



# Allegro Networks

## Terms and Conditions of Service

*Version 2.4.0*

April 2009

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## General Terms and Conditions

You should be aware that we can change these terms at any time. If we change these terms, these online versions of these terms and conditions will always be updated to reflect those changes.

Words with initial capital letters (e.g. "Plan Table") have the meanings set out in the Glossary at the end of the Agreement.

Our contract with you is comprised of the details in your application form, these terms and conditions, the applicable service schedules and any documents incorporated by reference.

### Section 1. Your obligations

- 1.1 We will provide you with the Service and will use reasonable care and skill in doing so. In order for us to provide you with the Service, there are things that we need to ask you to do. These are that you:
  - (a) ensure your PC meets the requirements set out on the Website from time to time;
  - (b) comply with the Acceptable Use Policy;
  - (c) not use, attempt to use or allow others to use the Service in a way that, in Allegro's reasonable opinion, significantly interferes with other customers' use or enjoyment of the Service or interferes with our efficient or proper operation of the Service (to avoid doubt, a high level of usage on an unlimited downloads plan will not, by itself, be a breach of this clause); pay all fees and charges associated with your use of the Service, in accordance with Section 2;
  - (d) make sure you keep your account information, password, data and equipment secure;
  - (e) regularly check the default email address that we have allocated to you for messages about your Service;
  - (f) receive our newsletter;
  - (g) Ensure that any equipment provided by you does not damage the Service or the Broadband Transmission Facilities
- 1.2 There are certain things that, despite our best efforts, we cannot guarantee or provide in relation to the Service. This means we have to ask you to acknowledge each of the following:
  - (a) We will use reasonable care and skill in providing the Service and will provide the Service in accordance with this Agreement. However, given the nature of telecommunications systems (including the Service's reliance on systems and services not owned or controlled by us), we cannot promise that the Service will be continuous, accessible at all times or fault-free.
  - (b) We will provide the Service Level Agreement as set out in Service Level Agreement Schedule as updated from time to time.
  - (c) We may not be able to meet a request from you to provide detailed information about your usage of your Service (for example, information about what sites you visited and when).
  - (d) We do not have to monitor use of the Service, whether by you or anyone else. If we do so, we can stop the monitoring at any time. We may monitor use of the Service to see whether you are complying with the Acceptable Use Policy or to investigate a breach (or suspected breach) of that policy. However, we are not under any obligation to enforce the Acceptable Use Policy or any other policy that applies to anyone using services that we provide to them.
  - (e) Where you provide your own wireless PC connection device, you are responsible for any loss caused by an unauthorised interception of your Service.
  - (f) We are not responsible for any loss caused by equipment provided by someone other than us.

- 1.3 The Smart Building Service works off a fixed telephone line and it is important for you to understand that the Service can sometimes affect the fixed telephone line. If your Service is a Smart Building Service, we ask that you:
- (a) warrant that:
    - (i) you are the legal lessee of the telephone service connected to a network to which your Service will be connected (the "relevant telephone service"); or
    - (ii) if you are not the legal lessee of the relevant telephone service, you have obtained the legal lessee's permission to connect the Service;
  - (b) acknowledge that:
    - (i) if the relevant telephone service is disconnected, your Smart Building Service may be disconnected (and this Agreement may be terminated), in which case you may have to pay us the Cancellation Fee;
    - (ii) the installation of your Smart Building Service may cause minor disruptions to the relevant telephone service; and
    - (iii) you may experience minor disruptions to your Smart Building Service if the relevant telephone service is transferred to another carriage service provider.

## **Section 2. Charges for your Service**

- 2.1 As with any service provided by Allegro, we ask you to pay certain charges. With this Service, you are responsible for paying the charges set out in the Plan Table (as amended from time to time in accordance with clause 5.2) for your selected pricing plan, starting from your Service Commencement Date and by the date specified on the invoice.
- 2.2 These charges apply even if they have been incurred by a person using your Service without your authorisation.
- 2.3 Our plans, except our Unlimited plans, have usage charges and for that purpose, 1 Megabyte is 1,000,000 bytes.
- 2.4 Unless specified in the Plan Table or your Application Form, data that travels from you to us (upstream) is not included in any data charge calculation.
- 2.5 You should only accept this Agreement if you agree to pay the charges set out in the Plan Table.
- 2.6 You should only purchase a plan that has usage charges (including voice plans) if you agree to pay these charges in full.
- 2.7 If you have a plan with a monthly allowance and usage charges Allegro will provide for you a tool that permits you to monitor and manage your usage.
- 2.8 Tools may include:
- (a) Emails detailing the amount of allowance you have consumed when you approach or exceed your monthly allowance.
  - (b) Online tools allowing you to view your consumption
  - (c) Any other tool that Allegro believes will provide you access to your usage information.
- 2.9 If you exceed your allowance and upgrade to a plan that is of equal or greater value and has a usage allowance that is greater than the amount you used in the month that caused you to be in excess of your allowance Allegro may, at its sole discretion, offer you a ex-gratia credit on your usage charges. This credit will not exceed 50% of your excess usage charges for:
- (a) the current month if you request the upgrade before your billing cycle ends and you have exceeded your allowance at the time you request the upgrade; or

- (b) The previous month if you have not exceeded your usage allowance for the current month at the time you request the upgrade.
- 2.10 Allegro will not credit your usage charges if you do not apply for the upgrade in the month that you incurred the excess usage or the month immediately after.
- 2.11 Allegro will not credit your usage charges under any circumstances if you have previously received an ex gratia credit for excess usage charges and have not upgraded your service to a more appropriate plan.
- 2.12 We have chosen to structure our charges so that all monthly fees are payable in advance and any additional megabyte charges are payable in arrears. Other fees and charges that are payable by you as set out in the Plan Table or Application Form are payable by the due date specified on the invoice.
- 2.13 We will produce only one invoice per month per account for recurrent charges. The date this invoice will be released is:
- (a) generally on of 7<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup> or 28<sup>th</sup> of the month; and
- (b) can be changed by sending written request to our accounts contact.
- 2.14 Invoices are due and payable 14 calendar days from the date they are rendered.
- 2.15 If an invoice is not paid by the due date we may, at our discretion, engage a Mercantile Agent to collect the default amount. In doing this we may:
- (a) Engage any Mercantile Agent of our choosing after an invoice has been in default for 30 calendar days; and
- (b) Instruct the Mercantile Agent to collect any outstanding amounts owed to Allegro by you; and
- (c) Charge you any fees rendered by our Mercantile Agent; and
- (d) Charge you any legal fees that may arise from proceedings; and
- (e) Require you to pay said fees in addition to the invoices that our Mercantile Agent has been given for collection; and
- (f) Subject to the provisions of clause 15.3, provide your personal information to a credit reporting agency.
- 2.16 We may allow you to choose to be billed for the Service by:
- (a) providing us with your credit card details for us to debit your charges for the Service, if your plan permits payment via this method; or
- (b) other billing methods that we may make available from time-to-time.
- 2.17 We may provide you with the option to pay for your Service via credit card. If you choose to provide us with your credit card details for the purposes of paying for your Service, we may:
- (a) bill all fees and charges (including usage charges) to your credit card on a monthly basis from your Service Commencement Date;
- (b) disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details;
- (c) take steps to verify that there is sufficient credit on your credit card account to meet likely fees;
- (d) charge any Cancellation Fee payable under clauses 1.3(b), Section 4 or Section 5 to your credit card immediately on notice of termination; and
- (e) charge any fee for our Equipment that has not been returned within 28 days of notice of termination;
- 2.18 We may provide you with the option to pay for your Service via direct debit. If you choose to use this payment option you must complete a Direct Debit Application form whereupon Allegro may, subject to any limitations described on your direct debit application:
- (a) Deduct amounts sufficient to pay all fees and charges (including usage charges) outstanding on your account when the direct debit is processed;
- (b) Deduct amounts sufficient to pay suspension fees that may be outstanding;

- (c) Charge you a fee of \$22.00 including GST for a direct debit that has failed due to insufficient funds;
- (d) Deduct any Cancellation Fee payable under clauses 1.3(b), Section 4 or Section 5 immediately on notice of termination; and charge any fee for our Equipment that has not been returned within 28 days of notice of termination;
- (e) Withdraw your ability to use Direct Debit as a payment method if your account has insufficient funds on 3 or more consecutive occasions no less than 14 calendar days apart.

### Section 3. Security Deposits

3.1 Allegro may, at its sole discretion require a security deposit to be lodged with us:

- (a) Prior to delivery of a new service if:
  - (i) The estimated monthly spend exceeds \$250 including GST; and
  - (ii) A credit worthiness check fails; and
  - (iii) You are not able to satisfy Allegro of your credit worthiness.
- (b) Prior to releasing a suspension of your service if:
  - (i) You are using a service that has a Bronze or Silver SLA; and
  - (ii) You have been suspended for non payment on at least one other occasion in the past six months; and
  - (iii) Your average monthly spend over the prior 3 months exceeds \$250.00.
- (c) In order to prevent service suspension or cancellation if:
  - (i) Your account falls into arrears more than 14 days; or
  - (ii) Allegro believes that your account is likely to fall into arrears more than 14 days; and
  - (iii) You are unable to convince Allegro of your credit worthiness.

3.2 Security deposits will be calculated using the following formula:

- (a) For users who have existing services,  
Taking the higher of \$500 and the sum of your past three invoices nett of:
  - a. Installation charges; and
  - b. Miscellaneous equipment charges
- (b) For users who require new services:  
Taking the higher of \$500 and the sum of
  - a. Your monthly service charges multiplied by 3; and
  - b. Your installation fee
  - c. Any existing security deposit
- (c) Security deposits are held by Allegro against your account to cover your fees and charges should your account become delinquent. Security deposits should not be considered a "prepayment" on your account and will not be used to pay for services as and when they fall due.
- (d) After your account has been terminated your security deposit will be returned to you within 30 days. The amount returned to you will be nett of:
  - (i) Outstanding service fees; and
  - (ii) Cancellation Fees payable under clauses 1.3(b), Section 4 or Section 5; and
  - (iii) Equipment charges for Equipment that has not been returned within 28 days of termination; and
  - (iv) Mercantile Agents fees

- (e) If you have a Security deposit lodged with Allegro and you cancel or alter your services such that the monthly service charges reduce to less than 70% of the value on which your security deposit was calculated you may apply in writing to have a portion of the security deposit refunded.
  - (i) The amount of the Security deposit refunded will be calculated by subtracting the amount calculated in clause 3.2(a) from the security deposit already held by Allegro.
  - (ii) Applications for security deposit reductions must be made in writing to [accounts@allegro.com.au](mailto:accounts@allegro.com.au).

#### **Section 4. Commencement and termination of this Agreement**

##### 4.1 Commencement of Agreement

- (a) We ask you to note that this Agreement commences on the following dates:
  - (i) If you complete an online Application Form, on the date you submit the Application Form; or
  - (ii) If you sign an Application Form, on the date you sign the Application Form; or
  - (iii) If you apply in circumstances other than those set out in (i) or (ii) above and the Material Terms are read to you, on the date you accept them; or
  - (iv) If the Material Terms are not read to you, this Agreement commences on the date we install the service.
- (b) We ask you to note that your Service commences on the date we complete installation of all Broadband Transmission Facilities required under the agreement with you and activate your service in our system.

##### 4.2 Application Cancellation

- (a) You may cancel an application made for a service at any time prior to the commencement of the service. To avoid doubt it should be emphasised that cancellation requests received subsequent to the commencement of those services are service cancellation requests and clause 4.4 will therefore apply.
- (b) Application cancellation requests must be made in writing and sent by email to [cancellations@allegro.com.au](mailto:cancellations@allegro.com.au).
- (c) Upon receipt of your cancellation request we will issue you with a ticket number by email, confirming that we have received your request. The date of your request is deemed to be the date when this confirmation email is sent by us. If you have not received your ticket number within 24 hours of sending your request then you should assume that we have not received the request and you should make contact with us to follow this up.
- (d) To ensure that your cancellation request is processed promptly, once you have received your ticket number, phone Allegro Customer Service on 1300 85 85 35 and quote your ticket number to confirm.
- (e) Upon cancelling an application you will be charged the Application Cancellation Fee unless a Cooling Off Period applies to you in which case you will only be charged the Application Cancellation Fee if you cancel after the Cooling Off Period has ended.
- (f) Where a Cooling Off Period applies to you we may choose to delay commencement of installation work for the service until after the Cooling Off Period has ended.

##### 4.3 Our right to suspend or terminate a service

- (a) We may suspend or terminate your Service if:
  - (i) you are in serious breach of this Agreement (you will be in serious breach if you breach your obligation to pay our charges for the

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- Service, breach the Acceptable Use Policy or breach clauses 1.1(c), 1.1(d), 1.1(e), 1.1(g), 9.4, 10.3 or 13.2 of this Agreement); and
- (ii) we have notified you in writing of your breach and you have failed to remedy the breach within 30 days of our notice (if the breach can be remedied).
  - (iii) If the breach is something which cannot be remedied, we may immediately terminate your Service with notice to you.
  - (iv) Engaging in conduct that breaches the Acceptable Use Policy or breaching clauses 1.1(d), 1.1(g), 9.4, 10.3 or 13.2 of this Agreement are breaches that are not capable of remedy.
- (b) In addition, we may suspend or terminate your Service if you do not pay the charges by the due date. If we lift the suspension on your Service, a \$30 administration fee applies.
  - (c) If we terminate your Service under clause 4.3(a) during your Contract Term, you must pay us the Cancellation Fee.
  - (d) We may suspend the Service to you during the 30 day period before we terminate your Service under clause 4.3(a). If we do suspend your Service, we will reimburse any monthly fees (pro-rated if necessary) that you paid during the suspension.
  - (e) If we terminate the Service for any reason, you must still pay us for any charges incurred before the termination.
  - (f) We may also terminate the Service at any time by giving you 30 days prior written notice.
  - (g) If we terminate your service under the provisions of clause 3.2(b) and you fail to settle your account within 90 days we may, at our sole discretion, retain or sell any equipment of yours that is in one of our data centres as full and final payment of your account.
- 4.4 We understand that, at some stage, you may no longer wish to continue with your Service for a number of reasons. Your rights when cancelling your service are as follows:
- (a) All cancellation requests must be made in writing and sent by email to [cancellations@allegro.com.au](mailto:cancellations@allegro.com.au).
  - (b) You may make a cancellation request under this agreement at any time. 28 days notice is required however, unless you are cancelling under clause 4.4(f).
  - (c) If you cancel this Agreement before the end of your Contract Term, you must pay us the Cancellation Fee unless you are cancelling under clause 4.4(f) in which case you do not have to pay the Cancellation Fee.
  - (d) Upon receipt of your cancellation request we will issue you with a ticket number by email, confirming that we have received your request. The date of your request is deemed to be the date when this confirmation email is sent by us. If you have not received your ticket number within 24 hours of sending your request then you should take it that we have not received the request and you should follow up with us.
  - (e) Your cancellation request will take effect on your next service anniversary date following the expiry of the 28 day notice period, unless you are cancelling under clause 4.4(f).
  - (f) In certain circumstances you may request that your Service be cancelled immediately. "Immediate cancellation" means that no notice period applies so your cancellation request will take effect on your next service anniversary date following the date of your request. Immediate cancellation requests may be made when:
    - (i) we are in serious breach of this Agreement; that is, if we breach our obligation to use reasonable care and skill in providing the Service and our obligations under clause 5.2); and
    - (ii) you have notified us in writing of our breach and we have failed to remedy the breach within 30 days of receiving your notice.

- 4.5 At certain times, we need to perform maintenance on or protect our networks to keep providing a high performing service to users. This means that we may sometimes need to suspend your Service if it is necessary for the purpose of maintenance, integrity, protection or restoration of our networks or the users of our networks. If we need to suspend your Service under this clause, we endeavour to ensure that the suspension is for as short a period as is reasonably possible.
- 4.6 Unfortunately, we cannot control some external events that may affect our provision of the Service to you. If a Regulatory Event occurs, we may not be able to continue providing the Service to you at all or may not be able to provide it on the same terms as set out in this Agreement. If this happens, we will give you as much notice as we reasonably can and we may need to terminate this Agreement. You will not pay any Cancellation Fee if your Service is terminated under this clause.
- 4.7 Exercise of our rights under clauses 4.5 and 4.6 does not affect your Contract Term.
- 4.8 The effect of termination
- (a) We need to make sure that certain things occur if you or we terminate this Agreement. So, if this Agreement is terminated:
    - (i) any software licences granted to you under this Agreement will immediately terminate and you must return to us or destroy the Software and all copies as we direct; and
    - (ii) you must immediately return any of our property to us.
  - (b) If we terminate this Agreement under clause 4.2 and, at your request, we later agree to provide you with the Service again, you may need to pay us a disconnection fee set out in the Plan Table.
  - (c) If you fail to return our property to us within 28 days of termination of this agreement you will be liable for the full retail price of the property.

## **Section 5. Changing this Agreement**

- 5.1 From time to time, we need to be able to change these terms to reflect our changing business. We can change this Agreement (including the Plan Table and any prices or the Acceptable Use Policy) in accordance with this clause 4.
- 5.2 We must give you at least 30 days' prior notice of the change, unless:
- (a) we need to make the change immediately in order to act legally or the change results from changes in the law. If this is the case, we will give you as much notice as we reasonably can; or
  - (b) the change will benefit you. If this is the case, we can make the change and without giving you notice; or
  - (c) the change relates to call charges on our Voice Over Broadband service. If this is the case, we can make the change immediately and the Voice Over Broadband Schedule applies.
- 5.3 If we make a change to this Agreement during your Contract Term and the change means that you are materially worse off (and does not fall within clause 5.2(a)), you may terminate this Agreement by giving us notice within 14 days of the date we notify you of the change. If you terminate your Agreement, you will not have to pay us the Cancellation Fee and the Agreement will be terminated from the date the change takes effect.
- 5.4 If we make a change to this Agreement after the expiration of your Contract Term and you do not accept the change, you may cancel this Agreement by giving us notice. The Agreement will be terminated from the date the change takes effect.
- 5.5 If you choose to cancel this Agreement under clauses 5.3 or 5.4, we will refund you any unused portion of your monthly charges.

