



**Northern Technology Holdings Pty Ltd**  
**Wireless Internet Services**  
**Terms and Conditions of Supply as at 1<sup>st</sup> January 2004**

**1. Applying for the Service**

- 1.1 Arafura Connect is a Trading Name of Northern Technology Holdings Pty Ltd (ACN 104 365 675) ("NTH"). This is an invitation by NTH for you to apply for Wireless Internet access, via the NTH Network, to the Internet and related services, such as email and web site hosting services ("Service") on these terms and conditions ("Terms").
- 1.2 You may apply for the Service by completing an Arafura Connect application form.
- 1.3 If NTH accepts your application, NTH will provide you with the Service (your "Account"), although NTH does not promise that your access to the Internet or use of the Service will be uninterrupted or error free.
- 1.4 You warrant that you are over 18 years of age, or if you are not over 18 years of age, that you have obtained the consent of a parent, teacher or other responsible adult prior to applying for or accessing the Service.

**2. Price and Payment**

- 2.1 Your will be invoiced for the first month's access fee when NTH accepts your application. Your monthly access fee will continue to be invoiced monthly in advance. Any fees payable for excess usage will be invoiced monthly in arrears. If you have selected a Service that is only payable via credit card or you have selected to pay by credit card, your credit card will be debited when NTH accepts your application, and automatically debited for access and/or usage monthly thereafter. You must pay:
- (a) All charges for the Service as notified to you by NTH; and
- (b) Any applicable taxes on the charges (for example, a goods and services tax), even if another person incurs the charges using your Account.
- 2.3 The charges must be paid even if:
- (a) Your computer is not working;
- (b) The Service is unavailable or the NTH network is temporarily down; or
- (c) You are unable to use the Service for any other reason.
- 2.4 You must pay all charges by credit card or by other method as directed by NTH from time to time. If your financial institution fails to honor your payment to NTH, you must pay the amount owing directly to NTH.
- 2.5 NTH will notify you of charges you have incurred by e-mail, or by such other means as NTH elects. You agree that NTH's records are conclusive evidence of the charges for your Account.
- 2.6 NTH may vary its fees and charges at any time by giving you reasonable notice of the change.
- 2.7 From time to time NTH may undertake promotions and make special offers in relation to the Service ("Promotions"). All Promotions are offered subject to their terms and may be withdrawn or altered at NTH's discretion. The terms of a Promotion will override these Terms to the extent of any inconsistency.
- 2.8 If you have paid for the Service in advance and then cease using the Service for any reason, you will not be entitled to any refund except to the extent that NTH Wireless Internet is required by law to give you such a refund.
- 2.9 Prices quoted are GST inclusive.

**3. Use of the Service**

- 3.1 When using the Service you must comply with these terms, and any other instructions NTH gives you, whether via its website or otherwise. NTH will co-operate with other Internet service providers to control unacceptable user behavior and may implement technical mechanisms to prevent behavior that is or would be in breach. You are also responsible for the use of your Account by any other person (whether you have given them permission to use it or not) and you must ensure that they also comply.
- 3.2 When using the Service, you must comply with NTH's Acceptable Use Policy - you must not break any laws, infringe the legal rights of any person or cause harm to the Service or its users. For example, you must not:
- (a) Defame, harass or abuse anyone or violate their privacy;
- (b) Distribute or make available obscene, pornographic, illegal or confidential material (for the avoidance of doubt and without limitation, you must not place on the Internet any content in contravention of applicable laws of the States, Territories or the Commonwealth);
- (c) Infringe intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner);
- (d) Interfere with or disrupt the Service, any other computer system or anyone else's use of them (or attempt to do any of these things), including by distributing viruses or overloading a system;
- (e) Access, monitor or use any data, systems or networks without authority (for example, by hacking) or attempt to probe, scan or test the vulnerability of any data, system or network;
- (f) Send unsolicited bulk emails;
- (g) Forge header information, email source addresses or user information;
- (h) Disobey the rules of any newsgroup, forum or email mailing list; or
- (i) Engage in any activities that expose NTH to liability.
- (k) NTH may limit the distribution of Bulk Emails, Emails with large Attachments or any other activity that may impinge the Service Quality of the network.
- 3.3 You must comply with any rules imposed by any third party whose content or service you access using the Service.
- 3.4 Commonwealth legislation allows the Australian Broadcasting Authority ("ABA") to direct NTH to remove certain prohibited Internet content from its servers or prevent users from accessing certain Internet content. NTH may take any steps necessary in order to ensure compliance with any relevant industry code of practice, notification or direction from the ABA, including removing any content (including part or all of a website) from its servers, closing or suspending your Account, filtering the Internet content made available to you or restricting access to a particular website. NTH may take these steps at any time and without notice to you.

- 3.5 You must not re-sell or attempt to re-sell the Service, or transfer your Account to another person without NTH's written consent.
- 3.6 NTH may monitor your Account to ensure that you are complying with these Terms. NTH will investigate any misuse of the Service and may involve police or other law enforcement agencies in doing so. NTH may recover from you any costs of investigating your misuse of the Service. If your use of the Service causes loss to other users, NTH may require you to pay compensation.

