.4 All Charges (unless otherwise specifically agreed), except any Charges for excess usage or specified non Internet or telecommunications services, are payable in advance and must be paid prior to the commencement of the Services and prior to each Due Date (as applicable).
- 11.5 Unless expressly stated otherwise, all Charges under this Agreement are inclusive of GST. Where Charges are expressed to be exclusive of GST, You must pay to World Without Wires PTY LTD 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 as any part of the Charges for the Services is payable. World Without Wires PTY LTD will issue a tax invoice to You for the supply of those Services at or before that time.
- 11.6 All accounts must be paid within Seven (7) days of invoice. Any account that is outstanding beyond seven (7) days is in default, and shall be dealt with in accordance with our credit policy, we may also:
- 11.6.1 Terminate this Agreement (as set out relevant Clause's); and/or
- 11.6.2 require you to pay us interest on any moneys owing to us at a rate equivalent to the prime rate charged for bank overdrafts by our current bankers at that time, that interest to be computed from the payment due date until all outstanding monies have been paid in full.

- 11.7 If we terminate this Agreement under any Clause as a result of your non-payment of any Charges:
- 11.7.1 we will be entitled to remove any of our equipment used by you in connection with the Services, and you must allow us to enter any premises in which our equipment is stored in order to facilitate this removal;
- 11.7.2 if you operate a business in which the Services we sell to you are on-sold to third parties, you automatically hereby assign or transfer to us your title to any business information or data owned and used by you in connection with the Services (including without limitation your customer lists and customer database), effective as of the date of termination of this Agreement; and
- 11.7.3 you consent to us entering the premises on which the items referred to in Clause 11.7.2 are stored or may be accessed or located, in order to enforce our rights to possess, use and sell those items;
- 11.7.4 we will set off any amounts we receive from the sale or use of these items against the amounts you owe to us under this Agreement; and
- 11.7.5 we will re-assign or re-transfer to you any items that remain after all amounts owed to us by you under this Agreement have been paid by you and/or set off by the sale or use of the items referred to in Clause 11.7.2, in accordance with this clause.
- 11.8 Service suspensions will be promptly removed on receipt of full payment of all Charges owed to us under this Agreement.
- 11.9 If you wish to query any item you have been charged for, please do so within seven (7) days of our invoice. All non-disputed amounts must be paid in full within the seven (7) day period described in Clause 11.6.

11.10 Where you request us to invoice amounts owing under this Agreement to a

#### Nominated credit card:

- 11.10.1 you will operate the credit card within terms and credit limits set in order to pay your account in full;
- 11.10.2 you will give us the authority to complete and sign on behalf of yourself, all necessary forms and documents to facilitate payments from the relevant bank, or other financial institution; and
- 11.10.3 you agree to remain liable to us for all amounts owing to your account consequently billed to your credit card until all amounts outstanding have been paid in full.
- 11.11 The amounts payable by you to us for, or in connection with, the Services under this Agreement will include any GST payable in connection with the provision of the Services. We will provide you with invoices in the form of tax invoices.