- 5.6 If you do not notify us of your decision to terminate this Agreement under clause 5.3 or 5.4 and continue using the Service from the date on which the change comes into effect, you will be taken to have agreed to the change.

## **Section 6. Altering your service**

- 6.1 From time to time you may wish to alter your service. Alterations may be made by contacting our contact centre subject to the following conditions:
- (a) Alterations will take place on the service anniversary;
  - (b) We will charge you a Service Alteration Fee unless:
    - (i) You are upgrading from one SLA class to a higher SLA class (egg: upgrading from Silver SLA to Gold SLA); or
    - (ii) You are upgrading from one bit rate to a higher bit rate in the same SLA class (egg: from 1024/1024 to 2048/2048 in the Silver SLA class); or
    - (iii) You are moving from one bundle to another with the same service speed and same SLA class (egg: moving from a 10GB 512/512 Bronze SLA plan to a 5GB 512/512 Bronze SLA plan)
- 6.2 Alterations involving the moving from one SLA class to a lower SLA class will require termination of the existing service and establishment of the new service.
- 6.3 Subject to the provisions of 6.2 we may at our discretion charge you:
- (a) the Cancellation Fee for your existing service;
  - (b) Establishment Fees for your new service; and
  - (c) Service Alteration Fee;

## **Section 7. Professional installation**

- 7.1 Broadband Transmission Facilities and Equipment
- (a) All Allegro Broadband Transmission Facilities and Equipment are professionally installed.
  - (b) We will install the Broadband Transmission Facilities and the Equipment at the Premises and will maintain those facilities for so long as we continue to supply the Service to you.
  - (c) Where we specify a date to you for installation, we will try to keep to the specified date. However, if we cannot keep the specified date, we will tell you and will complete the installation as close to that date as reasonably possible.
- 7.2 Accessories
- (a) When you purchase an Accessory from Allegro you may nominate to have that Accessory professionally installed for an additional charge.
  - (b) Accessories that are installed by Allegro Networks are not maintained by Allegro Networks.
  - (c) Allegro may at its discretion charge a fee for service for maintaining an Accessory (whether purchased from Allegro or not).
  - (d) Allegro may at its discretion refuse to maintain an Accessory (whether purchased from Allegro or not).
- 7.3 To ensure that we have proper permission to enter your Premises to have your Service or Accessory professionally installed, we ask you to warrant either that you are the owner of the Premises; or that you have obtained permission from the owner (including anybody corporate) for us to enter the Premises and install, maintain or remove the Broadband Transmission Facilities and the Equipment. If you ask us to install the Broadband Transmission Facilities and the Equipment in a particular way and we tell you that we do not recommend that method of installation, we are not responsible for any loss that results from acting in accordance with your instructions.

- 7.4 The safety of our employees is of paramount importance to us. We ask you to make sure you give us safe access to the Premises when we come to install, maintain or remove the Broadband Transmission Facilities and the Equipment.
- 7.5 Sometimes we may need another party to help to install the Broadband Transmission Facilities at the Premises (such as a qualified plumber or electrician), or for a third party network operator to disconnect their telecommunications services or cables on the Premises. If we do need this kind of help, we will tell you first and will require you to arrange for the work to be completed before we proceed with our installation.

#### **Section 8. Interception**

- 8.1 You acknowledge and agree that where the Service is a Carriage Service (as that term is defined in the Telecommunications Act 1997 (Cth)), we may be required by law to intercept or monitor communications sent using the Service. We may also be required to cooperate and involve police or other law enforcement agencies in such activities without notice.

#### **Section 9. Ownership and use of the Broadband Transmission Facilities**

- 9.1 The Broadband Transmission Facilities are an important part of our ability to provide you with the Service. This means we need to make sure that the Broadband Transmission Facilities remain our absolute property at all times.
- 9.2 For all purposes (including section 22(1) of the Telecommunications Act 1997 (Cth)) the boundary of our telecommunications network is:
- (a) the wall plate in the Premises providing your DSL or Ethernet Service; or
  - (b) in the case of any Equipment being installed by us the Ethernet port on the Equipment identified for Service connection; or
  - (c) any point specified in a Service Schedule; or
  - (d) any point that we may notify you of from time to time.
- 9.3 It is your responsibility to maintain and operate the network components and devices on your side of the network boundary.
- 9.4 To help protect our ability to provide you with the Service, you must not:
- (a) damage the Broadband Transmission Facilities in any way;
  - (b) use or permit anyone else to use the Broadband Transmission Facilities (except to access your Service in accordance with this Agreement) without our prior permission; or
  - (c) remove any marking which identifies the Broadband Transmission Facilities as belonging to us.

#### **Section 10. Ownership and use of the Equipment**

- 10.1 To facilitate the supply of the Service to you, we may choose to provide Equipment to you during the term of this Agreement. If we do so, risk in the Equipment passes to you when the Equipment is delivered to the Premises.
- 10.2 The Equipment, which is owned by us, will remain our property at all times unless ownership transfer thereof is specified in a Service Schedule.
- 10.3 To protect our interests in the Equipment which is owned by us, we ask, and you agree, that unless and until ownership of the Equipment passes to you under clause 10.2, you will:
- (a) not sell the Equipment; and
  - (b) not damage the Equipment; and
  - (c) not give a third party possession or use of the Equipment without our prior consent.

**Section 11. Maintenance of the Service**

- 11.1 We encourage you to use our technical support services for genuine problems with your Service. We will use reasonable efforts to rectify the problem as soon as possible. However, we ask you to acknowledge that:
- (a) we do not provide technical support services for configuring your local area network to connect it to your Service, and do not provide assistance with local area network-related difficulties; and
  - (b) we will only provide support for connecting your Service to a single PC (as we do not support multiple network cards and devices).
  - (c) if we need to attend your Premises in response to a technical support call, and we believe on reasonable grounds that there is no Service problem, or that we did not cause the Service problem, we may charge you a service fee that will be notified to you prior to our site visit.

**Section 12. Maintenance of the Equipment**

- 12.1 We are pleased to stand behind the Equipment that we provide to you and any new Allegro branded Equipment that our authorised dealers provide to you under these terms. If you obtain the Equipment from us or any new Allegro branded Equipment from our authorised dealers:
- (a) we will service and maintain that Equipment and keep it free from any defects in workmanship and materials associated with normal use, during the Maintenance Period (subject to availability of suitable parts, components, materials and labour); and
  - (b) if for any reason the Equipment fails to operate within the Maintenance Period, we may at our sole discretion repair, refurbish or replace all or part of the Equipment (subject to availability of suitable parts, components, materials and labour). Replacement parts may be new or refurbished. If we give you a replacement part, you must return the replaced part to us.
- 12.2 From time to time we may need to remotely upgrade the Equipment connected to the Broadband network, to ensure the security, correct operation and performance of that device on the Service. During a firmware upgrade, you may experience a short service interruption.
- 12.3 We do need to make sure that a process is followed in relation to reporting maintenance problems and that we do not spend time maintaining Equipment that has not been used appropriately. This means that, subject to clause 12.6, we are only responsible for servicing and maintaining the Equipment under clause 12.1 if:
- (a) you notify us of the defect during the Maintenance Period and follow the procedures for requesting maintenance services, as set out on the Allegro Networks website; and
  - (b) you have been supplied with either the relevant Equipment by us (including the new or refurbished Equipment) or the new Allegro branded Equipment by our authorised dealer; and
  - (c) you have used and maintained the Equipment in accordance with our instructions and have not modified it in any way; and
  - (d) the Equipment has only been used with our broadband network.
- 12.4 Subject to clause 12.6, we are not responsible for servicing and maintaining the Equipment under clause 12.1 if the Equipment is defective or fails to operate as a result of:
- (a) any abuse, misuse, neglect, mishandling or misapplication of the Equipment; any accident by you or a third party; any improper maintenance or service; or any unusual hazards affecting the Equipment (including, but not limited to, exposure to excessive humidity, heat, cold, dust, food, liquids, magnetic or electromagnetic interference, or incorrect power voltage); or

- (b) electrical supply problems or failure to provide a suitable environment for the Equipment; or
  - (c) any natural disaster (including, but not limited to, floods, lightning and fire), acts of terrorism, or any other cause beyond our reasonable control.
- 12.5 Allegro reserves the right to charge you for Equipment that is owned by us and is damaged as a result of the conditions specified in clause 12.4.
- 12.6 The rights conferred on you under this Section 12:
- (a) cease to apply if this Agreement is terminated for any reason before the end of the Maintenance Period; and
  - (b) are in addition to any non-excludable rights, conditions or warranties implied by law, including those under the Trade Practices Act 1974 (Cth).
- 12.7 All other rights, conditions or warranties related to maintenance of the Equipment are excluded.

### **Section 13. Software licences**

- 13.1 We may choose to provide Software to you and grant you a revocable non-exclusive licence to use the Software. Your rights in the Software are those set out in this Section 13.
- 13.2 Where we provide Software to you, it is important that you agree to:
- (a) only use the Software (including storing, loading, installing, executing or displaying it on a computer) in conjunction with your Service;
  - (b) only use the Software in accordance with our directions from time to time;
  - (c) not sub-licence, assign, share, sell, rent, lease or otherwise transfer to any person your right to use the Software;
  - (d) not copy (other than making one copy for archival or backup purposes), translate, adapt, modify, alter, de-compile, disassemble, or reverse-engineer the Software; create any derivative work of the Software; merge the Software with any other software; or change the Software in whole or in part, except as permitted under the Copyright Act 1968 (Cth); and
  - (e) not alter or remove any copyright or other intellectual property notifications applied to the Software.

### **Section 14. Limitation of liability**

- 14.1 Our liability to you
- (a) This contract is made up of the terms that are expressly set out in this contract and those implied by laws that cannot be excluded by us. No other terms apply.
  - (b) If you are a Residential Customer, clauses 14.1(c), 14.1(d), 14.1(e) and 14.1(k) apply to you.
  - (c) We accept our liability to you if we breach this Agreement or act negligently under the principles applied by the courts, except for as set out in clauses 14.1(d) and 14.1(e).
  - (d) As you have taken up the Service predominately for personal, domestic or household use, we do not accept liability for any business related losses that result from the use of the Service. However, we will accept that liability if it cannot be excluded under any legislation.
  - (e) We are not liable for any loss to the extent that it is caused by you, for example, through your negligence or breach of this Agreement.
  - (f) If you are a Business Customer, clauses 14.1(g), 14.1(i), 14.1(j), 14.1(k) and 14.1(k) apply to you.
  - (g) Subject to clause 14.1(i) where the price of the Service does not exceed \$40,000 or the Service is of a kind ordinarily acquired for personal, domestic or household use or consumption, we accept liability for direct loss caused by:
    - (i) our failure to provide the Service with due care and skill;

- (ii) any goods or materials supplied in connection with the Service not being reasonably fit for the purpose for which they are supplied; and
  - (iii) our breach of a condition or warranty that is implied into this Agreement by the Trade Practices Act, provided that you have mitigated the direct loss to the extent possible.
- (h) We are not liable for any loss to the extent that it is caused by you, for example, through your negligence or breach of this Agreement.
- (i) To the extent (if any) that the Service is not of a kind ordinarily acquired for personal, domestic or household use (and provided it is fair and reasonable to do so), our liability under clause 14.1(g) is limited to, at our option:
  - (i) re-supplying or paying for the costs of having the services re-supplied, if the liability relates to services; or
  - (ii) repairing the goods or refunding the purchase price of the goods, if the liability relates to goods (including for example, Equipment).
- (j) To the extent permitted by law, we exclude all liability to you for any indirect or consequential loss arising from or relating to this agreement (including your use of the Service) including:
  - (i) any loss of profits or loss of business (whether direct, indirect, anticipated or otherwise); or
  - (ii) any loss you may suffer as a result of any faults or interruptions in your Service, or
  - (iii) any loss caused by any use made of the Service (including any content that is sent, received, viewed or hosted using the Service), or
  - (iv) any loss caused as a result of any virus, worm, hacking or any other security breach incurred as a result of your use of the service.
- (k) To the extent permitted by law, our total liability for loss that is not (for any reason) covered by or excluded or limited by clauses 14.1(g) to 14.1(j) is limited in aggregate for any and all claims to \$100.

#### 14.2 Your liability to us

- (a) You are liable to us if you breach this Agreement or act negligently under the principles applied by the courts. However, you are not liable for any loss we suffer to the extent that it is caused by us, for example, through our negligence or breach of this Agreement.

### **Section 15. Information**

- 15.1 Information concerning you will be held in a database. The database will contain your name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Service, and information provided by you in connection with this Agreement or the Service.
- 15.2 This information (other than bank account and credit card details) may be used:
  - (a) to enable us to perform our obligations to you under this Agreement, including to provide the Service;
  - (b) to enable us to ensure that you perform your obligations under this Agreement;
  - (c) by any entity related to us and any service provider, for planning, research, or if required by any law, or if required by the rules of any stock exchange and if you give us your express consent, for the promotion and marketing (whether targeted, direct or indirect) of our products and services or the products or services of any service provider and any entity related to us.
- 15.3 In addition to our rights under 14.2(a), we may give personal information about you to a credit reporting agency to:
  - (a) obtain a consumer credit report about you; or

- (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.
  - (c) This information is limited to:
    - (i) identity particulars – your name, sex, address (and previous two addresses), date of birth, name of employer and drivers license number;
    - (ii) your application for consumer or commercial credit – the fact that you have applied for credit and the amount;
    - (iii) the fact that Allegro Networks is a current credit provider to you;
    - (iv) payments which are overdue more than 60 days, and for which debt collection has started;
    - (v) advice that your payments are no longer overdue in respect of any default that may be listed;
    - (vi) information that, in the opinion of Allegro Networks you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations); and
    - (vii) dishonoured cheques – cheques drawn by you for more than \$100 which have been dishonoured more than once.
  - (d) This information may be given before, during or after the provision of credit to you.
- 15.4 We may use the information in 15.1 in order to establish, or help others establish your commercial or consumer credit worthiness.. We may:
- (a) obtain and use information concerning your commercial activities and commercial credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess your application for the Service or to collect overdue payments;
  - (b) obtain or use a consumer credit report about you from a credit reporting agency to assess your application for the Service or collect overdue payments; and
  - (c) disclose information about you to other credit providers or obtain and use information from other credit providers for the purposes of assessing your application for the Service, your ongoing credit worthiness or the status of any account held by you with us or with any other credit provider.
  - (d) This information may be given before, during or after the provision of credit to you.
- 15.5 We may send a monthly newsletter, Allegro, to you via email each month. It will contain information relating to the Service and may also contain information about Allegro and/or new products and services offered by Allegro that may be of interest or benefit to you. It will not contain any advertising, marketing or promotional material for third party suppliers. As it is one of the principle means by which we tell you about Service related matters, you cannot opt out of receiving it and we will not include a functional unsubscribe message with the email containing it.
- 15.6 You consent to the collection, use and disclosure of information as set out in this15.2(a).
- 15.7 You must keep your username and password secret. If you are found to have distributed your username and password to other users, your username will be disabled. In order to overcome it being disabled you will need to resubscribe. This will incur additional charges.

## **Section 16. Relocating your Service**

- 16.1 From time to time you may need to relocate one or more services covered by this agreement from its current location to a new location of your choosing.
- 16.2 Service relocation will be permitted under the following circumstances:

- (a) The access technology required to deliver the service does not change in any way; and
  - (b) A new contract of service is signed for a minimum of 12 months; and
  - (c) A service cancellation request is submitted for the existing service at the same time; and
  - (d) The new contract of service has a promotional code of "SNC-RELOCATION(xxxx)" marked on it (where xxxx is the package number being relocated).
- 16.3 For relocated services Allegro will reduce the installation fee for the new service to 50% of that stated on the price list or application form for the selected contract term.
- 16.4 Services that are unable to be relocated due to changes in access technology due to the new location failing service qualification for the existing technology will not be eligible for the relocation discount.

### **Section 17. Transferring your Service or this Agreement**

- 17.1 Your rights under this Agreement belong to you alone. You may not transfer your rights and obligations in respect of the Service or this Agreement without our prior consent. Our consent will not be unreasonably withheld.
- 17.2 We may transfer or novate any of our rights or obligations under this Agreement to a reputable, credit worthy third party who agrees to be bound by our obligations under this Agreement. We will notify you if this happens.
- 17.3 At your request, we may change the place at which your Service is provided, if we are able to. You may need to pay a charge for installing your Service at the new address and you may experience some delays as a result of a change of address. We cannot guarantee that we will be able to provide the Service at the new place or take responsibility for any delays.

### **Section 18. Taxes**

- 18.1 The charges in the Plan Table may not include all taxes. You must pay us any applicable taxes that we include as part of your invoice for the Service. Applicable taxes may include any stamp and other duties, fees, taxes (including GST) and charges relating to your purchase of any Equipment, this Agreement or the performance of this Agreement, and any other transaction arising out of this Agreement.
- 18.2 GST may be imposed on a supply we make to you under this Agreement. Unless the consideration payable for the supply is expressed to include GST you must pay us an additional amount to cover the GST. We will issue a Tax Invoice to you for any supply on which GST is imposed
- 18.3 In this Section 18, "GST" and "Tax Invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### **Section 19. Complaints Handling**

- 19.1 If our service has not met your expectations with respect to performance, billing or for any other reason we encourage you to tell us about it at the first available opportunity. Our objective is to resolve any issues you may have as quickly and effectively as possible. We have put a complaints handling process in place in order to facilitate this.
- 19.2 To lodge a complaint you may either email or call us. In the first instance we recommend that you call. That way, if at all possible, we will resolve the issue(s) forming the substance of your complaint straight away, while you are on the phone.

