

# GLOBE TELECOM

## STANDARD TERMS AND CONDITIONS

Revision A 2017

### Definitions and Interpretation

**1.1** This agreement means these terms and conditions and includes application and particulars on the reverse ; "Charges" means the monthly access charges set out in the application and (if any) Schedule of Charges; "Confidential Information" includes all information marked or indicated as confidential to a party to this Agreement or any of its Related Bodies Corporate or which the other party knows or ought reasonably to be aware is confidential to the first mentioned party (regardless of its form and where the other party becomes aware if before or after the date of this Agreement); "Equipment" means any equipment, facility or materials; "GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999; "Initial Term" means the period described as such in the application commencing on the date which we notify you that the Globe Services will be available; "Specified Rate" means the interest rate of 2% above the ANZ Bank index rate from time to time; "We" and "Us" means Globe Telecom. **1.2** A reference to a person includes a body corporate, an unincorporated body or other entity and vice versa.

### 2. Term and Provision of Services

**2.1** This agreement commences on the date of first provision of a service and shall continue in force until terminated by either party, which may be affected immediately. **2.2** We will supply the Globe Services at the site. You agree to use the Globe Services for the duration of this Agreement and to pay the Charges to Globe. **2.3** We may alter, add or delete any of the Globe Services, and modify any of the Charges, provided we may not do so without reasonable justification and must notify you in writing of any such changes not less than 14 days before they take effect. **2.4** Where we re-supply, to you, services supplied by another carrier or service provider (the "other provider") and the other provider varies its charges to us, we may correspondingly alter the Charges on not less than 5 days' notice to you. **2.5** We shall use reasonable endeavors to commence providing the Globe Services as soon as practicable but shall not be liable for any delay. **2.6** Unless otherwise agreed you are responsible for maintaining any Equipment provided by you and you must modify your Equipment upon request. **2.7** If Equipment owned or controlled by you causes a fault in, or interferes with the operation of our telecommunications system, you must indemnify us for any necessary service calls or loss or damage incurred by us as a result. **2.8** You shall provide our contractors and us with reasonable access to your premises to enable us to comply with our obligations. **2.9** We may suspend or lime the Globe Service in the event of an emergency. **2.10** We do not warrant that the Globe Services will be free of any interruption.

### 3. Payment

**3.1** You must pay the Charges within 14 days of the date of our invoices. **3.2** If you dispute any invoice, you shall pay the undisputed amounts in accordance with this clause 3, and notify us of the disputed amounts and the reason for dispute on or before such payment. If the dispute cannot be resolved by agreement within 14 days we reserve all our rights including the termination or suspension of any of the Globe Services, until such dispute is resolved. We will not be liable to you for any loss or damage that may be suffered or incurred as a result of the exercise of such rights. **3.3** If any money due by you under this Agreement is not paid on its due date or if we make any payment which you should have made but have not made, then until all that money is paid or repaid to us (as the case may be), you must pay us interest on the unpaid amount at the Specified Rate. **3.4** Unless otherwise expressly stated, all sums payable or consideration to be provided under or in accordance with this agreement are exclusive of GST that shall be borne by the Customer. **3.5** If a party makes a taxable supply in connection with this Agreement, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner the amount of any GST payable in respect of the taxable supply. **3.6** If you terminate this Agreement prior to the end of the Initial Term in consideration of the expenses we incur in establishing this service you will pay to us an amount which is equivalent to the Monthly Access charges multiplied by the unexpired months of the Initial Term plus any charges for which we are liable to any other carrier which arises from provision of this service.

### 4. Termination

**4.1** In this Agreement an "event of default" occurs if: (a) either party breaches a material item of this Agreement and such breach is not rectified within 21 days written notice from the other party; (b) an order for the winding up of either party is made or a liquidator, receiver and manager, administrator or trustee in bankruptcy of that party of the whole or any part of its property or undertaking is appointed; (c) either party passes or attempts to pass a resolution for winding up or enters into or attempts to enter into any composition or scheme of arrangement except for the purposes of reconstruction; or

judgement or judgements aggregating in excess of \$5,000 against Customer. **4.2** If an event of default occurs, the non-defaulting party immediately terminate this Agreement by written notice to the defaulting party. **4.3** We may immediately suspend the Globe Services or terminate this Agreement upon one day of written notice to you. **4.4** On termination of this Agreement, all unpaid sums owing by you to us will immediately become due and payable. **4.5** Termination of this Agreement for any reason shall no prejudice the rights of either party which have accrued up to the time of termination.