11.13 The following instances incur additional Charges:

- 11.13.1 dishonoured or cancelled payments;
  - 11.13.2 Overdue invoiced amounts. In addition, World Without Wires PTY LTD reserves the right to pass on details to a Credit Reporting Agency for any payments which are more than 30 days overdue. This information may include personal details and account particulars, and listing of default and clearout status;
  - 11.13.3 any expenses, costs or disbursements incurred by World Without Wires PTY LTD in recovering any outstanding monies including dishonour fees, debt collection, agency fees, and legal fees;
  - 11.13.4 requests for Your Usage logs;
  - 11.13.5 requests for logs of Your recorded calls to World Without Wires PTY LTD support;
  - 11.13.6 any Prohibited Activity that in World Without Wires PTY LTD reasonable opinion adversely affects World Without Wires PTY LTD network;
  - 11.13.7 calls made by You to a third party that results in a charge levied against World Without Wires PTY LTD; and
  - 11.13.8 any additional instance(s) which cause a charge to be levied against World Without Wires PTY LTD.
- 11.14 World Without Wires PTY LTD does not refund unwanted Purchased Equipment. If You require a different model, World Without Wires PTY LTD allows 7 business days, from the date You receive the Purchased Equipment, to return to World Without Wires PTY LTD at Your own cost, any unopened Purchased Equipment from World Without Wires PTY LTD. Credit to Your account will be less a 15% restock fee. No credit will be applicable on any Purchased Equipment returned opened or after the 7 business day period.
- 11.15 Any refunds granted will be less an administration Fee except where World Without Wires PTY LTD is found to be at fault. All refunds in relation to purchased equipment are reimbursed by cheque only.
- 11.16 When requesting a change to your Services, upgrading, downgrading, temporary suspension or cancellation, you must provide this request to us in writing. The request will be processed and put into effect on the Due Date for the following month with additional charges appearing on your invoice. In the instance of a temporary suspension of the Services, it is your responsibility to contact us to request the reactivation of the Services.

## 12 Licence

- 12.1 World Without Wires PTY LTD grants to You an exclusive, non-transferable, revocable licence to use any Software World Without Wires PTY LTD may publish from time to time for the purposes of receiving the Services for the term of this Agreement.
- 12.2 You must not under any circumstances or for any reason:
  - 12.2.1 make any copies of the Software;
  - 12.2.2 disassemble, decompile or otherwise reverse engineer the Software or create derivative works based on the Software; or
  - 12.2.3 distribute or supply the Software to any person.

## 13 Suspension of Services

- 13.1 We reserve the right to immediately and without notice (and without prejudice to our rights of termination under Clause 14) suspend your access to the Services in our discretion if we:
- 13.1.1 reasonably consider that you have failed to comply with any provision of this Agreement;
  - 13.1.2 suspect that you may have breached our Acceptable Use Policy or Fair Use Policy; or
  - 13.1.3 receive allegations (which we believe to be genuine) which indicate that you have breached our Acceptable Use Policy or Fair Use Policy.
- 13.2 If we suspend your access to the Services under Clause 13.1, we may reactivate your access to the Services if we subsequently become satisfied that you are not in breach of any provision of this Agreement.
- 13.3 We may from time to time without notice suspend your access to the Services during a technical failure (including any failure caused by a Supplier ceasing to provide us with goods or services), or where modification or maintenance is being carried out in relation to the Services. We will use all reasonable endeavours to end any such suspension of Services as soon as practicable.
- 13.4 Notwithstanding any suspension of your access to the Services under this clause, you will remain liable for our out-of-pocket costs and any third party costs incurred during a period of suspension.

## 14 Termination

- 14.1 Without limiting the generality of any other clause in this Agreement, we may terminate this Agreement immediately by notice in writing if:
- 14.1.1 we have suspended your access to the Services under any Clause of this agreement and we have not reactivated your access to the Services under any Clause within seven (7) days of this suspension;
  - 14.1.2 a Supplier ceases to provide goods or services to us that are necessary for the continued provision of the Services;
  - 14.1.3 you are in breach of any term of this Agreement (including any Policy) and such breach is not remedied within seven (7) days of us notifying you;
  - 14.1.4 we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency administration;
  - 14.1.5 if you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
  - 14.1.6 if you, being a natural person, die; or
  - 14.1.7 you cease or threaten to cease conducting business in the normal manner.
- 14.2 In addition to terminating this Agreement we may:
- 14.2.1 retain any monies paid;
  - 14.2.2 charge a reasonable sum for work performed in respect of which work no sum has been charged;

- 14.2.3 be regarded as discharged from any further obligations under this Agreement; and
- 14.2.4 pursue any additional or alternative remedies provided by law.