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- 19.3 In the event that you choose to write to us, complaints should be sent by email to [dispute@allegro.com.au](mailto:dispute@allegro.com.au). We will acknowledge receipt of your written complaint by email within 5 working days.
- 19.4 After initial consideration it may be determined by us that further investigation will be required before the issue(s) forming the subject of your complaint can be resolved. When this is the case we will send you regular emails to update you on the progress made towards resolution of the issue(s) until such time as we can report that they have been resolved.
- 19.5 We will endeavour to resolve any issues which are the subject of a complaint made by you as quickly and effectively as possible and in any case within 30 working days.
- 19.6 As soon as the issue(s) forming the substance of your complaint have been resolved we will notify you by email. Unless we receive further correspondence from you with respect to your rights under clause 19.7 within 5 working days we will consider the matter closed.
- 19.7 If at any time you believe your complaint is not being handled satisfactorily you may escalate it by sending us an email to [dispute@allegro.com.au](mailto:dispute@allegro.com.au) advising us of this fact. You will then be assigned a case manager who will work with you to ensure that we resolve the issue(s) to your satisfaction.
- 19.8 In the unlikely event that after working with a case manager you are still not satisfied with our response to your complaint you are entitled to take the matter to the Telecommunications Industry Ombudsman (TIO), an independent body established to assist in the resolution of disputes between telecommunications carriers and their customers. The TIO can be contacted on 1-800-062-058 or at [www.tio.com.au](http://www.tio.com.au).
- 19.9 Where the substance of your complaint relates to an amount of money that you believe has been incorrectly billed by us:
- (a) You must submit a 'Billing Dispute Form' to us at least 5 working days prior to the due date printed on the bill, otherwise the invoice is payable in full notwithstanding the disputed amount; otherwise your service may be suspended.
  - (b) We will send you a 'Billing Dispute Form' upon request. Requests may be made by email to [dispute@allegro.com.au](mailto:dispute@allegro.com.au) or by phone.
  - (c) Provided that sufficient notice has been given under clause 19.9(a) and in the event that an amount on your bill is still in dispute on the date when the bill falls due, payment of the disputed amount may be withheld by you. To avoid doubt, it must be emphasised that it is only the disputed amount that may be withheld. All other amounts on the bill must be paid by the due date in all circumstances; otherwise your service may be suspended.
  - (d) For an amount already paid that you would subsequently like to dispute, a 'Billing Dispute Form' must be received by us within 6 months of the date of issue on the bill that records the charging of the disputed amount in question.
- 19.10 We, at our option, may choose to:
- (a) Cancel your service as part of a dispute settlement with you.
  - (b) Charge you a 'Complaint Investigation Fee' of \$99.00 to offset the cost of investigating a complaint made by you if, after completing the investigation, the complaint was found to have been made without reasonable basis.
  - (c) Charge you interest on any amount of money withheld by you subject to the resolution of a billing dispute, should this money be subsequently paid by you upon resolution of the dispute in our favour. Any such interest levied will be charged at the Reserve Bank cash rate plus 5% for the period from the due date on the bill where the amount in dispute is recorded until the date when it was paid.

**Section 20. General Terms**

- 20.1 Neither party waives any of its rights under this Agreement merely because it does not exercise them, or there is a delay in our exercising them.
- 20.2 This Agreement is governed by the laws of the Australian State or Territory in which you are connected to the Service.
- 20.3 Section 8, Section 9, Section 10, Section 14 and Section 15 survive termination of this Agreement (regardless of any other clauses that may survive termination).
- 20.4 If we need to notify you of any matters relating to the Agreement we ask, and you agree, that we may use post, fax, or email to the default email address we allocated to you. If we do use email, you will be taken to have received the email if the email leaves our servers, unless we receive evidence to the contrary.
- 20.5 If you acquire the Service through a Retailer, we ask you to acknowledge that:
- (a) the Retailer may act as our agent for the purposes of receiving a copy of this Agreement signed by you and providing it to us; and that
  - (b) the Service is provided by us and not by the Retailer.

**Section 21. Severability**

- 21.1 If any provision of provisions of this Agreement should be held to be invalid, unenforceable, illegal or in conflict with the Laws of any jurisdiction this Agreement should be construed as though the invalid, illegal or unenforceable provision(s) had never been contained herein; unless
- 21.2 The removal of the aforementioned illegal or unenforceable provisions would materially alter the interpretation of this agreement so as to cause the provision of Services contemplated herein to become unreasonable.

**Section 22. Miscellaneous Standard Charges**

- 22.1 Field services callouts where you are at fault.
- (a) \$165 (including GST) for the first 30 minutes, \$55 (including GST) per 30 minutes thereafter.
- 22.2 'Drop tools' priority restoration service: From time to time you may require a fault restoration to be completed in a time frame that is less than that identified in our Service Level agreement.
- Drop tools service is available subject to the following conditions:
- (a) Available to Bronze and Silver SLA customers only.
  - (b) \$880 for a response within 1 hour, \$440 for a response within 4 hours.
  - (c) Notwithstanding the 'Drop tools' priority service charges paid:
    - (i) There can be no guarantee given that problems can be resolved in these time frames.
    - (ii) Other charges may apply if the issue is found by us to relate to matters falling within your realm of responsibility and which are outside of our control.
  - (d) Availability of this service is entirely at Allegro's discretion.
- 22.3 'Drop tools' priority installation: From time to time you may require a service to be installed in a time frame that is less than the time frames identified in our Service Level Agreement.
- Drop tools installation is available subject to the following conditions:
- (a) You agree to pay a drop tools fee equal to the the standard 12 month installation fee for your service or \$550 (including GST), whichever is greater.
  - (b) The drop tools fee is in addition to any installation or setup fees that are required in your Service Schedule.

- (c) Additional installation fees may be charged (with your prior approval) for the hire of specialist equipment, the use of which is intended to reduce the installation time.
  - (d) All hardware and engineering resources required to complete the installation are in stock at the time your order is received by Allegro.
  - (e) Drop tools installation must be accepted by Allegro Networks in writing.
- 22.4 If a customer chooses 'Drop tools' priority installation, Allegro will establish, in its written acceptance, a committed delivery date with the customer. If the committed delivery date is not met, Allegro will not charge the customer the Drop tools priority installation fee.
- (a)
- 22.5 Freight & Handling
- (a) \$27.50 – Applies to all shipped items < 3 kg
  - (b) Weights > 3 kg will quoted on a case by case basis
- 22.6 DSL Reconnection
- (a) Should it become necessary for us to reconnect a DSL service after the disconnection of the PSTN service that you previously used to carry the DSL service we will charge a fee of \$165.

**Section 23. Broadband Connect and Metro Connect and Australian Broadband Guarantee customers**

- 23.1 If you are acquiring the Service under the Australian Broadband Guarantee, Broadband Connect or Metro Connect Schemes there are additional terms and conditions that apply to you.
- 23.2 Should case arise that an applicable clause in Section 24, Section 25, Section 26 or Section 27 contradict a clause in Section 1 through to Section 22 then the latter clause shall prevail.
- 23.3 If your Service is acquired under the Australian Broadband Guarantee then Section 24 is applicable.
- 23.4 If your Service is acquired under the Metro Broadband Connect program then Section 25 and Section 26 are applicable.
- 23.5 If your Service is acquired under the Broadband Connect program then Section 25 and Section 27 are applicable.

**Section 24. Australian Broadband Guarantee**

- 24.1 The Australian Broadband Guarantee Program is a Federal Government initiative designed to help deliver broadband Internet access to parts of the country not already serviced by cable, DSL or other equivalent service.
- 24.2 Allegro Networks agrees to be bound by its agreement with DCITA, and may not change these terms and conditions without first obtaining approval from the Department of Communications, Information Technology and the Arts.
- 24.3 This contract will operate for a period of 18 months from the date of service commencement, and at the conclusion of the contract the customer has the right to renew the original contract by a further 18 months at a monthly price no greater than the original contracted price.
- 24.4 The overall price of the Australian Broadband Guarantee Service being provided will not be increased for three years from the commencement of the provision of the service.
- 24.5 The maximum term of the Australian Broadband Guarantee Service may not exceed 36 months from initial Service commencement.

- 24.6 The Terms and Conditions that are current at the time the user subscribes will remain in effect for the entire term of the contract.
- 24.7 You attest that the site for which this service is requested was not able to obtain a Metro-comparable equivalent broadband service from the listed providers on the DCITA Online Service Locator <http://bcoms.dcita.gov.au/CAOSL/Welcome.do> at time of signing contract, and, to the best of your knowledge, has not previously had a Australian Broadband Guarantee or Broadband Connect service connected.
- 24.8 You attest that you are a residential customer, business with 20 permanent employees or less, not for profit organisation with 20 permanent employees or less or a not for profit organisation that intends to provide public access Internet facilities.
- 24.9 You agree to provide all necessary information to Allegro Networks and provide a truthful attestation so that we can make a Australian Broadband Guarantee claim for this service.
- 24.10 There is no contract cancellation fee associated with a Australian Broadband Guarantee customer cancelling their contract.
- 24.11 Australian Broadband Guarantee customers may change their service to a higher or lower plan at any time. Changing plans does not affect the contract end date.
- 24.12 Australian Broadband Guarantee services are only available to new Australian Broadband Guarantee subscribers. Australian Broadband Guarantee subscribers churning from other providers will not have Australian Broadband Guarantee services made available to them.
- 24.13 The customer may migrate between Australian Broadband Guarantee services within the technology platform and is always entitled to return to the original Australian Broadband Guarantee Service.
- 24.14 Allegro Networks commits to the Australian Broadband Guarantee requirement for a free of charge fault reporting service operating 24 hours a day seven days a week by email, facsimile and telephone 1300 85 85 35 from 8am to 8pm Monday to Friday and 9am to 6pm Saturday, Sunday and public holidays.
- 24.15 We commit to provide a service with average data download and upload speeds of at least 60% of the service's nominated peak speeds at least 75% of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- 24.16 We also commit to the service being available at least 99% of the time, averaged over a quarterly period.
- 24.17 Allegro Networks will make available to the customer tools that will enable them to test the data speed of their service, and an on line means for customers to check their usage on at least a daily basis.
- 24.18 Allegro Networks commits to the connection of a new service within 7 days of the customer signing the contract.
- 24.19 In the event of a service outage or fault for which Allegro is responsible, we commit to restoration of the service within 4 working days.
- 24.20 We commit to provide customers with full information about the service, as required by Australian Broadband Guarantee. Allegro Networks reserves the right to modify these Terms and Conditions at any time.
- 24.21 These Terms and Conditions were last revised in April 2007.

## **Section 25. Broadband Connect and Metro Broadband Connect**

### 25.1 Introduction

- (a) Allegro Networks provide fixed wireless broadband services, ADSL and other related services throughout Australia.
- (b) By subscribing to one of more of these services you accept that you will be bound by these Terms and Conditions.
- (c) For the purposes of these Terms and Conditions the words 'you', 'your' and 'customer' refer to the customer (i.e.: YOU).
- (d) The words 'we', 'us' and 'Allegro Networks' refer to Allegro Networks Pty Ltd.
- (e) Any word used in a singular context shall apply in the plural context and vice versa.
- (f) If any part of these Terms and Conditions should be deemed illegal or unenforceable by any Court, the affected section shall be considered struck from the Terms and Conditions and the remaining sections shall stand.
- (g) For those customers who are taking advantage of the Broadband Connect funding package or the Metro Broadband Connect funding package the "Broadband Connect Annexure" or "Metro Broadband Connect Annexure" will apply respectively.
- (h) In the event that a conflict arises between the main body of these Terms and Conditions and the Annexure, the Annexure will prevail.

#### 25.2 Jurisdiction

- (a) These Terms and Conditions and any other form of contract between the Customer and Allegro Networks Pty Ltd shall be governed by the laws of the State of Queensland in the Commonwealth of Australia.

#### 25.3 Quality of Service

- (a) Allegro Networks Pty Ltd makes its best endeavours to provide a high quality, high speed broadband service. To this end, we strive to ensure that our network is available in excess of 99% of the time.
- (b) Network availability is calculated as a 3 month weighted moving average of network reachability. Our Network Management System calculates and reports these statistics.
- (c) Unfortunately, factors outside of our control may affect the performance of your service. This includes but is not limited to failures within network components not under our direct control (issues within the Internet that are upstream from us, failures in your network, failures in any other Carriers' networks), virus attack, loss of line of sight, act of god (lightening strike, fire, flood) or interference.
- (d) In the event that an issue arises that is outside of our control we will endeavour to implement strategies for mitigating its effects on our users. We will not, however, be held responsible for any losses suffered as a result.
- (e) Allegro Networks only guarantee the minimum bit rate stated in the product description for the service that you have selected. Many of our services also have a "Burst" which allows the user to exceed their minimum bit rate for short periods as long as doing so would have no negative impact on other users. No representation is made as to the availability of this burst at any point in time.
- (f) Fault reporting may be made by phone or fax 24 hours a day, 7 days a week. Live help desk is available during normal business hours.

#### 25.4 Contract Term and Contract Termination

- (a) All new Allegro Networks services have a minimum 12 month contract term.
- (b) During this contract term, the prices and service details for your service will not change against your favour.
- (c) In the event that you cancel your contract within this 12 month contract term you will be billed a "cancellation fee". The cancellation fee is

calculated by multiplying the remaining number of months by the minimum monthly commitment.

- (d) If there is less than 6 months remaining on your contract, this amount is then halved.
- (e) Cancellation of contract can be effected by providing us with 30 days written notice.
- (f) We may terminate your service if you are found to have breached any of the provisions of our Terms and Conditions; any law recognised by the Commonwealth of Australia or are using the service in a manner that adversely effects the experience of other users.
- (g) We may terminate your contract if you do wilful acts that attempt to circumvent any of our accounting or administrative policies.

#### 25.5 Ownership and Warranty of Hardware

- (a) Ownership of customer premises equipment for Residential and Business grade wireless products lies with the customer.
- (b) Ownership of customer premises equipment for Premium wireless services is retained by Allegro Networks and if the device fails, it will be replaced by us.
- (c) Ownership of customer premises equipment for DSL services lies with the customer.
- (d) Allegro Networks extends the equipment manufacturers' 12 month warranty to the customer. Warranty does not cover damage caused by customer miss-handling, act of god, incorrect connection of customer premises equipment by the customer.

#### 25.6 Installation and Commissioning

- (a) Standard installation takes 21 days from the date of application.
- (b) Express installation options may be available for some service types at additional cost.
- (c) Installations are generally undertaken during normal office hours.
- (d) Our base installation fee covers a "Standard" installation (The definition of which is outlined in our product summary).
- (e) If our installers determine that an installation is outside a "Standard" installation you will be given a quotation for completion of the installation and an opportunity to accept or reject the quote.

#### 25.7 Invoicing and Payment

- (a) Customer invoices will be sent to your administrative email address (as stated on your application for) and/or primary mailing address. Please ensure that these addresses are kept up to date to ensure that you receive your invoices on time.
- (b) Payments may be made by cash, cheque or major credit card (Visa, MasterCard, Bankcard).
- (c) All residential grade services are COD and as such must be paid using an automatic credit card deduction.
- (d) Business and Premium grade services are invoiced on a 14 day invoice or may be paid using an automatic credit card deduction.
- (e) All installation charges are COD. When your installation is complete, a COD invoice will be generated covering installation and the first month's access fees.
- (f) We reserve the right not to enable your service until such time as this first payment is received.
- (g) If invoices are not paid we reserve the right to suspend any, or all of your services without warning. If your service is suspended, and you pay using an automatic credit card deduction, no service reactivation fee will apply.
- (h) If your service is suspended and you pay on invoice a disconnection fee of \$30 AUD + GST will apply.
- (i) Allegro Networks accepts no responsibility for losses incurred as a result of service suspension due to non payment.

#### 25.8 Notification of Changes

- (a) This Terms and Conditions document may be altered from time to time.
- (b) We will attempt to notify you of major changes by emailing your primary email address. We will post the new Terms and Conditions document to our website at [www.allegro.com.au](http://www.allegro.com.au).
- (c) We will assume that if you do not cancel your service within 30 days of changes to the Terms and Conditions, that you have accepted the Terms and Conditions in their new form.

#### 25.9 The SPAM and Privacy Acts

- (a) Allegro Networks respects your privacy.
- (b) We will not release any personal information we may have except as required by the Telecommunications Act 1997. We send you email that is directly related to the operation of your service. This may include but is not limited to service outage information, invoice and accounts information, data usage summaries.
- (c) From time to time, when we have major product announcements that might affect all users (changes to plans etc) we will send you email outlining the nature of these product changes. If you do not wish to receive this promotional literature from us please tell us and we will remove you from our mailing list.

#### 25.10 Assignment of Rights

- (a) Allegro Networks reserves the right to assign any or all of its rights under these terms and conditions without notice.
- (b) You may not assign the rights to your service to any other third party.
- (c) If you wish to transfer your connection you must cancel your service and the new party must arrange for a new account to be created.
  - (i) Assuming that no physical reinstallation is required, the new party will not be charged any installation or hardware fees.
  - (ii) The new contract will be for the minimum 12 month period.

#### 25.11 Data Consumption

- (a) All of our plans have data charged that travels from us to you ONLY (downstream data). Data that travels from you to us (upstream data) is not included in any data consumption calculations.
- (b) For the purposes of our calculations, 1 Megabyte is 1000000 bytes.
- (c) Premium unlimited services are truly unlimited. Regardless of your consumption we will not limit your access to the network.
- (d) Residential and Business unlimited services are governed by our "reasonable use" policy. Our "reasonable use" policy states that users who abuse the service (abuse is defined as consumption in excess of 20GB per month) may have the speed of their service throttled in order to ensure that other customers access to the service is not adversely effected.
- (e) If you have excess data on your bill, you will be furnished with a "data consumption report" with your invoice. This report shows a daily breakdown of data consumed, and the amount that you have been charged. There are also a number of statistics that are provided purely for information purposes.
- (f) You are responsible for paying for your excess data. Tools will be provided on our website to allow you to keep track of your data consumption.
- (g) Allegro Networks will not be held responsible for users you elect to use a plan that does not meet their needs and who subsequently incur substantial excess data charges.

