

# **Skyways Internet Services**

## **SERVICE PROVIDER AGREEMENT - TERMS AND CONDITIONS**

### **1. Definitions**

- 1.1 'Acceptable use policy' means the conditions of use applicable to the service as published by SkyWays Internet Services from time to time;
- 1.2 'Charges' means the charges payable by the customer to SkyWays Internet Services pursuant to this agreement including connection, access, usage and other fees;
- 1.3 'Internet' means the worldwide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol;
- 1.4 'Service' means interactive wireless permanent connection access to SkyWays Internet Services connection to the Internet, the provision of World Wide Web data and the incidental storage of data;
- 1.5 'World Wide Web' means a method of representing and obtaining graphical data and linking data items used by Internet users.
- 1.6 'SkyWays Internet Services Network' means any equipment owned leased or controlled by SkyWays Internet Services used for the purpose of storing, monitoring, routing, receiving or transmitting data.
- 1.7 'Customer Premises Equipment or CPE' means equipment used to interface the customers Personal Computer and the SkyWays Internet Services Network.
- 1.8 'Node' means an integral part of the SkyWays Internet Services Network responsible for transmitting data to other SkyWays Internet Services customers.

### **2. Access period**

- 2.1 The service shall be provided by SkyWays Internet Services to the customer from the date of this agreement for the access period.
- 2.2 This agreement will be renewed for the same term if no written instructions are received 30 days prior to each renewal date.
- 2.3 Renewal of this agreement for a subsequent period may involve an adjustment to the charges as a condition of SkyWays Internet Services providing its consent to renewal.

### **3. Provision of service**

- 3.1 SkyWays Internet Services, in accordance with the terms and conditions of this agreement, shall provide the customer with the service by such means as SkyWays Internet Services determines.
- 3.2 SkyWays Internet Services shall provide the service on a continuous basis during the term of this agreement. SkyWays Internet Services will inform the customer if the service is unavailable for access by the customer due to maintenance or any other foreseeable factor.
- 3.3 SkyWays Internet Services shall provide the customer with all identification and login information required for connection to the service.
- 3.4 SkyWays Internet Services reserves the right to add to, alter or remove services upon giving 21 days notice to the customer of that addition, alteration or removal. Notice shall be deemed to be given upon notification being posted to the SkyWays Internet Services website.
- 3.5 SkyWays Internet Services may assess the customer premises as a suitable location for a Node. Installation of the additional equipment and services required will only be made with the customers consent and at no additional cost to the customer.
- 3.6 SkyWays Internet Services will maintain ownership of all equipment supplied unless purchased by the customer.
- 3.7 SkyWays Internet Services will install the service within twenty one days of the application and payment being processed.

### **4. Customer obligations**

- 4.1 The customer must provide its own access facilities.
- 4.2 The customer is responsible for maintaining the secrecy and confidentiality of all identification and login information required by the customer to access the service.
- 4.3 The customer agrees not to disclose to any other person, corporation, entity or organization any identification or login information, whether in use or not, or any other confidential information relating to the service or SkyWays Internet Services.
- 4.4 The customer is liable for all fees resulting from use of the service accessed through the customer's identification or log-in information, whether authorized by the customer or not.
- 4.5 An invoice raised by SkyWays Internet Services shall be deemed to be correct and prima facie evidence of all charges contained therein.
- 4.6 The customer must not obtain third party data from a source other than SkyWays Internet Services while using any part of the SkyWays Internet Services Network.
- 4.7 The customer must allow external access to the customer premises from time to time during the course of the subscription to adjust and modify SkyWays Internet Services's equipment.
- 4.8 The customer acknowledges that SkyWays Internet Services (Australia) Pty Ltd is a Licensed

Carrier under the Telecommunications Act 1997.

4.9 The customer acknowledges that under the Telecommunications Act 1997 it is an offence to damage, interfere or tamper with SkyWays Internet Services's equipment.

4.10 The customer is liable for the cost of replacement of Customer Premises Equipment where the equipment has been damaged, stolen or destroyed.

4.11 The customer agrees to supply power to Node Equipment on a continuous basis at the customer's expense where applicable.

## **5. Use of the service**

5.1 The customer shall comply with all reasonable directions by SkyWays Internet Services in relation to the access and use of the service.

5.2 Throughout the access period and any renewal, the customer shall comply with the acceptable use policy.

5.3 The customer warrants that in accessing and using the service it will only use software that it is legally entitled to use.

5.4 The customer acknowledges that SkyWays Internet Services does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the service and SkyWays Internet Services shall not be held responsible in any way for any content or information accessed via the service.

5.5 SkyWays Internet Services disclaims all or any liability for any material on the Internet that the customer finds offensive, upsetting, defamatory or personally offensive.

5.6 The customer shall refrain from disruptive activities which may include, but are not limited to, the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, use of the service to gain unauthorized access to any other computer system, the sending of harassing, obscene, offensive or threatening electronic mail, forgery of electronic mail and the placement or transmission or storage of any defamatory material on the Internet.

5.7 The customer will not access, nor permit any other party to access, the service for any purpose or activity of an illegal or fraudulent nature.

5.8 The customer will not reproduce, distribute, transmit, publish, copy, transfer or commercially exploit any information accessed through or received from the service that would infringe the intellectual property right of any person.

5.9 The customer is responsible for preparing and maintaining sufficient back-up files and data storage capacity for all customer data including electronic messages.