## 15 Consequence of termination

- 15.1 On termination of this agreement:
  - 15.1.1 your right to use the service ceases;
  - 15.1.2 if You have not paid to World Without Wires PTY LTD the Equipment Charges for any Purchased Equipment, World Without Wires PTY LTD will immediately invoice You for any outstanding amount on the Purchased Equipment;
  - 15.1.3 all Charges for use of the Service and all other amounts owing by You to World Without Wires PTY LTD (including Equipment Charges) will become immediately due and payable. Any payment details held on record will be used against outstanding invoices. In addition, where a Service is charged at the end of the month, Charges will be applied at the end of the month; and
  - 15.1.4 where a Service requires the payment of a Cancellation Charge You are responsible for paying that Cancellation Charge in full, by the specified due date.
- 15.2 Termination of this agreement does not affect any of the accrued rights or liabilities of either party, nor does it affect any provision that is expressly or by implication intended to operate after termination.

## 16 Warranties

- 16.1 World Without Wires PTY LTD makes no warranty about the performance characteristic or capability of the Services or any Software.
- 16.2 World Without Wires PTY LTD does not warrant that Services will be free of blockages, delays or faults and World Without Wires PTY LTD is not responsible for any loss or damage which may occur as a result. Downtime will not be compensated for unless it is required by State or Federal law.
- 16.3 Connection speeds cannot and will not be guaranteed, nor can World Without Wires PTY LTD guarantee connection to any particular Internet site.
- 16.4 Network performance may vary among Services, and World Without Wires PTY LTD may manage the World Without Wires PTY LTD network to ensure fair and equitable Usage.
- 16.5 You warrant that You have not relied on any representation made by World Without Wires PTY LTD, its officers, employees or agents, which has not been stated expressly either in this Agreement or upon any description, illustrations or specifications contained in any document (including brochures, advertising or publicity material) produced by World Without Wires PTY LTD and You acknowledge that to the extent World Without Wires PTY LTD has made any such representation You have been provided with an opportunity to independently verify the accuracy of that representation and You entered into this Agreement solely in reliance upon either Your verification or Your decision not to verify (as the case may be).
- 16.6 To the extent permitted by law World Without Wires PTY LTD excludes all terms, conditions, warranties, undertakings, inducements and representations, whether

express or implied, statutory or otherwise, relating to the provision by World Without Wires PTY LTD of the Services or Software.

16.7 To the extent that World Without Wires PTY LTD's liability by operation of law cannot be excluded under clause 16.6 World Without Wires PTY LTD's liability shall be limited to:

16.7.1 in the case of goods:

16.7.1.1 to World Without Wires PTY LTD repairing or replacing those goods; or

16.7.1.2 where re-supply of the goods is not possible, fees paid for those goods.

16.7.2 in the case of services:

16.7.2.1 to World Without Wires PTY LTD re-supplying those Services; or

16.7.2.2 where re-supply of the Services is not possible, to the extent of fees paid for the Service for the period the Service was not supplied. Where a substitute Service has been supplied,

## 17 Limitation of Liability

17.1 We make no express warranties to you except those expressly set out in this Agreement.

17.2 We do not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this clause to be void.

17.3 We exclude:

17.3.1 from this Agreement all conditions, warranties and terms implied by statute or general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non Excludable Condition");

17.3.2 all liability to you in contract for consequential or indirect damages arising out of or in connection with this Agreement even if we knew they were possible or they were otherwise foreseeable including, without limitation, lost profits and damages suffered as a result of claims by any third person such as you or one of your customers; and

17.3.3 all liability to you in negligence for acts or omissions of us or our employees, agents or contractors arising out of and in connection with this Agreement.

17.4 Our liability to you for breach of any express provision of this Agreement or any Non Excludable Condition (except a Non Excludable Condition implied by section 69 of the Trade Practices Act 1974) is limited at our option to one of supplying, replacing or repairing the goods or supplying again the services in respect of which the breach occurred.

17.5 On request by you we will refund any amount paid by you for the goods or services in respect of which the breach occurred, rather than the remedy referred to above.

17.6 If you are a consumer, as defined under the Trade Practices Act 1974, we do not exclude liability to you for breach of any Non Excludable Condition in respect of goods or services ordinarily acquired for personal, domestic or household use and consumption.

- 17.7 Subject to Clause 17.6, you warrant that you have not relied on any representation made by us which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by us.