**Section 26. Metro Broadband Connect Annexure**

- 26.1 The Metro Broadband Connect Program is a Federal Government initiative designed to help deliver broadband Internet access to parts of the country not already serviced by cable, DSL or other equivalent service.
- 26.2 Allegro Networks agrees to be bound by its agreement with DCITA, and may not change these terms and conditions without first obtaining approval from the Department of Communications, Information Technology and the Arts.
- 26.3 In the event of any conflict or inconsistency between any part of our standard form of agreement and this annexure, the requirements in this annexure will take precedence to the extent of any conflict or inconsistency.
- 26.4 This contract will operate for a period of 18 months from the date of service commencement, and at the conclusion of the contract the customer has the right to renew the original contract by a further 18 months at a monthly price no greater than the original contracted price.
- 26.5 The overall price of the Metro Broadband Connect Service being provided will not be increased for three years from the commencement of the provision of the service. The maximum term of the Metro Broadband Connect Service may not exceed 36 months from initial Service commencement.
- 26.6 The Terms and Conditions that are current at the time the user subscribes will remain in effect for the entire term of the contract.
- 26.7 You attest that the site for which this service is requested was not able to obtain a DSL consumer broadband service or other Metro Broadband Connect equivalent broadband service from the listed providers on the MBC Online Service Locator as at the 8th of March 2006, and, to the best of your knowledge, has not previously had a Metro Broadband Connect service connected.
- 26.8 You attest that you are a residential customer, business with 20 permanent employees or less, not for profit organisation with 20 permanent employees or less or a not for profit organisation that intends to provide public access Internet facilities.
- 26.9 You agree to provide all necessary information to Allegro Networks and provide a truthful attestation so that we can make a Metro Broadband Connect claim for this service.
- 26.10 There is no contract cancellation fee associated with a Metro Broadband Connect customer cancelling their contract.
- 26.11 Metro Broadband Connect customers may change their service to a higher or lower plan at any time.
- (a) Where a customer upgrades their existing Metro Broadband Connect service to a new, higher level of service, the customer will be subject to the Allegro's terms and conditions, including any additional charges.
  - (b) If the new service is a registered Metro Broadband Connect service, Allegro will provide the service on the registered terms and conditions for that Metro Broadband Connect service. Allegro will also provide the new Metro Broadband Connect service for the remainder of the three year period that commenced when the Customer's original Metro Broadband Connect service was connected.
  - (c) If the new service is not a Metro Broadband Connect service, then Allegro has no obligation to provide Metro Broadband Connect terms and conditions in relation to the service.
- 26.12 Metro Broadband Connect services are only available to new Metro Broadband Connect subscribers.
- 26.13 Metro Broadband Connect subscribers churning from other providers will not have Metro Broadband Connect services made available to them.

- 26.14 The customer may migrate between Metro Broadband Connect services within the technology platform and is always entitled to return to the original Metro Broadband Connect Service without penalty.
- 26.15 Allegro Networks commits to the Metro Broadband Connect requirement for free-of-charge 24/7 fault reporting, and a help desk facility which operates from 8am to 8pm Monday to Friday and 9am to 6pm Saturday, Sunday and public holidays.
- 26.16 We commit to provide an Internet access service with average data download and upload speeds of at least 60% of the service's nominated peak speeds at least 75% of the time as measured according to a prescribed Metro Broadband Connect testing schedule.
- 26.17 We also commit to the service being available at least 99% of the time, averaged over a quarterly period.
- 26.18 Allegro Networks will make available to the customer tools that will enable them to test the data speed of their service, and an on line means for customers to check their usage on at least a daily basis.
- 26.19 Allegro Networks commits to the connection of a new service within 7 days of the customer signing the contract.
- 26.20 In the event of a service outage or fault for which Allegro is responsible, we commit to restoration of the service within 4 days.
- 26.21 We commit to provide customers with full information about the service, as required by Metro Broadband Connect.
- 26.22 Allegro Networks will provide its customers with not less than 30 working days notice of its intention to withdraw itself or a service from Metro Broadband Connect. In the instance where Allegro Networks withdraws a service but continues to operate as a Metro Broadband Connect provider, we will offer to migrate customers of the withdrawn service to a comparable service being offered, if one is available.
- 26.23 Allegro Networks reserves the right to modify these Terms and Conditions at any time. These Terms and Conditions were last revised in March 2006.

#### **Section 27. Broadband Connect Annexure**

- 27.1 The Broadband Connect Program is a Federal Government initiative designed to help deliver broadband Internet access to parts of the country not already serviced by cable or DSL.
- 27.2 Allegro Networks agrees to be bound by its agreement with DCITA, and may not change these terms and conditions without first obtaining approval from the Department of Communications, Information Technology and the Arts.
- 27.3 This contract will operate for a period of 18 months from the date of service commencement, and at the conclusion of the contract the customer has the right to renew the original contract by a further 18 months at a monthly price no greater than the original contracted price.
- 27.4 The overall price of the Broadband Connect Service being provided will not be increased for three years from the commencement of the provision of the service.
- 27.5 The maximum term of the Broadband Connect Service may not exceed 36 months from initial Service commencement.
- 27.6 The Terms and Conditions that are current at the time the user subscribes will remain in effect for the entire term of the contract.
- 27.7 You attest that the site for which this service is requested was not able to obtain a DSL consumer broadband service or other Broadband Connect equivalent broadband service prior to the 8th of April 2004, and, to the best of your knowledge, has not previously had a Broadband Connect service connected.

- 27.8 You attest that you are a residential customer, business with 20 permanent employees or less, not for profit organisation with 20 permanent employees or less or a not for profit organisation that intends to provide public access Internet facilities.
- 27.9 You agree to provide all necessary information to Allegro Networks and provide a truthful attestation so that we can make a Broadband Connect claim for this service.
- 27.10 There is no contract cancellation fee associated with a Broadband Connect customer cancelling their contract.
- 27.11 Broadband Connect customers may change their service to a higher or lower plan at any time. Changing plans does not affect the contract end date.
- 27.12 Broadband Connect services are only available to new Broadband Connect subscribers.
- 27.13 Broadband Connect subscribers churning from other providers will not have Broadband Connect services made available to them.
- 27.14 The customer may migrate between Broadband Connect services within the technology platform and is always entitled to return to the original Broadband Connect Service.
- 27.15 Allegro Networks commits to the Broadband Connect requirement for free-of-charge 24/7 fault reporting, and a help desk facility which operates from 8am to 8pm Monday to Friday and 9am to 6pm Saturday, Sunday and public holidays.
- 27.16 We commit to provide a service with average data download and upload speeds of at least 60% of the service's nominated peak speeds at least 75% of the time as measured according to a prescribed Broadband Connect testing schedule.
- 27.17 We also commit to the service being available at least 99% of the time, averaged over a quarterly period.
- 27.18 Allegro Networks will make available to the customer tools that will enable them to test the data speed of their service, and an on line means for customers to check their usage on at least a daily basis.
- 27.19 Allegro Networks commits to the connection of a new service within 7 days of the customer signing the contract.
- 27.20 In the event of a service outage or fault for which Allegro is responsible, we commit to restoration of the service within 2 days.
- 27.21 We commit to provide customers with full information about the service, as required by Broadband Connect.
- 27.22 Allegro Networks reserves the right to modify these Terms and Conditions at any time. These Terms and Conditions were last revised in June, 2005.

## Acceptable Use Policy

### Section 1. Introduction

- 1.1 If you have an agreement with Allegro for a service ("Service") that includes or incorporates this Acceptable Use Policy ("AUP"), you must comply with this AUP when you use that Service.
- 1.2 A reference to "you" in this AUP includes a reference to your officers, employees, contractors, agents and anyone else (other than Allegro or its representatives) who uses the Service.

### Section 2. What you cannot use the Service for

- 2.1 You must not use the Service, attempt to use the Service or allow the Service to be used in any way:
  - (a) *Breaches of law*  
which results in you or Allegro breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct; or a voluntary code of conduct that you have agreed to comply with;
  - (b) *Damage to property or people*
    - (i) which results, or could result, in damage to property or injury to any person; or
    - (ii) to harass, menace or stalk people;
  - (c) *Protection of minors*  
which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to you;
  - (d) *Discrimination*  
which unlawfully incites discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality;
  - (e) *Obscene, defamatory, offensive, abusive*
    - (i) to send, display, access, make available, publish, distribute or be otherwise involved in material which is obscene, defamatory or is, or would be regarded by Allegro, acting reasonably, as, in all the circumstances, offensive; or
    - (ii) which is, or which would be considered by a reasonable person to be, offensive or abusive;
  - (f) *Illegal business practices and gambling*
    - (i) to engage in any misleading or deceptive business or marketing practice; or
    - (ii) that involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;
  - (g) *The rights of others*
    - (i) which infringes Allegro or any other person's rights (including intellectual property rights and moral rights);
    - (ii) which constitutes a misuse of Allegro or any other person's confidential information; or
    - (iii) which results in a breach by you of any obligation that you owe to any person.

**Section 3. What you cannot use the service to do**

- 3.1 You are not authorised to access Allegro computer systems or networks for any purpose other than to use the Service in accordance with this AUP and your agreement with Allegro for supply of the Service.
- 3.2 You must not:
- (a) *Interfering with services and systems*  
interfere with the proper operation of the Service or any other part of Allegro network or systems;
  - (b) *Newsgroups, forums and chat rooms*  
use the Service to contribute to, or participate in, a Newsgroup, forum or chat room in a way that has an adverse effect on the proper operation of those Newsgroups, forums and chat rooms.
- 3.3 You must not use the Service, attempt to use the Service or allow the Service to be used:
- (a) *SPAM and USENET SPAM*  
to send, cause the sending of or otherwise be involved in the sending of, SPAM or USENET SPAM;
  - (b) *SPAM means*
    - (i) unsolicited commercial electronic messages as defined in the Spam Act 2003 (Cth) sent in breach of the Spam Act; or
    - (ii) Bulk electronic messages of any kind (including email, fax, SMS and ICQ messages). A bulk electronic message is when you send over 20 electronic messages or an electronic message to over 20 recipients during a period of 10 consecutive minutes.
  - (c) *USENET SPAM means*  
Excessive electronic Newsgroup messages. Excessive means posting the same or substantially the same message ("Message") to one or more Newsgroups resulting in a Bredbart Index of 20 or more. A Bredbart Index is calculated by multiplying the number of Messages by the square root of the number of Newsgroups that they are posted to over a consecutive 45 day period.
  - (d) *Virus, denial of service attacks*  
in connection with any program (including a virus, Trojan horse, worm, cancelbot, time bomb), or activity (including a Denial of Service attack), that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data is Allegro or anyone else's);
  - (e) *Open relay and port probing*  
to access or use Allegro or anyone else's systems, networks or data (including through open relay, port probing and the use of packet sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data;
  - (f) *Spoofing*  
to create, send or alter in any way and by any means (including spoofing and use of third party mail servers), the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than you; or
  - (g) *Usage limits*  
to manipulate or bypass Allegro's content usage limits by any means including connecting multiple modems to the Service.

**Section 4. Other obligations related to SPAM and USENET SPAM**

- 4.1 You must not benefit from SPAM or USENET SPAM (which includes causing or requesting any of your details to appear in SPAM or USENET SPAM and/or receiving responses to SPAM or USENET SPAM).
- 4.2 You must not purchase, create, use, distribute, sell or otherwise be involved in software, services or lists of sites, addresses, numbers or other identifiers of any kind (including email addresses and phone numbers) that are used to promote, send, or assist with the sending of, SPAM or USENET SPAM.
- 4.3 If you send Bulk solicited electronic messages, then:
  - (a) you must include in each message, an email address, telephone number, facsimile number or mailing address that can be used to notify you that the recipient no longer wishes to receive such messages from you ("Opt Out Notice"); and
  - (b) if you are sent an Opt Out Notice, then you must immediately comply with the notice.

**Section 5. Email messages**

- 5.1 We set limits on the size of emails sent to or by you using your Allegro email account, the period for which email messages can be stored on Allegro servers and the maximum disk space that will be allotted on Allegro servers for your Service. These limits are set out in the Plan Table for your chosen plan ("Mail Quota").
- 5.2 We will delete any electronic mail message sent by you or addressed to you using your Allegro email account if:
  - (a) the size of the mail message addressed to you (including attachments) exceeds your Mail Quota;
  - (b) the size of the mail message sent by you (including attachments) exceeds 10 MB;
  - (c) the total of your undeleted messages (including attachments) exceeds your Mail Quota; or
  - (d) you have not deleted the message within 180 days of it becoming available to you (whether read or unread). We recommend that you delete emails on a regular basis. Once deleted, the message will not be able to be retrieved.
- 5.3 You will not send any electronic mail message via SMTP that is sent using a server other than the Allegro SMTP server, unless we otherwise agree with you. Please note this does not restrict your use of email services accessed solely via a web browser such as Hotmail.
- 5.4 We will delete any electronic mail message in your Allegro email account where the message has been stored in the Deleted or Spam folders 7 days after the message becomes available to you.
- 5.5 If we delete any electronic mail messages in your Allegro email account under the terms of this agreement we are not required to notify you or the sender of the mail message(s).
- 5.6 If your Service is cancelled, we may delete any stored or received emails in your Allegro email account after 30 days.

**Section 6. Reasonable Use Policy**

- 6.1 Our reasonable use policy applies to all Services except our Premium Services.
- 6.2 Our reasonable use policy states that users who have excessive usage may have their speed of their Service throttled in order to ensure that other customers' access to their Service is not adversely affected.
- 6.3 Excessive use means:

- (a) For a Residential user, a total download exceeding 20GB over the past 28 days;
- (b) For a Business user, a total download exceeding 50GB over the past 28 days;
- (c) For a Smart Resort user, a total upload or download exceeding 1GB over the past 7 days unless:
  - (i) The resort in which you are staying has specific plans that allow for different excessive use policies and;
  - (ii) You have subscribed to one of these plans.

## Wholesale Supply Schedule

### Section 1. General

- 1.1 The "Wholesale Supply Schedule" ' applies to wholesale customers only. They apply in addition to the 'General Terms and Conditions'.
- 1.2 If particular terms in the General Terms and Conditions are found to be inconsistent with terms in the Wholesale Supply Schedule, then the Wholesale Supply Schedule apply instead of the General Terms, to the extent of the inconsistency.
- 1.3 Our contract with you is comprised of the details in your application form, the terms and conditions, the applicable service schedules and any documents incorporated by reference.
- 1.4 You should be aware that we can unilaterally change these terms and conditions at any time. If we change these terms, the online versions of these terms and conditions will always be updated to reflect those changes.
- 1.5 Words with initial capital letters (e.g. "Plan Table") have the meanings set out in the Glossary at the end of the Agreement.

### Section 2. Availability of Services and Pricing

- 2.1 The services available to wholesale customers and the wholesale pricing that applies for those services will be provided upon request to bonafide wholesale customers, after execution of a reciprocal non disclosure agreement.

### Section 3. Suspension or Termination of Services

- 3.1 If a provision of the Wholesale Terms and Conditions gives us the right to suspend or terminate your service, that right is in addition to our rights to suspend or terminate your service under the General Terms and Conditions.
- 3.2 Should your wholesale account be suspended or terminated with an undisputed debt accrued that is more than 30 days in arrears, we reserve the right to take ownership of all retail customer accounts serviced using our products and services under our agreement with you. Upon exercising this right we will bill these retail customers directly for their use of our products and services.

### Section 4. Commencement and Discontinuation of Services

- 4.1 We ask you to note that your Service(s) commence(s) on the date we complete installation of all Broadband Transmission Facilities required under the agreement with you, activate your service(s) in our system and have the service(s) accepted by you.
- 4.2 If we decide to exit a Service then we may, by giving you prior reasonable notice:
  - (a) migrate you to an alternative service; or
  - (b) cancel the Service.
- 4.3 If the proposed alternative service is materially detrimental to you, then you may cancel the Service without the payment of any early termination charges.

### Section 5. Billing

- 5.1 You must:
  - (a) nominate to us the accounts to be included in your accounts list, and tell us of any changes to the accounts; and
  - (b) provide us with a single billing address for us to bill your accounts.
- 5.2 You are responsible for billing your end users.
- 5.3 We will invoice you for the Services you acquire from us on a monthly basis.

5.4 Payment terms are 30 days net.

**Section 6. Help Desk Responsibilities**

- 6.1 You must operate a centralised help desk for the services you acquire from us, which must:
- (a) handle enquiries from your end users including billing enquiries, service difficulty reports and provisioning enquiries; and
  - (b) perform initial diagnosis of your end users' service difficulties.
- 6.2 You must direct your end users to contact your centralised help desk for enquiries about the services you buy from us.
- 6.3 If one of your end users contacts us directly about a service you buy from us we will direct them to contact you instead.
- 6.4 We reserve the right to charge you an amount of \$150.00 ex GST each time one of your customers contacts us directly. We would exercise this right in the event that such contacts become a common occurrence.

**Section 7. Provision of Professional Services**

- 7.1 At our discretion, we may provide you with professional services upon request, charged on a time and materials basis.
- 7.2 Hourly rates to be charged for the services of our professional staff are as follows (ex GST):
- (a) Technician: \$165.00
  - (b) Senior Technician: \$188.00
  - (c) Chief Technician: \$450.00
- 7.3 Materials are charged at cost plus 20%



## **Broadband, Premium Voice and IP PBX Service Level Agreement Schedule**

This Service Level Agreement (“SLA”) applies to Allegro’s Broadband, Premium Voice and IP PBX customers.