### 5. Liability

**5.1** You indemnify and hold us harmless in respect of all loss, damage, costs, expenses and liability arising from your installation, possession, use or maintenance of the Equipment and their use by any person of the Service or Equipment. **5.2** Subject to this clause 5: (a) all conditions, warranties and representations which are not expressly provided or included in this Agreement are excluded from this Agreement; and (b) our maximum agreeable liability to you in contact, tort (including negligence), under statute of otherwise is limited to \$200,000. **5.3** Each party's liability is entirely excluded for any indirect loss or damage, loss of profits, loss of business or anticipated savings, loss, corruption or destruction of data of data or for any other type of indirect or consequential loss or damage whatever. **5.4** This Agreement includes terms implied by any statute which cannot be lawfully excluded, including those implied by the Trades Practices Act 1974 (Cth) and corresponding state and territory legislation. However, in relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of those items (other than section 69 of the Trade Practices Act) will be limited, at our option, to any one or more of: (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and (b) in the case of services, supplying again or payment of the cost of having the services supplied again. **5.5** Notwithstanding any provision in this Agreement or any condition, warranty or representation otherwise made by us, we limit to the maximum extent possible all liability to you in relation to the problem known as the year 2000 problem, including without limitation the ability of any product or service supplied by us to perform date related functions correctly and accurately. **5.6** We shall own all intellectual property rights in all intellectual property created pursuant to or in contemplation of this Agreement. **5.7** Each party agrees to keep in confidence, must not use or disclose and upon request must return any Confidential Information of the other party.

### 6. Force Majeure

Failure or delay in the performance by any party of any obligation under this Agreement must be deemed not to be in breach of this Agreement if: (a) the failure or delay is due to any cause beyond the reasonable control and without the fault or negligence of the party; and (b) the party notifies the other party as soon as the failure or delay is anticipated, of the failure or delay, its cause, and its expected duration.

### 7. Dispute Resolution

**7.1** The parties will not start court or arbitration proceedings except to seek urgent interlocutory relief until: (a) first, a party gives notice to the other party about the nature of the dispute and the parties will seek to negotiate a settlement within 14 days of receipt of such notice; (b) secondly, to the extent those negotiations fail, the parties will seek, within a further 7 days, to reach agreement on a non-litigation, non-arbitration and without prejudice procedure for resolving the dispute; (c) thirdly, if the agreed procedure does not culminate in a settlement of the entire dispute within 30 days, either party may then commence court proceedings to resolve remaining issues. **7.1** The parties must continue to perform their obligations under this Agreement for the duration of the dispute.

### 8. General

**8.1** The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this Agreement, or exercise any election or discretion under this Agreement, shall not operate as a waiver of the rights of a party, whether express or implied, arising under this Agreement. **8.2** Each party shall execute and complete all deeds and other documents and do all things as may be required to perfect the transactions intended to be effected under this Agreement. **8.3** The provisions of this Agreement may only be varied by further written agreement of the parties. No variation of the provisions of this Agreement shall be expressed or inferred from a course of dealing. **8.4** This Agreement contains the entire understanding and agreement between the parties as to the subject matter. All previous negotiations, understandings, representations warranties (other than warranties set out in this Agreement) are superseded by this Agreement and shall of no force or effect whatever and no party shall be liable to any other party in respect to those matters. No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this Agreement or constitute and collateral agreement, warranty or understanding between the parties. **8.5** This Agreement shall be governed by and construed in accordance with the laws in force in Victoria and each party submits to the jurisdiction of courts and tribunals exercising jurisdiction in that State. **8.6** The person who signs this Agreement on behalf of Customer warrants in favour of Globe that he or she has all necessary authority to execute this Agreement in that capacity. **8.7** Customer must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of Globe.