## 18 Indemnity

- 18.1 You release and indemnify us, our servants, agents and Suppliers from all liability arising in connection with the provision or cancellation of the Services or any goods or services provided by our Suppliers. This indemnity includes (but is not limited to) an indemnity against all actions, claims and demands (including the cost of defending in or settling any action, claim or demand) which may be instituted against us, as well as all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a result, whether directly or indirectly of:
- 18.2 any breach of this Agreement by you including but not limited to a breach in respect of which we elect to terminate this Agreement;
- 18.3 the negligence of you or your agent, employee of sub-contractor or of any other person for whose acts or omissions you are held liable; and
- 18.4 any loss of or damage to any property, or injury to or death of any person, caused by any negligent act or omission or wilful misconduct of you or your officers and employees.

## 19 Privacy

- 19.1 World Without Wires PTY LTD's privacy policy can be found at <http://www.wires.com/privacypolicy.html>

## 20 Complaints procedure

- 20.1 If You wish to make a complaint about World Without Wires PTY LTD, our Services or any associated matter, You may contact us by email, telephone, post, facsimile. Wherever possible, complaints will be dealt with promptly, and where possible You will receive a response within 5 working days.
- 20.2 If You are dissatisfied with the outcome of Your complaint, You may choose to escalate the complaint internally by requesting to speak to a supervisor.
- 20.3 As a last resort, the Telecommunications Industry Ombudsman offers a full complaint procedure. Details are online at <http://www.tio.com.au/>
- 20.4 Under no circumstances will any complaint made on a public forum or any public bulletin board or IRC be recognized as an official complaint.

## 21 Refund Policy

- 21.1 if you voluntarily cancel a Service, the provision of the Service to you will cease on the Due Date of the month after you provide us with written notice of this cancellation (and no refund will be applicable);
- 21.2 if we terminate a Service under any clause, the provision of the Service to you will cease in accordance with the provisions of that Clause (and you will not be entitled to a refund in respect of the Service); and
- 21.3 if you validly terminate this Agreement as a result of our breach, your only remedy (see Clause 17 which sets out the limitations on our liability) is a refund of the unused portion of your monthly, quarterly or yearly prepaid account (or other period as agreed), calculated at the applicable monthly rate, after deducting our costs and expenses in connection with the termination of the Services.
- 21.4 All refunds will be processed and paid in the same manner as you pay us. For example: if you chose Credit Card we will refund to your Credit Card, if you chose BPAY we will send you a cheque.

## 22 Severability

- 22.1 If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable in a particular jurisdiction:
  - 22.1.1 It is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
  - 22.1.2 It does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- 22.2 This clause is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

## 23 Waivers

- 23.1 A waiver of a provision of this Agreement or a right or remedy arising under this Agreement, including this clause, must be in writing and signed by the party granting the waiver. Unless otherwise specified a waiver is valid for 7 business days.
- 23.2 A single or partial exercise of a right does not preclude a further exercise of that right or the exercise of another right.
- 23.3 Failure by a party to exercise a right or delay in exercising that right does not prevent its exercise or operate as a waiver.
- 23.4 A waiver is only effective in the specific instance and for the specific purpose for which it is given.

## 24 Cumulative rights

- 24.1 The rights and remedies of a party under this Agreement does not exclude any other right or remedy provided by law.

## 25 Force majeure

- 25.1 World Without Wires PTY LTD is not liable for:
- 25.1.1 any delay in installing any Service;
  - 25.1.2 any delay in correcting any fault in any Service;
  - 25.1.3 failure or incorrect operation of any Service; or
  - 25.1.4 any other delay or default in performance under this Agreement, if it is caused by any event which is reasonably beyond our control, including but not limited to compliance with World Without Wires PTY LTD Legal Obligations, war, accident, acts of \$DEITY, industrial action, embargo, delay or failure or default by any other supplier.

## 26 Continuing indemnities and survival of indemnities

- 26.1 Each indemnity contained in this Agreement is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- 26.2 Each indemnity contained in this Agreement:
- 26.2.1 is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
  - 26.2.2 Survives the termination of this Agreement.