### **Section 1. Service Level Agreements Available**

- 1.1 There are three Service Levels. These reflect the differing needs of Allegro’s Customers.
  - (a) “Gold” – Focussed on the needs of Corporate and Enterprise customers requiring 24/7 support with fast response and restore times.
  - (b) “Silver” – Focussed on the needs of small to medium customers who require effective and responsive business hours support.
  - (c) “Bronze” – Focussed on the needs of customers who purchase services predominantly for domestic use.

### **Section 2. Transitional Arrangements**

- 2.1 On 1<sup>st</sup> of April, 2008 Allegro Networks released a new series of products. For the purposes of these Service Level Agreement the following translations apply to old or pre-existing services:
  - (a) Residential, Residential Broadband and Residential Smart Building operate on a “Bronze” SLA;
  - (b) Business, Business Broadband and Business Smart Building operate on a “Silver” SLA;
  - (c) Premium, Premium Broadband and Premium Smart Building operate on a “Gold” SLA.

### **Section 3. Smart Resort Service Level Agreements**

- 3.1 Smart Resorts have two Service Levels applicable to them:
  - (a) The “Gold” SLA applies to the Resort (as represented by the Resort manager);
  - (b) The “Bronze” SLA applies to any individual connection or subscriber that is connected or trying to connect to the Smart Resort service within the Resort.
- 3.2 To remove doubt, this means that events that effect the entire resort have a “Gold” SLA applied to them, events that effect a single subscriber have “Bronze” SLA applied to them.
- 3.3 In recognition of the fact that subscribers in Smart Resorts require support outside normal support hours for Bronze services our frontline support personnel are trained to assist Smart Resort subscribers with issues they may have logging on or subscribing. This assistance is available at all times during our contact hours.

### **Section 4. Gold Service Level Priority**

- 4.1 We promise that, in the unlikely event of an unplanned outage, our resources will be devoted to responding to and restoring customers with our Gold Service Level. We will notify Gold Service Level customers of planned outages in advance to give you time to plan. We will notify Gold Service Level customers of unplanned outages promptly.

**Section 5. Contact Hours**

- 5.1 Allegro's front-line support personnel are available to assist with service and account queries and to log service effecting issues.
- 5.2 The front line support personnel can be contacted using the following methods for general assistance and enquiries:

Service Level Agreement	Contact Hours	Contact Details
Bronze and Silver	8am to 6pm Monday to Friday and 9am to 1pm Saturday, Sunday and public holidays	1 300 85 85 35 or <a href="mailto:support@allegro.com.au">support@allegro.com.au</a>
Gold	24 hours a day, 7 days a week	1 300 85 85 35 during Bronze and Silver contact hours and on the after-hours number provided at other times

- 5.3 In addition, the following email addresses are available for other administrative tasks:
- (a) Accounts enquires: [accounts@allegro.com.au](mailto:accounts@allegro.com.au)
  - (b) Service modifications: [modifications@allegro.com.au](mailto:modifications@allegro.com.au)
  - (c) Service cancellations: [cancellations@allegro.com.au](mailto:cancellations@allegro.com.au)
  - (d) Complaints: [dispute@allegro.com.au](mailto:dispute@allegro.com.au)

**Section 6. Service Hours**

- 6.1 Depending on the SLA associated with your service Allegro will only commit to providing response and restoration during specific times.

Service Level Agreement	Service Hours
Bronze	8am to 6pm Monday to Friday excluding public holidays
Silver	8am to 6pm Monday to Friday excluding public holidays
Gold	24 hours a day, 7 days a week

**Section 7. Response Times**

- 7.1 Allegro will respond to a customer contact within the following times:

Service Level Agreement	Response Time
Bronze	N/A
Silver	4 hours
Gold	30 minutes between 8am and 8pm Monday to Friday excluding public holidays, and 2 hours outside those times

- 7.2 Response times are measured from the time the customer calls the service number (1300 85 85 or, in the case of Gold customers, the after-hours number) until Allegro service and support staff respond and acknowledge the fault has been logged (which may be by phone or email or other means).
- 7.3 All response times are measured during service hours only. For example, an issue logged on a Silver Service Level Agreement at 8pm Monday must be responded to by 12pm Tuesday.

**Section 8. Restoration Times**

- 8.1 Allegro will restore service outages within the following times, according to the nature of the outage:

Service Level Agreement	Resolution Type		
	Remote Resolution	On site visit Required	Radio Frequency Resolution
Bronze	N/A	N/A	N/A
Silver	4 hours	12 hours	48 hours
Gold	2 hours	8 hours	36 hours

- 8.2 Restoration times are measured from the time Allegro responds to a service call to the time the service passes Allegro service availability tests. Restoration of a Smart Resort service means restoration of broadband connectivity to the Smart Resort, not restoration of any end user activation in that Smart Resort.
- 8.3 All restoration times are measured during service hours only.

### Section 9. Guaranteed Availability

- 9.1 Allegro will measure the end to end network connectivity of its Service once a calendar month. This end-to-end network connectivity will be measured using our Network Management System. Absent manifest error, the measure reported by that system is final and binding.
- 9.2 At the end of each calendar month, Allegro will determine the level of end to end connectivity for your Service over the three month period based on its measurements using weighted moving averages (the "Service Level").
- 9.3 If we determine that the Service Level achieved for your Service in the most recent 3 month period is less than the promised service level threshold, we will credit your account with an amount equal to a percentage of your monthly subscription charge as follows:

Service Level Agreement	Minor Failure		Severe Failure	
	Threshold	Rebate	Threshold	Rebate
Bronze	N/A	N/A	N/A	N/A
Silver	99.9%	20%	94%	50%
Gold	99.95	20%	98%	50%

- 9.4 These rebates are the sole remedy for a failure to meet any guarantee under this service level agreement. Rebates do not apply to Residential products.
- 9.5 Where we pay a rebate, the events or failures giving rise to that rebate are not included in any measurement of end-to-end connectivity for subsequent months.

### Section 10. Exceptions

- 10.1 Our measurement of the Service Level for your Service does not include the following:
- 10.2 Network unavailability caused by planned and scheduled outages. It is sometimes necessary to schedule network outages to allow for improvement and maintenance work to be carried out on the network. This work is usually scheduled to occur between 6.00pm and 6.00am to minimise inconvenience to our customers. Any unavailability of the Allegro network that is a result of planned and scheduled network outages will not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
- 10.3 Network unavailability caused by unscheduled maintenance in cases of emergency.
- 10.4 Network unavailability caused by failures in any other carriers network, failures in your network, viruses, attacks, acts of God, interference and other events not under our direct control.
- 10.5 Network unavailability caused by your modem. The service and maintenance of your modem is covered by the Terms and Conditions. Any unavailability of the network that is caused by or results from your modem will not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
- 10.6 Network unavailability outside Service Hours, as defined by section 2 of this Service Level Agreement Schedule. Service outages outside Service Hours will

not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.

- 10.7 The Service Level is a measure of network availability and not of service availability. This means that we do not measure the availability of your Service at any given time. Accordingly, any unavailability of your Service or any applications (such as email, web hosting, and the ability to browse the web) is not included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
- 10.8 Many of Our Services have a "Burst" which allows the user to exceed their minimum bit rate for short periods as long as doing so would have no negative impact on other users. No representation is made to the availability of this burst at any point in time.

#### **Section 11. Exclusions for non standard installations.**

- 11.1 From time to time you may ask, and Allegro may agree, to perform an installation of a service in a manner that is outside of the Allegro' standard installation for the service in question.
- 11.2 If Allegro agrees to perform such an installation you must agree:
- (a) to accept best efforts fault resolution SLA where a visit is required or an RF issue needs to be resolved; and
  - (b) release Allegro from performance of its obligations under Section 9 of this Service Level Agreement for faults where a site visit is required or an RF issue needs to be resolved.
- 11.3 To eliminate doubt, this section applies if:
- (a) The equipment location on the roof of your building is not safely accessible by two people using a 3 storey ladder; or
  - (b) In order to access the antenna a section of roof must be traversed that is:
    - (i) In excess of 22.5 degrees in pitch; or
    - (ii) Constructed of a material that is not iron, concrete or tile; or
  - (c) The equipment is only accessible using a cherry picker or other elevated work platform as a result of:
    - (i) Difficulty accessing the roof; or
    - (ii) The location of the equipment on the mast makes it impossible to reach the equipment without an elevated work platform; or
    - (iii) The height of the mast exceeds 3m.

**Section 12. New service installation guarantees**

- 12.1 Allegro networks guarantees to deliver your new service within a guaranteed time frame.
- 12.2 If your new service is not installed within the guaranteed time frame you will be eligible for a credit of your first monthly Service fee.
- 12.3 The delivery guarantee period begins when Allegro has accepted your order. For the avoidance of doubt, you will receive an email stating that your order has been accepted. It is the date of this email that will be used as the start date for the service installation guarantee.
- 12.4 The delivery guarantee does not apply when delays have been caused by forces outside Allegro's control, specifically:
- (a) Lack of customer readiness; or
  - (b) Site access issues at the customer's premises; or
  - (c) Delays in provisioning 3<sup>rd</sup> party services; or
  - (d) Acts of god (in particular rain, snow, high wind or other events that make installation of services dangerous
- 12.5 The guarantee
- 12.6 Delivery guarantees are based on technology. The following delivery guarantees apply:

Technology	Location	Delivery Guarantee
WiMAX	On Net	15 working days
G.SHDSL (off net)	AAPT Network	25 working days
ADSL (off net)	AAPT Network	20 working days
VDSL, ADSL, Ethernet	Smart Buildings	15 working days
Point to Point Microwave (No Repeater Required)	On Net	40 working days
3 <sup>rd</sup> party Ethernet	Trade Coast Central	30 working days
Point to Point Microwave (Repeater Required)	On Net	80 working days

- 12.7 Any technology not represented in clause 12.6 is excluded from the delivery guarantee.

**Section 13. Altering this Service Level Agreement**

- 13.1 We reserve the right to change or withdraw this Guarantee at any time with 30 days prior notice. If a credit is due to you for the month preceding the effective withdrawal or change of the Guarantee you will still receive the credit for that month. For the avoidance of doubt, clause 4 of the Terms and Conditions does not apply to any change to, or withdrawal of, this Guarantee.

## Wholesale Service Level Agreement Schedule

### Section 1. Service Level Agreements Available

- 1.1 There are three Service Levels. These reflect the differing needs of Allegro's wholesale customers.
- (a) "Gold" – Focussed on the needs of large wholesale customers requiring 24/7 support with fast response times. This is available on resale of the Allegro 'Premium' and 'Connect' product ranges.
  - (b) "Silver" – Focussed on the needs of other wholesale customers who require effective and responsive business hours support. This is available on resale of the Allegro 'Business' product range.
  - (c) "Bronze" – Focussed on the needs of wholesale customers who resell services predominantly for domestic use. This is available on resale of the Allegro 'Residential' product range.

### Section 2. Gold Wholesale Service Level Priority

- 2.1 We will notify Gold Wholesale Service Level customers of planned outages in advance to give you time to plan. We will notify Gold Wholesale Service Level customers of unplanned outages promptly.

### Section 3. Contact Hours

- 3.1 Allegro's front-line support personnel are available to assist with service and account queries and to log service effecting issues.
- 3.2 The front line support personnel can be contacted using the following methods for general assistance and enquiries:

Service Level Agreement	Contact Hours	Contact Details
Bronze and Silver	8am to 6pm Monday to Friday, 9am to 1pm Saturday, Sunday & public holidays	1 300 85 85 35 or <a href="mailto:support@allegro.com.au">support@allegro.com.au</a>
Gold	24 hours a day, 7 days a week	1 300 85 85 35 during Bronze and Silver contact hours and on the after-hours number provided at other times

- 3.3 In addition, the following email addresses are available for other administrative tasks:
- (a) Accounts enquires: [accounts@allegro.com.au](mailto:accounts@allegro.com.au)
  - (b) Service modifications: [modifications@allegro.com.au](mailto:modifications@allegro.com.au)
  - (c) Service cancellations: [cancellations@allegro.com.au](mailto:cancellations@allegro.com.au)
  - (d) Complaints: [dispute@allegro.com.au](mailto:dispute@allegro.com.au)

### Section 4. Service Hours

- 4.1 Depending on the SLA associated with your service Allegro will only commit to providing response and restoration during specific times.

Service Level Agreement	Service Hours
Bronze	8am to 6pm Monday to Friday excluding public holidays
Silver	8am to 6pm Monday to Friday excluding public holidays
Gold	24 hours a day, 7 days a week

**Section 5. Response Times**

5.1 Allegro will respond to a customer contact within the following times:

Service Level Agreement	Response Time
Bronze	N/A
Silver	8 hours
Gold	1 hours between 8am and 6pm Monday to Friday excluding public holidays, and 4 hours outside those times

5.2 Response times are measured from the time the customer calls the service number (1300 85 85 35 or, in the case of Gold customers, the after-hours number provided to you on your welcome letter) until Allegro service and support staff respond and acknowledge the fault has been logged (which may be by phone or email or other means).

5.3 All response times are measured during service hours only. For example, an issue logged on a Silver Service Level Agreement at 6pm Monday must be responded to by 12pm Tuesday.

**Section 6. Guaranteed Availability**

6.1 Allegro will measure the end to end network connectivity of its Service once a calendar month. This end-to-end network connectivity will be measured using our Network Management System. Absent manifest error, the measure reported by that system is final and binding.

6.2 At the end of each calendar month, Allegro will determine the level of end to end connectivity for your Service over the three month period based on its measurements using weighted moving averages (the "Service Level").

6.3 If we determine that the Service Level achieved for your Service in the most recent 3 month period is less than the promised service level threshold, we will credit your account with an amount equal to a percentage of your monthly subscription charge as follows:

Service Level Agreement	Minor Failure		Severe Failure	
	Threshold	Rebate	Threshold	Rebate
Bronze	N/A	N/A	N/A	N/A
Silver	99.5%	10%	94%	25%
Gold	99.9%	10%	98%	25%

6.4 These rebates are the sole remedy for a failure to meet any guarantee under this service level agreement. Rebates do not apply to Residential products.

6.5 Where we pay a rebate, the events or failures giving rise to that rebate are not included in any measurement of end-to-end connectivity for subsequent months.

**Section 7. Exceptions**

Our measurement of the Service Level for your Service does not include the following:

7.1 Network unavailability caused by planned and scheduled outages. It is sometimes necessary to schedule network outages to allow for improvement and maintenance work to be carried out on the network. This work is usually scheduled to occur between 6.00pm and 6.00am to minimise inconvenience to our customers. Any unavailability of the Allegro network that is a result of planned and scheduled network outages will not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.

7.2 Network unavailability caused by unscheduled maintenance in cases of emergency.

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- 7.3 Network unavailability caused by failures in any other carriers network, failures in your network, failures to access your premises or your end users' premises, viruses, attacks, acts of God, interference and other events not under our direct control.
  - 7.4 Network unavailability caused by your equipment or your end users' equipment. The service and maintenance of your equipment or your end users' equipment is covered by the Terms and Conditions. Any unavailability of the network that is caused by or results from your equipment or your end users' equipment will not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
  - 7.5 Network unavailability outside Service Hours, as defined by section 2 of this Service Level Agreement Schedule. Service outages outside Service Hours will not be included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
  - 7.6 The Service Level is a measure of network availability and not of service availability. This means that we do not measure the availability of your Service at any given time. Accordingly, any unavailability of your Service or any applications (such as email, web hosting, and the ability to browse the web) is not included in our measurement of the Service Level and will not entitle you to receive a credit under this Guarantee.
  - 7.7 Restoration of faults that require a site visit to a service that involves an installation other than a Standard Installation as defined in the appropriate service schedule.
  - 7.8 Network unavailability attributed to the failure of a Third Party Tail.

## **Section 8. Altering this Service Level Agreement**

- 8.1 We reserve the right to change or withdraw this Guarantee at any time with 30 days prior notice. If a credit is due to you for the month preceding the effective withdrawal or change of the Guarantee you will still receive the credit for that month. For the avoidance of doubt, clause 4 of the Wholesale Terms and Conditions does not apply to any change to, or withdrawal of, this Guarantee.

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## TradeCoast Central and Dark Fibre Services Schedule

### Section 1. Trade Coast Central Managed Ethernet

- 1.1 This Service Specification describes the functionality and features of the standard Ethernet service available at TradeCoast Central, Eagle Farm, Brisbane. It should be read in conjunction with Allegro's Standard Terms and Conditions and Service Level Agreement Schedule.
- 1.2 Each customer premises at TradeCoast Central is pre-provisioned with 10 Ethernet services. The Ethernet services are provisioned over a Cisco Metro Ethernet network, by Fujitsu Australia under contract with Allegro.
- 1.3 Each Ethernet service is an end to end data switched Ethernet service, between an A end and a B end, conforming to the IEEE 802.3 and supporting 802.1Q (Q-in-Q or VLAN stacking).
- 1.4 The A end of the Ethernet service is customer side of the Allegro management router in the communications room at TradeCoast Central ("Comms Room"). The Comms Room is a carrier neutral facility, in a controlled and secure environment, located at the entrance to the TradeCoast Central precinct. Co-location services are available at the Comms Room.
- 1.5 The B end of the Ethernet service is the customer side of the Cisco Metro Ethernet device at the customer premises.
- 1.6 Services are provided using Virtual Local Area Networks (VLANs). Services on different VLANs on the same distribution network are securely segregated and cannot be interconnected at the Ethernet layer.
- 1.7 The customer can purchase up to 10 Services (on different VLANs) at each site.
- 1.8 For each site, the customer nominates:
  - (a) The bandwidth required over the channel; and
  - (b) Whether VLAN stacking is required.
- 1.9 Allegro reserves the right to apply rate limiting to inappropriate broadcast Ethernet frames. This protects Allegro's network performance from any degradation that could otherwise result from the creation of excessive traffic loads that may occur when a Customer floods the network in a manner incompatible with Allegro's Acceptable Use Policy.