- 3.7 In order to provide the best possible service for all NTH customers, NTH may make changes to the Service if it is necessary to do so for the efficient operation of the NTH Network. For example, NTH may:

- (a) Restrict or disconnect your service if your activities represent an unusually large burden on the NTH network ;
- (b) Delete incoming and outgoing email messages which exceed 2 megabytes in size;
- (c) Deliver access and content via proxy servers.

**4. Disclaimers and Liability**

- 4.1 You acknowledge that:

- (a) NTH does not exercise any control over content accessible through use of the Service;
- (b) NTH is not responsible for any damage you or any person using your Account may suffer arising from using:
- (i) The Service (including loss of data, delays, non-deliveries, mis-deliveries or service interruptions, whether or not caused by NTH's negligent acts or omissions); or
- (ii) Any content accessed through the Service (including inaccurate, incomplete or out of date information).
- (c) NTH is not liable for any charges levied on you by your chosen telecommunications carrier or by any content provider (it is your responsibility to check whether your call to connect to the NTH Point of Presence is a local call by contacting your telecommunications provider);
- (d) NTH does not make any warranty or representation regarding the performance of or right to use any software provided to you in connection with the Service. You agree that you will make no claim against NTH in respect of the software, its performance or your right to use it; and
- (e) NTH is not able to provide support for software not supplied by NTH, including software downloaded from the Internet.

- 4.2 Except for any conditions or warranties on the Service that NTH is required to give by law, NTH makes no statement, warranty or promise about the quality or suitability of the Service.

- 4.3 NTH acknowledges that the Trade Practices Act 1974 (Cth) and other legislation may imply into these Terms certain conditions and warranties which may not be excluded, restricted or modified by agreements ("Non-Excludable Condition"). NTH's liability under those Non-Excludable Conditions is, where permitted, limited (at NTH's option) to:

- (a) For goods, replacing or repairing those goods or paying the cost of repair or replacement; or
- (b) For the Service, supplying the Service again or paying the costs of having the Service supplied again.

- 4.4 Except to the extent that clause 5.3 applies, NTH excludes all liability to you or any other person (whether using your Account or otherwise) for any costs, loss, liability or damage (whether direct or consequential) arising out of this contract or the supply of the Service by NTH including any inaccuracy or omission in the Service or as a result of any act, omission or negligence by NTH or its representatives.

- 4.5 You indemnify NTH against any costs, expenses, loss or liability directly or indirectly suffered or incurred by NTH (including as a result of a claim by a third party) resulting from:

- (a) Any breach of these Terms by you; and
- (b) The use or misuse of the Service by you or any person using your Account (including but not limited to use of the Service contrary to clause 4).

**5. Suspension and Termination**

- 5.1 NTH may suspend the Service immediately at any time without liability to you if you breach these Terms (or NTH reasonably suspects you have breached these Terms) or if suspension is required for technical reasons. NTH will endeavor to give you notice of such suspension.

- 5.2 NTH may terminate the Service if:

- (a) You breach these terms;
- (b) You or any person using your Account misuses the Service; or
- (c) There are reasonable grounds to suspect that any information provided by you to NTH in your application was incomplete or incorrect.

- 5.3 NTH may close your Account for any reason on 24 hours notice to you.

- 5.4 You may close your Account on 30 days' written notice to NTH pursuant to any payout required for early termination of contracts.

- 5.5 If your Account is closed or the Service is terminated, you must pay all outstanding charges immediately.

**6. Privacy Consent**

- 6.1 NTH collects and uses Personal Information about you primarily to supply you with the products and services you order from it and its related companies. NTH also collects and uses Personal Information for related (or secondary) purposes including:

- (a) Billing and account management;
- (b) Business planning and product development; and
- (c) To provide you with information about promotions, as well as the products and services of NTH companies and other organisations.

- 6.2 If you do not provide all the Personal Information NTH requests from you, NTH may be unable to supply the products or services you have requested, or NTH may be restricted in the way it supplies these products or services to you.

- 6.3 NTH may disclose Personal Information about you (for the purposes set out in clause 6.1) to:

- (a) Any of the NTH Group companies or any other corporation related to NTH;
- (b) NTH's suppliers who need access to the Personal Information to provide NTH with services, enabling NTH companies to supply you with the products and services you have ordered; and
- (c) Joint venture partners of the NTH Group of Companies.
- 6.4 If you wish only to receive communications that are account-related or legally required, you may request not to receive other communications (i.e. you may "opt out"). If you wish to make a request to opt out, you can do so at any time by letting NTH know of your request by contacting the NTH customer service line on (08) 8947 6900.
- 6.5 You may request access to Personal Information NTH holds about you, and NTH will grant you access unless it is required or permitted to refuse such a request. You may also request that information about you be corrected if you think that it is not accurate.
- 6.6 For the purpose of processing your application and ongoing credit management of your account, NTH may need to disclose to a credit reporting agency:
- (a) Personal identifying details, including your name, current and previous addresses, driver's license number, date of birth and employer;
- (b) The fact you have applied for an NTH service, and any credit limit on your account;
- (c) The amount of payments which are overdue for at least sixty (60) days, when steps have been taken by NTH to recover those overdue payments;
- (d) Where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (e) Cheques or credit card payments that have been dishonored;
- (f) Court judgments or bankruptcy orders made against you;
- (g) That, in the opinion of NTH, you have committed a serious credit infringement; and
- (h) When NTH ceases to provide products or services to you.
- 6.7 You authorise NTH to disclose the information described in clause 6.6 to a credit reporting agency. You also authorise NTH to seek from or give to any credit providers authorised by you or named in a credit report or to other telecommunications providers (carriers or carriage service providers), and NTH's franchisees, agents, contractors and outlets, the same information and any other information collected for Service activation and any other information on your credit worthiness, credit history or credit capacity that credit providers are allowed to give under the Privacy Act.
- 6.8 You authorise NTH to obtain and use personal credit information (e.g. your existing household loans and personal credit card history) for the purpose of considering an application by you for commercial credit;
- 6.9 You authorise NTH to obtain and use commercial information about your commercial credit worthiness or commercial history (your existing credit record as a sole trader) when considering an application for consumer credit, for example where the Service will be used for domestic purposes.
- 6.10 NTH may refuse or cancel the supply of products or services on the basis of its credit assessment of you. You are entitled to see, and to correct, any credit information which NTH holds about you.
- 7. General**
- 7.1 In these Terms "NTH Network" means the telecommunications network operated by NTH and other subsidiaries of Northern Technology Holdings Pty Ltd, "person" includes individuals, corporations and any other entities, and "related body corporate" has the meaning given to that expression in the Corporations Act.
- 7.2 NTH may amend these Terms by giving you reasonable notice by mail, email or by notice on the NTH web site. If you object to the amended Terms, you may close your Account in accordance with clause 6.4. If you do not close your Account, you will be deemed to have agreed to the amended Terms, which will apply to you from the end of the reasonable notice period.
- 7.3 If NTH is going to communicate with you by email, any email communications will be sent to your Primary NTH Email Account . You agree to monitor this email account regularly to retrieve and review these communications.
- 7.4 You may not assign this Agreement or your rights and obligations under it to any other person. However, NTH may assign its rights and obligations under this Agreement to any related body corporate of NTH.
- 7.5 A party does not waive its rights under these Terms unless the waiver is in writing and signed by the party against whom the waiver is claimed.
- 7.6 Any provision of these Terms that is void, voidable or unenforceable may be severed from the Terms and the remainder of the Terms will continue unaffected.
- 7.7 NTH may pay a commission to a person who introduced you to the Service.
- 7.8 These Terms are governed by the laws of the Northern Territory and each party submits to the non-exclusive jurisdiction of the Courts of that State/Territory.
- 8. Domain Names (including Sub-Domains)**
- 8.1 NTH will register a domain name on a first come, first served basis in accordance with the rules and policies of NTH's chosen naming authority, and there is no guarantee that your preferred domain name will be registered.
- 8.2 Your requested domain name and application details must comply with the requirements of NTH's chosen naming authority as advised by NTH from time to time.
- 8.3 NTH reserves the right to refuse registration, re-delegation and/or hosting of any domain name or sub-domain which it considers to be offensive, defamatory, illegal or otherwise inappropriate. This right may be exercised by NTH at any time.
- 8.4 When requesting domain name redelegation, you warrant that you are the legal owner of the domain name and NTH reserves the right to require proof of ownership. You agree that your personal data relating to the domain name is to be listed in the public registry for your domain name.
- 8.5 While all possible efforts are made to ensure there will be no disruption to mail and/or hosting services during delegation, NTH takes no responsibility if disruption occurs.
- 8.6 If NTH has not received the payment of any amount due within 30 days of a request for payment including a domain name registration, redelegation or renewal, NTH reserves the right to cancel the domain name and all services associated with it.
- 8.7 Sub-domain names provided for customer use remain property of NTH at all times and may not be re-delegated or re-pointed to any other provider or non-NTH server.
- 8.8 NTH reserves the right to withdraw use of a sub-domain name at any time on reasonable notice.
- 9. Email Services**
- 9.1 Usernames must meet NTH specifications as shown during signup. NTH reserves the right to delete usernames that it considers to be offensive, defamatory, illegal or otherwise inappropriate without notice.
- 10. Webhosting Services**
- 10.1 Extra charges apply if the files stored in your website and/or data served from your website exceed the levels included in your chosen service. It is your responsibility to upload your web site to our servers. NTH will provide you with uploading instructions on the NTH homepage.
- 11. Permanent Connections**
- 11.1 A permanent connection cannot be guaranteed. Planned outages (e.g for network and service maintenance), unplanned outages and disconnections for reasons outside NTH's control may occur.
- 11.2 The Service provided by NTH is for Internet Access only. NTH does not provide any hardware, ISDN lines, or any support for these items. You agree to pay any set up fee, the monthly Service charge and any additional charges as set out in NTH's published rate cards.