## 27 No Assignment

- 27.1 World Without Wires PTY LTD may on 30 days' written notice to You, assign all its rights and obligations under this Agreement.
- 27.2 You may not assign Your rights under this Agreement or otherwise transfer the benefit of this Agreement or a right or remedy under it, without the prior written consent of World Without Wires PTY LTD.

## 28 Installation of Equipment at your Premises

- 28.1 World Without Wires Pty Ltd shall install the Equipment at the site nominated by You and agreed by World Without Wires Pty Ltd. World Without Wires Pty Ltd shall use reasonable endeavours to install the Equipment on or around the agreed installation date but will not be liable for any loss or damage for failure to do so.
- 28.2 You are liable for any Charges associated with the installation of any Equipment at Your premises.
- 28.3 Installation of the Equipment will be in consultation with You, however, the technician will decide on the position of Equipment.
- 28.4 Subject to any law to the contrary, You are responsible for the cost of repairing or replacing any faulty equipment (including the Equipment), provided that World Without Wires Pty Ltd will, where possible, pass on the benefit of any manufacturer's warranty in respect of the Equipment.
- 28.5 You must provide a safe environment for the installation, maintenance and removal of any Equipment.
- 28.6 Subject to this clause, You warrant that You are the owner of the premises where the installation of the Equipment is to take place. Where You are not the owner of the premises, You must provide World Without Wires Pty Ltd with written evidence from the premises owner or landlord that the required work can be carried out.
- 28.7 World Without Wires Pty Ltd retains full rights, title and interest to and in the Equipment. You must not interfere with the Equipment without the prior written consent of World Without Wires Pty Ltd.
- 28.8 You shall assume all risks and liabilities for and in respect of the Equipment.
- 28.9 Where the Equipment is affixed, attached or secured to land or premises, the Equipment shall be deemed not to be a fixture and may be removed by World Without Wires Pty Ltd at any time in accordance with this Agreement.

## 29 Fees (subject to change)

- 29.1 A service termination charge of \$100 inc. GST exists for **ADSL customers** who terminate their service within 6 months of their signup date.
- 29.2 A service termination charge of \$150 inc. GST exists for Wireless customers who enter into an **equipment repayment plan** and choose to terminate their service within 6 months of their signup date.

## 30 Subsidised Equipment (subject to change)

- 30.1 All subsidised equipment remains the property of World Without Wires Pty Ltd
- 30.2 World Without Wires Pty Ltd will take full responsibility for any equipment malfunction for a period of 12 Months from the date of installation. This warranty only applies where a defect has arisen, wholly or substantially, as a result of faulty manufacture, parts or labour.  
All warranty is subject to the following conditions;
- 30.2.1 All warranty claims are at the discretion of World Without Wires Pty Ltd.
- 30.2.2 The customer is not authorized to arrange repair work. All warranty claims must be directed to World Without Wires Pty Ltd.
- 30.2.3 Where repair work is required for items located outside the metropolitan area the customer is responsible for all travel and freight costs incurred to repair the items.
- 30.2.4 The company's liability ceases if the equipment is repaired or interfered with by any person other than those authorized by World Without Wires Pty Ltd. All warranty work is to be carried out by authorized persons only.
- 30.2.5 Warranty will only be provided for faults caused by normal wear and tear for the specified period of time from date of purchase.
- 30.2.6 Warranty will not be provided for any faults caused by damage (other than normal wear and tear) including vandalism, acts of malicious damage, misuse and lack of maintenance.
- 30.2.7 All warranty repair work will be carried out during normal working hours. Any work outside of normal hours will result in the associated costs being born by the customer.

## 31 Entire Agreement

- 31.1 This Agreement contains the whole understanding between World Without Wires PTY LTD and You to the exclusion of any prior or collateral Agreement or understanding of any kind relating to the Services.
- 31.2 By commencing use of the Services, you acknowledge that your use of the Services is subject to the terms and conditions of this Agreement.