### Section 2. Dark Fibre

- 2.1 Allegro's Dark Fibre service covers the supply of one or several unlit strands of single mode optical fibre to which the customer can attach optical equipment.
- 2.2 The Customer is responsible for providing the terminating equipment, which is required to convert the Dark Fibre into a useable path for communications transport, including the lasers which "light" the fibre. The devices connecting to Allegro's Dark Fibre service must comply with the acceptable emission levels as specified in Class 3A of AS2211.
- 2.3 Allegro's Dark Fibre service complies with ITU-T Recommendation G.652 for 9 micron, single mode fibre. Allegro does not provide any regenerating or terminating optical or electronic equipment with this service.
- 2.4 The technical performance of the Allegro Dark Fibre service is defined with reference to the attenuation of the link. Excluding connectors and splices, the attenuation of the Dark Fibre service does not exceed:
  - (a) 0.25dB/km at 1550nm; and
  - (b) 0.37dB/km at 1310nm.
- 2.5 The average two way splice loss per splice does not exceed 0.10 dB at both 1310nm and 1550nm. Allegro or its contractors can provide an estimate of the

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number of splices required for the provision of a specific fibre route. Information on the exact number of splices is generally not available until the fibre path has been designed, normally following the receipt of a purchase order.

- 2.6 Acceptance testing is carried out when the Dark Fibre service has been terminated at both ends of a service. The tests are performed in both directions at both 1310nm and 1550nm wavelengths. Upon commissioning of the service, Allegro will provide the Customer with acceptance test results showing fibre distance, link loss and insertion loss at 1310nm and 1550nm.
- 2.7 Allegro's Dark Fibre service is terminated on a fibre termination panel (FTP) installed at the Customer premises. On the FTP the fibres will be terminated on panel mounted angled SC (A/SC) optical connector. Or alternatively where pre-existing fibre is provided the termination may be in a standard fibre tray with standards SC connectors. These connectors will connect the fibres to the Customer's equipment via an optical patch lead.
- 2.8 The Installation Charges do not cover cabling on the Customer Site. Any costs incurred for cabling on the Customer Site, including the riser in a multi-storied building may be invoiced to the Customer on a fee for service basis.
- 2.9 The Customer is responsible for the maintenance and restoration of cabling on the Customer Site, and any fault restoration services carried out by Allegro concerning that cabling may be on a fee for service basis.
- 2.10 The Customer is responsible for providing the optical patch leads between the dark fibre connectors on the FTP and the Customer Equipment and for connecting the lead between these two points.

### **Section 3. Service Levels**

- 3.1 Allegro's Gold Service Level Agreement, as described in the Service Level Schedule, apply to TradeCoast Central services.
- 3.2 In relation to TradeCoast Central services, rebates do not apply to fibre cut repair and response and Network Availability excludes unavailability due to fibre cuts.

## Smart Resort Services Schedule

### Section 1. DEFINITIONS

- 1.1 In this schedule, "you" and the "Resort" are one and the same person. Otherwise, capitalised terms have the meaning given to them in the Smart Resort Application Form, including;
- (a) Territory;
  - (b) Commencement Date;
  - (c) Initial Term;
  - (d) Services;
  - (e) Your Contact Details;
  - (f) Your Billing Contact Information;
  - (g) Site Details;
  - (h) Service Requirements;
  - (i) Resort Charges;
  - (j) Customer Plans and Charges
  - (k) Payment Details; and
  - (l) Special Terms and Conditions.

### Section 2. APPOINTMENT

- 2.1 Allegro Networks appoints the Resort as an authorised ALLEGRO NETWORKS sales representative for the sole purpose of marketing and reselling the Services to Customers in the Territory.
- 2.2 Any persons engaged by the Resort to perform the Services, will be solely the responsibility of the Resort.

### Section 3. TERM OF AGREEMENT

- 3.1 This Agreement will commence on the Commencement Date and remain in force for the Initial Term. Upon expiry of the Initial Term, this Agreement will continue with termination by either party on 3 months notice in writing.

### Section 4. RESORT'S RESPONSIBILITIES AND WARRANTIES

The resort must:

- 4.1 Use its best endeavours to promote the Services to Customers and carry out its obligations in a manner that reflects favourably on the quality image of ALLEGRO NETWORKS and its services and will avoid all circumstances and actions which would place the Resort in a position of conflict of interest with its obligations in this Agreement or with the general interests of ALLEGRO NETWORKS;
- 4.2 Ensure that staff are adequately trained and competent sales personnel who have a reasonably adequate knowledge of the specifications, features and advantages of the Services to enable the effective marketing of the Services and make its personnel aware of, and obligate them to comply with, the obligations of the Resort in this Agreement;
- 4.3 Encourage its employees and the personnel of its sub-contractors to undertake the free training provided for the Resort by ALLEGRO NETWORKS;
- 4.4 Support ALLEGRO NETWORKS delivery of the Services sold by the Resort, including, but not limited to:
- (a) selling the Services on Allegro's Standard Terms and Conditions only; as amended from time to time, a copy of which you acknowledge receiving
  - (b) promptly forwarding any completed Service Applications and credit information to ALLEGRO NETWORKS;

- (c) promptly informing Customers of the services and support available from the Resort as well as from ALLEGRO NETWORKS;
  - (d) consulting with ALLEGRO NETWORKS concerning additional requests for support, training or services from Customers;
  - (e) reporting promptly to ALLEGRO NETWORKS all known or suspected defects in the Services or any safety problems and keeping ALLEGRO NETWORKS informed of Customer complaints with respect to the Services; and
  - (f) assisting ALLEGRO NETWORKS to resolve Customers complaints;
  - (g) provide forecasts if required to ALLEGRO NETWORKS
  - (h) Use Service Applications, promotional materials, sales literature and sales aids provided by ALLEGRO NETWORKS solely in its activities as prescribed by this Agreement and must not use any materials that refer to ALLEGRO NETWORKS in relation to any services that have not been approved in writing by ALLEGRO NETWORKS;
  - (i) Not make any representations or warranties relating to the Services except as set out in sales literature or forms provided by ALLEGRO NETWORKS or as otherwise expressly permitted in writing by ALLEGRO NETWORKS;
  - (j) Identify itself as an authorised Resort of ALLEGRO NETWORKS only with respect to the Services and must otherwise identify itself as a business which is independent of ALLEGRO NETWORKS;
  - (k) Not disparage ALLEGRO NETWORKS or its affiliates or their products or services, and must not disparage ALLEGRO NETWORKS competitors or the services or products of such competitors; not interfere with products;
  - (l) Refer all customers requests for ALLEGRO NETWORKS services not covered by this Agreement to the ALLEGRO NETWORKS sales manager within one business day of receipt of such a request;
  - (m) Keep accurate accounts, books and records relating to the business of the Resort with respect to the Services, in accordance with generally accepted commercial and business accounting principles and practices, that are at least sufficient for ALLEGRO NETWORKS to ascertain the Resort's compliance with its obligations under this Agreement;
  - (n) Submit to ALLEGRO NETWORKS any information which may be relative to any service provided by ALLEGRO NETWORKS
  - (o) Comply with all of ALLEGRO NETWORKS written policies, procedures and directives provided to the Resort; and
  - (p) Report to and comply with all reasonable directives from Allegro's Duly Authorised Representative.
  - (q) Attend review meetings with ALLEGRO NETWORKS as reasonably required by ALLEGRO NETWORKS at Resorts or ALLEGRO NETWORKS premises
  - (r) Not, during the term of this agreement promote any services that compete with the Services.
- 4.5 The resort must pay any moneys due by it to ALLEGRO NETWORKS within ALLEGRO NETWORKS normal payment terms, as notified to the Resort by ALLEGRO NETWORKS from time to time;
- 4.6 If requested by ALLEGRO NETWORKS use all reasonable endeavours to assist ALLEGRO NETWORKS to recover debts.
- 4.7 Be liable for and pay (when due) all costs and expenses incurred by the Resort in performing its obligations under this Agreement, including but not limited to rental, salaries, telephone, travelling expenses, public liability insurance and other marketing and sales expenses;
- 4.8 Obtain the approval of ALLEGRO NETWORKS for any proposed promotional material or advertising in any medium;
- 4.9 Not use the marks of ALLEGRO NETWORKS.

- 4.10 The Resort is authorised to sell Services to Customers but is not authorised to contractually bind ALLEGRO NETWORKS.
- 4.11 The Resort may only use the terms and conditions for the Services that are contained in the Service Application provided to the Resort by ALLEGRO NETWORKS or as otherwise permitted in writing by ALLEGRO NETWORKS.
- 4.12 The parties acknowledge that the appointment of the Resort under this Agreement is not an implied endorsement by ALLEGRO NETWORKS of any other business carried on by the Resort, and no such representation has been or will be made by either party
- 4.13 The Resort represents and warrants that it is not by law or agreement with others prohibited from entering into this Agreement with ALLEGRO NETWORKS.

#### **Section 5. SUB-CONTRACTORS**

- 5.1 The resort shall:
- (a) Not engage sub-contractors to perform any of its obligations under this Agreement without prior approval of ALLEGRO NETWORKS, which approval shall not be unreasonably withheld; and
  - (b) Ensure that all sub-contractors approved by ALLEGRO NETWORKS and contracted by the Resort shall be subject to the terms of this Agreement and bound by the obligations applicable to the Resort as if they were party to this Agreement.

#### **Section 6. ASSIGNMENT**

- 6.1 The Resort shall not assign any right or interest under this Agreement, or delegate any work or other obligation to be performed by the Resort under this Agreement without the prior written consent of ALLEGRO NETWORKS which consent will not be unreasonably withheld. Any attempted assignment or delegation in contravention of this clause is void and ineffective.
- 6.2 Should ALLEGRO NETWORKS sell its core business it will use all reasonable endeavours to assign its interest in this Agreement to the new owner of the business.

#### **Section 7. INSURANCE**

- 7.1 The Resort shall, at all times during the term of this Agreement, at its expense, maintain comprehensive liability insurance against claims for bodily and personal injury, death, property damage and injury caused by or resulting from the acts, omissions or misrepresentations of the Resort, its affiliates, servants or Resorts, employees, sub-contractors, and any others for whom it is responsible under this Agreement or otherwise.
- 7.2 Such insurance shall be in the minimum amount of \$5,000,000 per occurrence and shall name ALLEGRO NETWORKS as an additional insured.
- 7.3 Upon the request of ALLEGRO NETWORKS, the Resort shall furnish proof to the reasonable satisfaction of ALLEGRO NETWORKS as to the currency of the insurance coverage.

#### **Section 8. ALLEGRO NETWORKS RESPONSIBILITIES**

- 8.1 ALLEGRO NETWORKS shall:
- (a) Deliver the Services to the Customers in accordance with its Standard Terms and Conditions as amended from time to time, a copy of which can be found on the Allegro Website. To the extent of an inconsistency between this Agreement and Standard Terms and Conditions, this Agreement prevails;
  - (b) Provide telephone assistance to the Resort for its inquiries concerning the pricing, application and general information about the Services;

- (c) Provide the Resort with reasonable quantities of pro forma Service Applications, promotional materials, sales literature, and sales aids to be used by the Resort solely in its activities as prescribed by this Agreement;
- (d) Provide training as follows:
  - (i) ALLEGRO NETWORKS will provide at no charge to the Resort and its personnel all training that ALLEGRO NETWORKS considers appropriate to enable the Resort to market and demonstrate the Services effectively;
  - (ii) ALLEGRO NETWORKS will provide at ALLEGRO NETWORKS then current applicable rates any other marketing or training offered by ALLEGRO NETWORKS and requested by the Resort;
  - (iii) Review all Service Applications submitted by Customers on the basis that the Customer is acting as the Resorts agent and the Resort shall be liable for all charges related to the Service Application. ALLEGRO NETWORKS shall process these Service Applications in accordance with Allegros' standard practices, however ALLEGRO NETWORKS reserves the right to reject, for any reason, any Service Application; and
  - (iv) Actively support and promote where possible the Resort's business.

### **Section 9. CHARGES**

- 9.1 Resort shall, during the term of this Agreement, pay to ALLEGRO NETWORKS, the Resort Charges agreed in writing between them in the Application Form. The charges and method of payment may be varied by agreement.
- 9.2 Allegro shall, during the term of this Agreement, pay to the Resort, the Resort Commissions agreed in writing between them in the Application Form. The charges and method of payment may be varied by agreement. Allegro shall provide a monthly commission statement setting out the Resort Commission payable.

### **Section 10. TERMINATION**

- 10.1 Either party may terminate this Agreement, for material breach, by giving the other party 14 days written notice. Provided that it has first given the other party 14 days to remedy breach and the other party has failed to do so.
- 10.2 Notwithstanding anything to the contrary in this Agreement, ALLEGRO NETWORKS shall be entitled to terminate this Agreement forthwith by written notice to the Resort without liability to make further payment of any kind to the Resort (save for any such payment as shall have accrued at the date of such termination) if:-
  - (a) The Resort has committed any serious or persistent breach of any of the fundamental provisions of this Agreement;
  - (b) The Resort, in the reasonable opinion of ALLEGRO NETWORKS, shall be guilty of any grave or serious misconduct or wilful neglect or incompetence in connection with the provision of the services or in the discharge of the Resort's obligations under this Agreement or without reasonable cause shall have neglected or failed substantially to provide the services and cannot be remedied in ALLEGRO NETWORKS opinion;
  - (c) The Resort shall have been convicted of any criminal offence other than an offence which in the reasonable opinion of ALLEGRO NETWORKS does not affect the provision of the services;
  - (d) The Resort by its actions or omissions in the reasonable opinion of ALLEGRO NETWORKS shall have seriously damaged the interests of ALLEGRO NETWORKS or which shall have brought the reputation of ALLEGRO NETWORKS or its directors or staff into serious disrepute;
  - (e) The Resort is unable to make available the services to be provided hereunder because of the Resort's death or because of the Resort's

- illness, injury or mental disability lasting three weeks in the aggregate in any quarterly period;
- (f) The Resort has a petition presented against it for its winding up or if it should go into liquidation either voluntarily or compulsory or if a receiver or receiver/manager is appointed in respect of its property or undertaking or any part thereof;
  - (g) The Resort has a petition presented against him/her for his/her bankruptcy (including a voluntary presentation).
  - (h) The Resort has a consistent failure to providing / referring new business to ALLEGRO NETWORKS and or not supporting ALLEGRO NETWORKS products and or favouring another provider that has similar products to ALLEGRO NETWORKS.
- 10.3 Where the Resort is a corporation, and the terms of this Clause 10.2 apply to a person then they shall also apply, where relevant, to the duly authorised representative of the Resort who signs this Agreement on behalf of the Resort.
- 10.4 Upon termination or expiry of this Agreement, the Resort shall immediately:
- (a) Discontinue any use of any advertising or business material which identifies the Services or refers to ALLEGRO NETWORKS.
  - (b) Remove and return to ALLEGRO NETWORKS, or destroy at ALLEGRO NETWORKS request, any and all promotional and or other material supplied by Allegro Networks;
  - (c) Return, upon request, all Confidential Information in whatever form held except that which ALLEGRO NETWORKS determines is necessary to operate and maintain previously provided Services;
  - (d) Return to ALLEGRO NETWORKS all Customer related files held by the Resort in whatever form including contact, relationship and other documents or notes relating to Customers.
  - (e) Cease holding itself out in any other manner as an Resort of ALLEGRO NETWORKS;
  - (f) Notify and arrange for all publishers and others who may identify, list or publish the Resort's name as a Resort for ALLEGRO NETWORKS or the Services (including, but not limited to, publishers of telephone directories, yellow pages and business directories), to discontinue such listings.

## **Section 11. RESTRAINT**

- 11.1 In recognition of the support to be provided to the Resort by ALLEGRO NETWORKS, including but not limited to training and access to Confidential Information, the Resort must not during the Restraint Period, within Australia, engage in the marketing or supply of telecommunications services which are similar to the Services, to any Applicable Customer.
- 11.2 For the purposes of clause 11.1:
- (a) "Applicable Customer" means any person with whom ALLEGRO NETWORKS has: entered into; or (at the time of termination or expiry of this Agreement) is about to enter into, a contract for the supply of telecommunications services as a result of the Resort's activities pursuant to this Agreement; and
  - (b) "Restraint Period" means:
    - (i) the term of this Agreement; and
    - (ii) a period of 12 months following the termination or expiry of this Agreement.
  - (c) "engage" includes:
    - (i) solicit, interfere with, deal with or endeavour to entice away from ALLEGRO NETWORKS; and
    - (ii) assist, encourage, advise or instruct any friend, relative or business associate to do any of the things prohibited in clause 11.1; and

- (iii) be involved or associated with either as director, shareholder, employee, reseller, contractor, consultant, trustee or beneficiary any person, corporation or trust..
  - (d) "Resort" means the Resort and the duly authorised representative of the Resort that signs this Agreement on behalf of the Resort.
- 11.3 The Resort must not following expiration or termination of this Agreement churn any existing Customer from ALLEGRO NETWORKS to any other carrier or service provider.

## **Section 12. CONFIDENTIAL INFORMATION**

- 12.1 This Agreement and all Confidential Information that is furnished to the Resort under or in contemplation of this Agreement or identified as confidential or proprietary by ALLEGRO NETWORKS shall be and remain confidential and proprietary to ALLEGRO NETWORKS.
- 12.2 Unless ALLEGRO NETWORKS otherwise agrees in writing, all Confidential Information shall:
- (a) Be treated in strict confidence by the Resort and used by the Resort only for the purposes of performing the Resort's obligations under this Agreement;
  - (b) Not be reproduced or copied in whole or in part, except as is necessary for proper use under this Agreement;
  - (c) Be made available only to such employees of the Resort who have a need to have access to the Confidential Information for the purposes of this Agreement and have been obliged to comply with the terms of this clause in favour of ALLEGRO NETWORKS and
  - (d) Together with any copies thereof, in whatever form held, be returned, be destroyed or, if in the form of software recorded on an erasable storage medium, be erased when no longer needed or this Agreement terminates, or expires whichever occurs first.
- 12.3 This clause 12 shall survive termination of this Agreement..