5.10 SkyWays Internet Services has no responsibility to provide training in the use of the service pursuant to this agreement. Training may be provided or procured for an additional fee.

## **6. Charges**

6.1 The customer shall pay the charges at the rate and in the manner specified in schedule 1. Payment must be made in the names provided in schedule 1.

6.2 SkyWays Internet Services reserves the right to add to or alter the pricing upon giving 14 days notice to the customer of that addition or alteration. Notice shall be deemed to be given upon notification being posted to the SkyWays Internet Services website.

6.3 The Setup Fee, Annual Subscription Fee or the first months Monthly Subscription Fee (as defined in the attached Pricing Schedule) must be paid prior to the commencement of installation.

6.4 The Installation Fee is non-refundable.

6.5 Monthly Subscription Fees are non-refundable once the month of subscription has commenced.

6.6 A Late Payment Fee of \$5 will apply to all accounts that remain unpaid more than 7 days past the due date shown on the invoice.

6.7 An Unprocessed Payment Fee of \$10 will apply to all accounts where the monthly accounts charge, which is processed during the first business week of each month, is not successful.

## **7. Indemnity**

7.1 The customer releases and indemnifies SkyWays Internet Services, its servants and agents from and against all actions, claims and demands which may be instituted against SkyWays Internet Services arising out of a breach of this agreement by the customer or of any other person for whose acts or omissions the customer is vicariously liable.

7.2 Meteorological conditions and other forms of interference may diminish the quality of Internet access via wireless. SkyWays Internet Services has no control over such events and whilst it will use all reasonable endeavours to reduce the consequences of such events it must be acknowledged that it has no control over them and cannot be responsible for any consequences. In the event that interference temporarily diminishes data transmission to a point where the access is unusable, SkyWays Internet Services will, where possible, make 56k dial-up access ports available to the customer during the period of interruption. The customer will bear the costs of this temporary alternative service.

7.3 The customer should understand that the product and service provided by SkyWays Internet Services is a domestic use product. SkyWays Internet Services will not prevent commercial use of the product, however provides no warranty as to the quality of the service for commercial use.

7.4 SkyWays Internet Services will not be responsible for failure to perform its obligations due to force majeure, including without limitation, fires, floods, lightening, acts of terrorism, riots, labor disputes, transportation delays, shortage of labour, fuel, power, materials equipment, or any cause beyond SkyWays Internet Services's reasonable control. If an event of force majeure occurs, SkyWays Internet Services may, during any period of shortage of supply of the service or any other delays as a result of force majeure, prorate its supply of services to be provided in such a manner as deemed equitable in the sole judgement of SkyWays Internet Services. Provided, however, in the event of a force majeure that shall continue for a period of at least three months, SkyWays Internet Services may give a notice of immediate termination of this Agreement, without any liability to SkyWays Internet Services as a result.

## **8. Implied terms**

8.1 Subject to subclause 8.2, any condition or warranty that would otherwise be implied in this agreement is hereby excluded.

8.2 Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement. However, the liability of SkyWays Internet Services for any breach of such condition or warranty shall be limited, at the option of SkyWays Internet Services, to one or more of the following:

8.2.1 if the breach relates to goods;

8.2.1.1 the replacement of the goods or the supply of equivalent goods;

8.2.1.2 the repair of such goods;

8.2.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or

8.2.1.4 the payment of the cost of having the goods repaired.

8.2.2 if the breach relates to services:

8.2.2.1 the supplying of the services again; or

8.2.2.2 the payment of the cost of having the services supplied again.

## **9. Liability of SkyWays Internet Services**

SkyWays Internet Services shall be under no liability to the customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods supplied or the provision of the service pursuant to this agreement or in respect of a failure or omission on the part of SkyWays Internet Services to comply with its obligations under this agreement.

## **10. Termination**

10.1 For the purpose of this agreement, the following are terminating events -

10.1.1 the breach or threatened breach by the customer of any of its material obligations under this agreement;

10.1.2 the appointment of any type of insolvency administrator in respect of the property or affairs of the customer;

10.1.3 the entry or proposed entry by the customer into any scheme, composition or arrangement with any of its creditors;

10.1.4 the permanent discontinuance of use of the service by the customer;

10.1.5 the merger with or the takeover of either party by another person;

10.1.6 any event described in this agreement as a terminating event; or

10.2 The service may be terminated immediately by SkyWays Internet Services on the happening of a terminating event.

10.3 The customer shall immediately on termination return to SkyWays Internet Services all copies of all documents in the possession of the customer relating to the service and SkyWays Internet Services.

10.4 Any termination of the licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement that is expressly or by implication intended to continue in force after such termination.

10.5 SkyWays Internet Services will require external access to the customer's premises to retrieve equipment upon termination of this contract.

10.6 The customer may request to terminate their account and the service provided by SkyWays Internet Services. Such termination request must be provided in written form at least 30 days prior to the requested termination date.

## **11. Entire agreement**

This agreement supersedes all prior agreements, arrangements and undertakings between the parties

and constitutes the entire agreement between the parties relating to the software. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorized representative of the party.

#### **12. Law**

This agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

#### **13. Waiver**

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

#### **14. Dispute resolution**

Any dispute or difference arising in connection with this agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators, Australia. During such arbitration, a duly qualified legal practitioner may represent both parties.

DISCLAIMER: These terms and conditions were last updated on the 15th November 2006. All customers were notified by email of the updated terms and conditions.