## **Section 13. LIABILITY**

- 13.1 Except as required by law, ALLEGRO NETWORKS total aggregate liability to the Resort, whether for breach of contract, in tort, under statute or otherwise, is limited to the charges paid under this agreement. The parties agree that ALLEGRO NETWORKS shall not be liable to the Resort for any special, incidental, consequential, or any other indirect loss or damage whatsoever, arising out of or in connection with the performance of this Agreement.
- 13.2 The Resort assumes all liability for any acts or omissions of its sub-contractors as if they were the acts and omissions of the Resort. ALLEGRO NETWORKS is not liable for and does not guarantee the performance of any obligation which the Resort may have to its sub-contractors, including the payment of any remuneration and the Resort will so inform any sub-contractors it appoints.
- 13.3 Except as required by law, ALLEGRO NETWORKS shall have no liability to the Resort for commissions that might have been earned but for ALLEGRO NETWORKS inability or failure to provide Services to any Customer or for any delays in the provision of Services to any Customer or in the event of discontinuation of the Services for any reason.

## **Section 14. INDEMNITY**

- 14.1 The Resort shall fully indemnify and keep indemnified ALLEGRO NETWORKS against all claims, actions, suits, demands and proceedings made or brought against ALLEGRO NETWORKS and against all damage, loss, costs, expenses or liability (including legal costs on an indemnity basis) which but for this indemnity ALLEGRO NETWORKS may suffer or may incur by reason of or in

connection with the performance or non performance (including without limitation any act or omission) by the Resort of its obligations under this Agreement or by any employee or sub-contractor of the Resort with respect to the obligations of the Resort under this Agreement.

## **Section 15. GENERAL**

- 15.1 The relationship of the parties under the Agreement shall be, and shall at all times remain, one of principal and agent and not that of employer and employee, franchisor and franchisee, partners or joint venturers.
- 15.2 The person who signs this Agreement on behalf of the Resort guarantees to ALLEGRO NETWORKS the payment of all monies due and payable under this Agreement in the same manner and to the same extent as if that person was actually the Resort under this Agreement. ALLEGRO NETWORKS has agreed to enter into this Agreement with the Resort at the request of the person executing this Agreement on behalf of the Resort.
- 15.3 If we install a VDSL solution, you specify that each Specified Apartment is not enabled with ISDN, that no other devices share the line and that the phone line to which the modem is to be connected is in the bedroom. We own the Broadband Transmission Facility as defined in the Standard Terms and Conditions. You own the modem in the Specified Apartments. If a modem is lost or stolen, you may purchase a replacement modem from us at then current rates for a modem.
- 15.4 You will manage all billing and account enquiries from the Customer if the service is post-paid (i.e.: added to the room account). For prepaid services (i.e.: paid by the end user on a credit card) we will manage all billing and account enquiries through our contact centre.
- 15.5 The terms and conditions for Smart Building Residential services apply to Smart Resorts to the extent applicable.
- 15.6 All services are provided using Allegro's high performance network, and burst to channel capacity.
- 15.7 Only available in specified buildings.
- 15.8 If we install a VDSL solution, you own the modem. You may purchase additional modems for our standard rates.
- 15.9 Allegro's declared network boundary is the enabled phone line identified by you on the service application form or, in the case of Ethernet, the wall socket. As such, responsibility for connection to your network, maintenance and installation of firewalls, modems and other customer owned devices lies entirely with you and your customers.
- 15.10 A fair use policy exists. Users consuming excessive (more than 1GB per week of upload or download) data may have their usage restricted during times of peak network load. Some plans have different shaping policies – should this be the case, it will be identified on the plan when the user subscribes.

## Residential Voice and Business Voice Services Schedule

Residential Voice and Business Voice are 'Voice over broadband' services.

VOICE OVER BROADBAND SERVICES REQUIRE MAINS ELECTRICAL POWER AND WILL NOT BE AVAILABLE IN THE EVENT OF A POWER OUTAGE AFFECTING YOUR PREMISES. WE STRONGLY RECOMMEND YOU MAINTAIN A WORKING LINE POWERED TELEPHONE CONNECTED TO STANDARD TELEPHONE SERVICES, FOR USE IN EMERGENCIES.

### Section 1. Description of Service

- 1.1 The Voice over Broadband is a voice communication service whereby the voice communication is converted into a digital signal and carried, in part, over a high-speed (broadband) internet network. This type of telephony service may be generically referred to as Voice over IP (VoIP). It is separate and distinct from traditional fixed line (PSTN) telephone services.
- 1.2 The Voice Over Broadband Service offers you the ability to make local, national and international telephone calls to select destinations using their Allegro Broadband connection.
- 1.3 To access the Voice Over Broadband Service, you must:
  - (a) use the specified modem/router provided by Allegro for this purpose; and
  - (b) maintain an Allegro broadband service connected to the Voice over Broadband Service.
- 1.4 You understand and acknowledge that the Voice Over Broadband Service does NOT support access to 000 or other emergency service telephone numbers and is NOT a substitute for a Standard Telephone Service. You should always maintain an alternative telephone service which provides access to 000 and other emergency service telephone numbers.
- 1.5 You acknowledge that the Voice Over Broadband Service cannot be used to make calls to 1900 or 0500 numbers or for operator-assisted calls.
- 1.6 You understand that access to, and quality of, the Voice Over Broadband Service can be affected by factors affecting the your broadband connection including, but not limited to, the following:
  - (a) throttling of your download speed, for example, because of unacceptable use.
  - (b) usage of the Allegro broadband service while making a call with the Voice Over Broadband Service.

### Section 2. Equipment

- 2.1 The VoIP modem/router equipment supplied by Allegro supports inbound telephone calls from your standard, fixed-line (PSTN) telephone service. If you choose not to purchase an approved Allegro VoIP modem/router, you will need to keep a telephone handset connected directly to their PSTN phone line to receive inbound phone calls.
- 2.2 Unless we expressly advise otherwise in writing, the VoIP modem/router supplied by Allegro does not support access to 000 and other emergency telephone numbers. You will not be able to call 000 or other emergency service telephone numbers with your Voice Over Broadband Service, and should keep a telephone handset attached directly to their (PSTN) telephone line for this purpose.
- 2.3 The VoIP modems/routers supplied by Allegro have been customized for the Allegro Voice Over Broadband Service, and therefore may not work with other VoIP services without modification. All such modifications and all associated

costs are your responsibility. The equipment warranty may become null and void if the modifications are not performed by the manufacturer.

### **Section 3. Voice Over Broadband call rates**

- 3.1 Voice Over Broadband call rates apply to all calls made with the Allegro Voice Over Broadband Service, other than calls which fall within the scope of any free calls or free minutes specified from time to time or included in our Plan Table.
- 3.2 All applicable call rates are available in the Voice Over Broadband Plan Table on the Allegro website at [www.allegro.com.au](http://www.allegro.com.au).
- 3.3 The following conditions apply to Allegro Voice Over Broadband call rates:
  - (a) Allegro may change call rates at any time, without notice to you. Clause 4.2 of the terms and conditions does not apply to call rate changes.
  - (b) Calls will be charged at the rates which are displayed on the Allegro website ([www.allegro.com.au](http://www.allegro.com.au)) at the time a call is made.
  - (c) You are responsible for checking all applicable rates before making calls using your Allegro Voice Over Broadband Service.
- 3.4 Untimed calls are charged at a flat rate as set forth in the Voice Over Broadband Plan Table displayed online.
- 3.5 Timed calls are charged in one (1) second increments from the time of connection, at the rate set forth in the Voice Over Broadband Plan Table displayed online, except calls to international destinations. A minimum charge may apply as set out in the Plan Table.
- 3.6 Calls to international destinations are charged in one (1) minute increments at the beginning of each minute increment, regardless of completion of each one (1) minute increment. The international call rates associated with these increments can be viewed online, displayed by country in the Voice Over Broadband Plan Table displayed online. A minimum call charge may apply to an international destination as set out in the Plan Table. You understand that international call rates to mobile phones may be different from call rates to fixed line telephones.
- 3.7 In addition to call charges, Allegro charges:
  - (a) an establishment fee for each new account; and
  - (b) a line rental fee, where the number of "lines" is a measure of the number of concurrent calls capable of being made to or from the service; and
  - (c) an installation fee; and
  - (d) other charges as may be specified in the Plan Table from time to time.

### **Section 4. Liability**

- 4.1 Without derogating from clause 12 of the Terms and Conditions, Allegro will not be liable for any delays or failures in the Voice Over Broadband Service, including emergency 000 dialling, connectivity, or any interruption or degradation of voice quality that is caused by any:
  - (a) Act or omission of an underlying carrier or service provider.
  - (b) Equipment, network or facility shortage, upgrade or failure.
  - (c) Service, equipment, network or facility failure caused by power outage to you or Allegro.
  - (d) Outage of an Allegro broadband service.
- 4.2 Allegro is not responsible for reimbursements for calls made with another service while the Voice Over Broadband Service is temporarily unavailable.
- 4.3 You acknowledge that the Voice Over Broadband Service cannot be used for calls to any emergency service telephone number, including 000 and should not be used for emergency calls of any type. Allegro advises that you maintain a Standard Telephone Service for emergency use.

- 4.4 You acknowledge that the connection speed of your Allegro broadband service can affect the quality of the Voice Over Broadband Service or prevent connectivity with the service. We are not liable for loss of your Voice Over Broadband Service due to the throttling of your download speed.
- 4.5 Allegro shall not be liable for the consequences of an occurrence of any event beyond its reasonable control and such occurrences shall not amount to a breach of this Agreement.

**Section 5. General**

- 5.1 You agree to grant us the authority to act on your behalf to port any relevant numbers from your existing telecommunications service provider(s) to us for the purpose of us supplying any telecommunication service, including by signing any letter of authority or similar document which we reasonably require for this purpose.
- 5.2 Voice Over Broadband will consume broadband data. If you are on a usage based plan this may result in you incurring excess data charges. You accept responsibility for excess usage charges resulting from this use.

## Allegro Connect Services Schedule

Allegro Connect is a new range of products that were introduced in January, 2008.

All customers who are on existing Residential, Business and Premium service (be they Wireless, Smart Building or DSL) will be migrated to Allegro Connect products by the 30<sup>th</sup> of June 2008.

### Section 1. Allegro Connect General Terms

- 1.1 All Allegro Connect services present an Ethernet interface to the subscriber.
- 1.2 Unless stated for a specific bundle, all Allegro Connect services operate on the Gold Service Level Agreement.

### Section 2. Transitional Arrangements

- 2.1 During transition from the previous Allegro Networks plans to the Allegro Connect product all old plans will expire and new plans will take their place.
- 2.2 This transition will not affect you in any material manner (other than the name of the product that appears on your invoice)
- 2.3 The following product translation will take place:
  - (a) Residential Broadband (Smart Building, Wireless and DSL) will be migrated to Allegro Connect Residential Bundles and will be delivered in accordance with the Bronze Service Level Agreement.
  - (b) Business Broadband (Smart Building, Wireless and DSL) will be migrated to Allegro Connect Business Bundles and will be delivered in accordance with the Silver Service Level Agreement.
  - (c) Premium Broadband (Smart Building, Wireless and DSL) will be migrated to Allegro Connect Premium Bundles and will be delivered in accordance with the Gold Service Level Agreement.

### Section 3. Allegro Connect Components

- 3.1 Virtual Circuits
  - (a) Virtual Circuits provide a clear, point to point Ethernet encapsulated service between two discrete locations on Allegro's network.
  - (b) The contention ratio of these services is guaranteed to be 1:1
  - (c) Unless specified for a specific Service Delivery Technology the maximum Ethernet PDU that may be passed is 1518 bytes (including headers and CRC).
- 3.2 IPv4 Transit
  - (a) Allegro Networks supplies IPv4 Transit using two different techniques:
    - (i) Bridged IP
      - a. Services that attract a Gold SLA will be configured to use Bridged IP.
      - b. a static "/30" network (2 usable addresses) supplied with one address will be allocate to the customer edge device, the other will be allocated to the customer gateway within Allegro's network.
      - c. Bridged IP services have no authentication system.
      - d. Bridged IP services support a full 1500 byte Ethernet payload.
    - (ii) PPPoE.
      - a. Services that attract a Bronze or Silver SLA will be configured to use PPPoE authentication.

- b. A username and password will be supplied.
  - c. A single static IP address will be supplied.
- (b) Unless specified all IPv4 Transit services are configured to use Bridged IP.
- (c) Additional Address Space
  - (i) Additional address space can be routed to the customer device. The following options are available:
    - a. Customer supplied address space
    - b. Allegro supplied address space
  - (ii) Allegro supplied address space is “non portable” and must be returned to Allegro Networks when the service is cancelled.
- (d) BGP4 Peering
  - (i) BGP4 peering with Allegro is accepted for all IPv4 transit services.
  - (ii) Configuration of BGP compliant hardware is the responsibility of the customer.
  - (iii) An Autonomous System Number is required for the customers’ organisation. If the customer does not have one Allegro Networks will obtain one on behalf of the customer and at the customer’s expense.
  - (iv) Autonomous Systems Numbers are “non-portable” and must be returned to Allegro Networks when the service is cancelled.
  - (v) Allegro recommends that static routing policies remain in place until all BGP routing policies have been confirmed accurate.
- (e) Contention Ratios
  - (i) Allegro Networks actively manages contention ratio on the IPv4 services of its customers in order to provide the best possible experience for its customers at any given time.
  - (ii) If no contention ratio is specified for a selected service the maximum contention ratio will be 2:1.
- (f) Unlimited Usage Services
  - (i) Unlimited usage plans have no cap on the volume of data that can be transferred over the service during a billing period and have no excess usage charges.
  - (ii) Usage is intrinsically limited by the maximum bit rate of the Transit service.
  - (iii) The customer is billed a fixed amount each month on a “per Mbps” basis.
- (g) Services with Bundled Data and Metered Usage
  - (i) Bundled IPv4 Transit services have a limited volume of data included with the month subscription fee.
  - (ii) Data consumed in excess of the volume limit will be charged at the rate specified in the Plan Table.
  - (iii) The customer is responsible for all data delivered to the IP address(es) allocated to them.
  - (iv) Data can be metered in one of three ways:
    - a. Egress Only – Metering is based on the volume of data sent from Allegro to the Customer.
    - b. Egress + Ingress – Metering is based on the sum of volume of data sent from Allegro to the Customer and from the Customer to Allegro.
    - c. Egress or Ingress – Metering is based on the volume of data metered one direction only, however, the direction that is metered will be the greater of the volume of data from Allegro

to the Customer and the volume of data from the Customer to Allegro.

- (v) If not specified in the Plan Table then the metering mechanism will be Egress Only.
- (h) Services with 95<sup>th</sup> Percentile Metering
  - (i) 95<sup>th</sup> percentile billing provides the customer with the capacity to burst to a rate up to double their committed rate without renegotiating their contract.
  - (ii) The customer is charged a base amount for their committed rate and pays a surcharge for the amount they exceed their committed rate.
  - (iii) Excess bandwidth is charged in increments of 1Mbps or part thereof.
  - (iv) Consumption is averaged over 4 x 15 minute intervals per hour (96 intervals per day) and measured in Mbps.
  - (v) At the end of the billing period the top 5% of samples (by magnitude) are discarded and the customer is billed at the rate of the largest remaining sample.
  - (vi) Both traffic from the customer to Allegro, and from Allegro to the customer is metered using this method.
- (i) Services Capped Spend with Shaping (\*Unlimited)
  - (i) With a capped spend plan the customer is provided with a limited volume of data and when this limit is hit the service will have its data rate reduced to a nominal speed.
  - (ii) The reduced speed, unless otherwise specifies will be 64kbps
  - (iii) Metering is based on the volume of data metered one direction only; however, the direction that is metered will be the greater of the volume of data from Allegro to the customer and the volume of data from the customer to Allegro.

### 3.3 Premium Voice

- (a) Allegro Premium Voice services provide SIP based termination services on a prioritised private network.
- (b) Service are purchased on a "line by line" basis and include all data transmission costs.
- (c) IPv4 Transit services are not required to support the Premium Voice product.
- (d) A private IPv4 network will be provided to facilitate interconnection with our voice switching centre. Three of the available 6 addresses are used for our voice gateways, three are reserved for customer use.
- (e) The customer will be provided with access to at least 2 voice gateways for redundancy reasons.
- (f) Unless specified for a service delivery technology the only codec supported is G.729.
- (g) Premium Voice circuits are prioritised though Allegro's Distribution and Access networks.
- (h) Configuration and maintenance of customer equipment is the responsibility of the customer.

## Section 4. Service Delivery Technologies

Allegro Networks uses a number of technologies to deliver the "Connect" product range. Some of these technologies give rise to specific terms and conditions.

### 4.1 Point to Point Microwave

- (a) All orders for point to point microwave services are accepted by Allegro Networks only after a comprehensive site survey.

- (b) Selection of frequency, antenna size and antenna type will be based on good radio planning practice and is entirely at the discretion of Allegro Networks.
- (c) A 6sqmm unbroken earth must be available at the location the Equipment is to be installed this earth must be unbroken back to the nearest electrical distribution board. If this is not available our installation technicians will install it at your cost.
- (d) A dual 240v single phase electrical outlet must be provided at the location at which the Equipment and Accessories are to be installed. If this is not available, our installation technicians will install it at your cost.
- (e) 3RU of rack space is required at the location the equipment is to be installed to accommodate our termination and demarcation equipment.
- (f) Reliable operation of these systems requires that our technicians have physical access to the installation once every six months.
- (g) Microwave services are subject to service outages when the rainfall rate exceeds the design limitations.
- (h) Allegro Connect point to point microwave services are engineered to maintain no worse than 99.995% availability (approximately 26 minutes a year outage).
- (i) A standard point to point microwave service:
  - (i) includes a mount capable of elevating the antenna to a height 1000mm above your roof. Allegro reserves the right to charge extra for mounts and towers that are required to elevate the antenna more than 1000mm from the roof;
  - (ii) has a maximum cable distance between the Broadband Transmission Facilities and the Equipment, Accessories or demarcation point not exceeding 90m;
  - (iii) is on a building or structure that is elevated no more than 8m above an area that can be accessed without the need for ladders, cranes or other elevated work platforms. Allegro reserves the right to charge for the hire of cranes and elevated work platforms used to facilitate the installation and maintenance of the Broadband Transmission Facilities.
- (j) Mounts and towers exceeding the limitations specified in the Telecommunications (Low-Impact Facilities) Determination 1997 will require a development approval to be issued by your local or state government. Allegro is not responsible for obtaining this approval.
- (k) The customer is responsible for obtaining all approvals from building owners, body corporate and other interested parties before the installation.
- (l) All point to point services are symmetrical.
- (m) Aggregation Equipment will be installed at the customer's premises.
- (n) Selection of Aggregation Equipment is at the sole discretion of Allegro Networks.
- (o) Allegro Networks declared network boundary is the Ethernet Port on the Aggregation Equipment that is specified for interconnection with the customers equipment or Accessories.
- (p) Premium Voice services using this delivery technology may use either G.729, G.711u or G.711a.

#### 4.2 3.4GHz WiMAX

- (a) All orders for WiMAX services are only accepted after Allegro Networks has completed a line of site survey.
- (b) Selection of antenna size is based on the distance the subscriber is from the base station and in accordance with Allegro internal policy.
- (c) A 6sqmm unbroken earth must be available at the location the equipment is to be installed. This earth must run unbroken to the nearest electrical distribution board and cannot be tapped off the back of a power point. If this is not available our installation technicians will install it at your cost.

- (d) A dual 240v single phase electrical outlet must be provided at the location at which the Equipment and Accessories are to be installed. If this is not available, our installation technicians will install it at your cost.
- (e) A standard WiMAX service:
  - (i) includes a mount capable of elevating the antenna to a height 2000mm above your roof. Allegro reserves the right to charge extra for mounts and towers that are required to elevate the antenna more than 2000mm from the roof;
  - (ii) has a maximum cable distance between the Broadband Transmission Facilities and the Equipment, Accessories or demarcation point not exceeding 90m;
  - (iii) is on a building or structure that is elevated no more than 8m above an area that can be accessed without the need for ladders, cranes or other elevated work platforms. Allegro reserves the right to charge for the hire of cranes and elevated work platforms used to facilitate the installation and maintenance of the Broadband Transmission Facilities.
- (f) Mounts and towers exceeding the limitations specified in the Telecommunications (Low-Impact Facilities) Determination 1997 will require a development approval to be issued by your local or state government. Allegro is not responsible for obtaining this approval.
- (g) The customer is responsible for obtaining all approvals from building owners, body corporate and other interested parties before the installation.
- (h) All WiMAX services are symmetrical.
- (i) Aggregation Equipment may be supplied at the customer premises.
- (j) Selection of aggregation Equipment is at the sole discretion of Allegro Networks.
- (k) Allegro Networks declared network boundary is:
  - (i) The Ethernet port on the WiMAX Broadband Transmission Facilities; or
  - (ii) The Ethernet port on the aggregation Equipment specified for connection to the customer equipment or Accessories if aggregation Equipment is supplied.

#### 4.3 G.SHDSL

- (a) All orders for G.SHDSL services are only accepted after being qualified by our G.SHDSL provider.
- (b) As distance affects the speed that can be obtained using G.SHDSL it is possible that some speeds may not be available in some areas.
- (c) In consideration of subclause (ii) the option to upgrade a service to a higher bit rate may not exist in some areas.
- (d) Allegro will supply termination/aggregation Equipment to terminate the G.SHDSL service at your premises.
- (e) The selection of termination/aggregation Equipment is entirely at the discretion of Allegro Networks.
- (f) A single 240v single phase electrical outlet must be provided at the location at which the Equipment and Accessories are to be installed. If this is not available, our installation technicians will install it at your cost.
- (g) All G.SHDSL services are symmetrical.
- (h) Allegro Networks declared network boundary is the Ethernet port on the termination or aggregation Equipment that is specified for connection to the customer equipment or Accessories.

#### 4.4 Ethernet over Category 5/6 cable

- (a) Ethernet services are only available in selected Smart Buildings.
- (b) All orders for Ethernet services are only accepted after the completion of a desktop feasibility study.
- (c) Ethernet services are limited to a maximum speed of 100Mbps, full duplex.

- (d) The maximum distance between the Ethernet port provided to the customer and the Equipment must not exceed 8m
- (e) Not all bit rates are available in all buildings.
- (f) Allegro Networks declared network boundary is the Ethernet port on the wall into which the customer equipment or Accessories connect.

#### 4.5 VDSL

- (a) VDSL services are only available in selected Smart Buildings.
- (b) All orders for VDSL services are only accepted after the completion of a desktop feasibility study.
- (c) VDSL Services are limited to a maximum speed of 10Mbps full duplex.
- (d) VDSL Services are only available in some buildings.
- (e) Not all bitrates are available in all buildings
- (f) Equipment in the form of a VDSL modem will be provided to facilitate your connection.
- (g) Allegro Networks declared network boundary is the Ethernet port on the VDSL termination Equipment provided by Allegro.

#### 4.6 ADSL/ADSL2

- (a) ADSL services are available in selected Smart Buildings and through several of our telecommunications partners.
- (b) Orders for ADSL services in selected Smart Buildings are only accepted after the completion of a desktop feasibility study.
- (c) Orders for ADSL services that are provided through one of our telecommunications partners are only accepted after being qualified by our telecommunications partner.
- (d) If the ADSL service is in a selected Smart Building, Equipment in the form of an ADSL modem will provided to facilitate your connection.
- (e) Not all speeds are available in all areas.
- (f) Allegro Networks declared network boundary is:
  - (i) The telephone line to which the customer supplied modem is attached if the service is provided through one of our telecommunications partners; or
  - (ii) The Ethernet port on the ADSL termination Equipment that we supply if the service is in one of our Smart Buildings.

#### 4.7 Allegro owned/operated fibre optic cable

- (a) Fibre optic services are available in selected regions of the Sunshine Coast.
- (b) Orders for fibre services will only be accepted after the completion of a thorough site survey and design.
- (c) A dual 240v single phase electrical outlet must be provided at the location at which the Equipment and Accessories are to be installed. If this is not available, our installation technicians will install it at your cost.
- (d) 3RU of rack space is required at the location the equipment is to be installed to accommodate our termination and demarcation equipment.
- (e) Reliable operation of these systems requires that our technicians have physical access to the installation once every six months.
- (f) The customer is responsible for obtaining all approvals from building owners, body corporate and other interested parties before the installation.
- (g) All fibre optic services are symmetrical.
- (h) Aggregation Equipment will be installed at the customer's premises.
- (i) Selection of Aggregation Equipment is at the sole discretion of Allegro Networks.
- (j) Allegro Networks declared network boundary is the Ethernet Port on the Aggregation Equipment that is specified for interconnection with the customer's equipment or Accessories.
- (k) Premium Voice services using this delivery technology may use either G.729, G.711u or G.711a.

- (l) Allegro Networks declared network boundary is Ethernet port on the Aggregation equipment installed by Allegro Networks at the customer's site.

#### 4.8 3<sup>rd</sup> party services

- (a) From time to time Allegro Networks may offer you a service using a 3<sup>rd</sup> party provider.
- (b) Allegro makes no guarantee as to the quality or reliability of the third party provider and as such all 3<sup>rd</sup> party services are delivered on a Best Efforts basis.
- (c) All 3<sup>rd</sup> party services will be delivered in accordance with the 3<sup>rd</sup> parties terms and conditions.
- (d) Allegro Networks declared network boundary is Allegro's side of the point of interconnect between Allegro and the 3<sup>rd</sup> party.

#### 4.9 Legacy Technologies

- (a) Allegro Networks, through its acquisitions has a number of legacy delivery technologies. These include Wilan Ultima, Wilan Libra, Terabeam, Karlnet and YDI 802.11 technologies.
- (b) Whilst largely overlapping Allegro Networks' coverage, these legacy technologies may be available in locations that Allegro's premier network does not cover.
- (c) The decision to allow or disallow a customer connection to a legacy technology is entirely at the discretion of Allegro Networks.
- (d) Connection to legacy networks may incur additional installation charges.
- (e) Any connection to a legacy network will be done on either a Silver or Bronze Service Level Agreement. This means that services that would normally be of a Gold service level agreement will be reduced to a Silver SLA.
- (f) Allegro reserves the right to declare any legacy technology in any area End of Life as a result of being unserviceable or unmaintainable.
- (g) Allegro reserves the right to terminate any contract or service with 45 days notice should it decide to declare a legacy technology End of Life.
- (h) We may allow users to stay connected to an End of Life technology. If we do so the Service Level Agreement that will apply to these services is the Bronze SLA.

### **Section 5. Allegro Connect Bundles**

- 5.1 In order to offer connectivity solutions that are comparable with other solutions in the market place Allegro Networks offers Connectivity Bundles.
- 5.2 Allegro Connect Bundles offer a mechanism of purchasing a cluster of Allegro Connect services for a reduced price.
- 5.3 Allegro Connect Bundles cannot have additional services added to them. They must be "unbundled" in order to do this.
- 5.4 Premium Bundles
  - (a) Allegro Premium Bundles are supported by the Gold Service Level Agreement.
  - (b) If the service has metered data rate, excess data will be charged at a rate of \$90/GB (including GST)
  - (c) The service is not authenticate and instead uses a bridged IP network.
  - (d) Further address space can be routed to the user's IP address in accordance with the allocation guidelines published from time to time by the Asia Pacific Network Information Centre.
  - (e) Premium Bundles can support BGP4 if required by the customer.
- 5.5 Business Bundles

- (a) Allegro Business Bundles are supported by the Silver Service Level Agreement.
- (b) The contention ratio on Allegro Business Bundles is guaranteed to be 20:1 or less.
- (c) A single static IP address is supplied with each connection.
- (d) If the service has metered data rate excess data will be charged at a rate of \$90/GB (including GST)
- (e) Authentication is provided using PPPoE.
- (f) Further address space can be routed to the user's IP address in accordance with the allocation guidelines published from time to time by the Asia Pacific Network Information Centre.
- (g) Business Bundles can support BGP4 if required by the customer.

#### 5.6 SOHO Bundles

- (a) Allegro SOHO Bundles are supported by a Bronze Service Level Agreement.
- (b) The contention ratio on SOHO Bundles is guaranteed to be 20:1 or less
- (c) A single static IP address is supplied with each connection
- (d) If the service has metered data, excess data will be charged at a rate of \$90/GB (including GST).
- (e) Authentication is provided using PPPoE
- (f) No further address space may be routed to a user using a SOHO Bundle.
- (g) SOHO Bundles do not support BGP4
- (h) SOHO Bundles are only available to users who are directly connected to Allegro's network. For the avoidance of doubt, SOHO bundles can only be provisioned on the following technologies:
  - (i) Smart Buildings
    - a. Ethernet
    - b. VDSL
    - c. ADSL/ADSL2
  - (ii) 3.4 GHz WiMAX
  - (iii) Legacy Technologies
    - a. Wilan Ultima

#### 5.7 Residential Bundles

- (a) Allegro Residential Bundles are supported by a Bronze Service Level Agreement.
- (b) The contention ratio on Residential Bundles is guaranteed to be 50:1 or less.
- (c) A single static IP address is supplied with each connection.
- (d) If the service has metered data, excess data will be charged at a rate of \$90/GB (including GST)
- (e) Authentication is provided using PPPoE.
- (f) No further address space may be routed to a user using a SOHO Bundle.
- (g) SOHO Bundles do not support BGP4
- (h)

## Terms and Conditions Glossary

Words in this Agreement with initial capital letters (egg Acceptable Use Policy) have defined meanings, as follows:

*"Acceptable Use Policy"*

means our policy about the acceptable levels and methods of use of the Allegro Broadband Service. The current version of the Acceptable Use Policy is located on the Allegro website.

*"Accessory"*

Mean a device or devices that are used by you in conjunction with the Allegro Broadband Service in order to facilitate the provision of additional features and functionality beyond that described in the Service Schedule whether supplied by Allegro or not.

*"Additional User"*

means a person (other than you) whom you nominate and we authorise to access the Service through your modem.

*"Agreement"*

means these terms and conditions, the Schedules, the Acceptable Use Policy, the Plan Table, and the terms contained on your Application Form.

*"Allegro Performance Enhancing Broadband Service" and "Service"*

means the broadband service we provide from the Equipment to the internet, including:  
access to the world wide web, Allegro Broadband web hosting services, electronic mail service and global newsgroups;  
the ability to upload and download files to and from the global internet using the file transfer protocol,  
and other services we may provide to you from time to time, including voice or other services described in the schedules to these terms and conditions.

*"Application Cancellation Fee"*

means the fee charged when an application for a service is cancelled prior to commencement of the service. The amount of the fee is equal to the sum of:  
If published, the installation fee that would be charged on the service if it were for a 12 month contract term; and  
If not published, the installation fee derived by summing the installation list prices of the constituent Allegro Connect components that would apply if they were purchased on a 12 month contract term; and  
One month's subscription fee; and  
A service alteration fee of \$132 (including GST) and  
If applicable, for each third party tail, the contracted payout price plus 20%.

*"Application Form" means:*

if you apply online, the online application form for the Service you submitted at our website;  
if you apply by telephone, the application form you ask our front of house to complete;  
if you sign an application form, the application form you sign or if you apply through a Retailer, the application form you ask the Retailer to complete.

*"Broadband Transmission Facilities"*

means the equipment and facilities installed to the Premises on the network side of the wall plate through which the Service is supplied, excluding the Equipment and Software.

*"Business Customer"*

means a customer who is not a Residential Customer.

*"Cancellation Fee"*

means the aggregate of all payments due under this Agreement for the remainder of the Contract Term.

*"Contract Term"*

means the period you nominated on the Application Form and starting on the Service Commencement Date.

*"Cooling Off Period"*

means the period specified under the law where you live, during which time you are permitted to cancel a contract with a seller for the purchase of goods, services or property, without incurring a legal obligation to compensate the seller in any way.

*"Credit Information" means:*

identity particulars (name, address, date of birth, ABN, ACN or ARBN);  
your application for credit or commercial credit, including the amount applied for;  
the fact we are a current credit provider to you;  
payments which are overdue by more than 60 days and for which debt collection has commenced;  
advice that payments are no longer overdue in respect of a default which has been listed;  
information that you have committed a serious credit infringement; and  
cheques drawn by you for more than \$100 and which have been dishonoured more than once.

*"Equipment"*

means a modem (including a wireless modem), modem filters, cabling from your wall plate to the modem, router, power supply. Equipment does not include any wireless PC connection device such as a wireless USB adaptor device or PC card adaptor device. This includes modems supplied as part of a Smart Building solution.

*"Establishment Fee"*

Means a fee that we charge for installing your service and establishing your account.

*"Service Level Guarantee"*

means the customer service level guarantee set out in the Service Level Agreement Schedule.

*"Maintenance Period"*

means 12 months from the date we deliver the Equipment to you

*"Material Terms"*

means those terms and conditions we read out to you over the telephone.

*"PC"*

means the personal computer through which you access the Service.

*"Plan Table"*

means the fees, charges and features that apply to your Service (as amended from time to time). The current Plan Table is located on our website.

*"Premises"*

means the location or building to which the Service will be provided and the Broadband Transmission Facilities installed, and the land at that location or on which the building stands.

*"Regulatory Event" means:*

a determination or notice issued by the Australian Competition and Consumer Commission; or  
a determination by any court; or  
a determination by us that, in our opinion, on reasonable grounds and acting in good faith, the supply of the Service, the terms of this Agreement or any action

taken or required to be taken in accordance with this Agreement contravenes or may contravene any applicable law including, without limitation, the Telecommunications Act 1997 (Cth) or the Trade Practices Act 1974 (Cth).

*"Residential Customer"*

means a customer who takes up the Service predominantly to use for personal, household or domestic use or consumption.

*"Retailer"*

means a third party that has entered into a dealership agreement with Allegro, in order to promote Allegro services.

*"Security Deposit"*

Means the deposit taken from you and held as a guarantee against future delinquency on your account.

*"Service"*

see "Allegro Performance Enhancing Service".

*"Service Alteration Fee"*

Means a \$132.00 (including GST) fee for altering your service subject to the provisions of Section 6.

*"Service Commencement Date"*

means the date defined in clause 4.1.

*"Software"*

means any software we supply to you for use in conjunction with the Service, including any upgrades and manuals.

*"Third Party Tail"*

A third party service, forming part of Allegro Networks service offering to a customer, subscribed to by Allegro Networks on behalf of that customer:

- \* that links an end point designated by the customer and an Allegro Networks point of presence and
- \* which does not form part of an Allegro Networks standard product offering.

*"You" and "Your"*

(with or without initial capital letters) means the person named as the customer on the Application Form.

*"We", "Our", and "Us"*

(with or without initial capital letters) means Allegro Networks Pty Ltd (ABN 93 101 425 094) and its employees; as well as its agents, sub-agents and their respective employees.

*"Website"*

means the Allegro Networks website.

*"Wholesale Customer"*

a licensed telecommunications carrier who, after signing non disclosure and wholesale agreements with us, is permitted to resell our products or services