

## **MY BIZ PHONE General Terms and Conditions**

*For Meanings of Terms, see the Glossary at the end of the document*

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### **1. Service**

1.1 Formation of Agreement: Customer may order a Service from MY BIZ PHONE by completing a MY BIZ PHONE Order Form. The Agreement will be formed when MY BIZ PHONE accepts the Order Form. The Agreement will comprise, in order of precedence from highest to lowest: (a) The Order Form;

- (b) The Service Schedule for the Service ordered;
- (c) The Service Level Schedule;
- (d) These General Terms and Conditions.

1.2 Provisioning of Service: Upon acceptance by MY BIZ PHONE of the Order Form, MY BIZ PHONE agrees to provide and the Customer agrees to acquire the Service as is set out in the Order Form. The Service will be activated on the later of the date on which MY BIZ PHONE is able to provide the Service and the requested activation date nominated in the Order Form. MY BIZ PHONE will use commercially best endeavours to activate the Service in accordance with the timeframes requested by the Customer.

1.3 Order Withdrawal: The Customer acknowledges and agrees that if it withdraws or cancels:

- (a) one or more Service(s) from an Order; or
- (b) an Order in its entirety

before MY BIZ PHONE has completed provisioning the relevant Service(s) or Order (as applicable), the Customer will be liable for and must pay MY BIZ PHONE an Order Withdrawal Charge.

1.4 Service Levels: MY BIZ PHONE does not warrant that the Service will be uninterrupted or fault free. MY BIZ PHONE will use its best endeavours to meet the Service Levels and, if it fails to meet those Service Levels, will provide a Service Credit in accordance with the terms set out in the Service Level Schedule.

### **2. Period of Agreement**

2.1 The Agreement commences on the acceptance by MY BIZ PHONE of the Order Form.

2.2 The Agreement will continue until the end of the Minimum Service Period and thereafter on a month to month basis unless it is earlier terminated in accordance with the Agreement.

2.3 After the expiry of the Minimum Service Period, either party may terminate the Agreement by providing to the other not less than 30 days' written notice of Termination.

### **3. Customer Obligations**

3.1 Ensure Proper use of the Service: Customer agrees that it will not knowingly, or by any negligent act or omission: (a) use or permit the use of the Service in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort, or otherwise to any third person;

(b) use or permit the use of the Service in connection with the commission of an offence against the laws of the Commonwealth or the States or Territories;

(c) use or permit the use of the Service for the transmission of any defamatory, offensive, abusive, indecent, spam or menacing material or the making of any hoax call or in any other manner in contravention of the Acceptable Use Policy;

(d) use or permit the use of the Service in connection with the transmission of any computer virus that may adversely affect the MY BIZ PHONE Equipment, the MY BIZ PHONE Network, the equipment or network of any third party provider to MY BIZ PHONE or any network users;

(e) use or permit the use of the Service to engage in any activities in a manner that may expose MY BIZ PHONE or any third party provider to the risk of any legal or administrative action including prosecution under any law; or

(f) interfere or attempt to interfere with the operation of: The Service, Service Number or an IP address; any MY BIZ PHONE Equipment; the MY BIZ PHONE Network or the equipment, network or IP Addresses of any other person.

3.2 Assistance: Customer will do everything reasonable to help, and co-operate with, MY BIZ PHONE and any person engaged by MY BIZ PHONE to provide to the Customer the Service at the Site. The kinds of assistance MY BIZ PHONE may require from the Customer include: (a) ensuring that it is

possible and safe for MY BIZ PHONE and persons engaged by MY BIZ PHONE to obtain necessary access to a Site (including for any emergency);

(b) ensuring that relevant people are available and give to MY BIZ PHONE timely instructions;

(c) ensuring that Customer Equipment is ready at the appropriate times;

(d) at Customer's own expense and following MY BIZ PHONE's reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable MY BIZ PHONE to provide the Service;

(e) obtaining and maintaining any authorisation, permission, licence, waiver, registration or consent from any person necessary for the Customer to secure to enable MY BIZ PHONE to provide the Service;

(f) informing MY BIZ PHONE of the location of MY BIZ PHONE Equipment (if any); and

(g) working together with MY BIZ PHONE to establish procedures to reduce fraud or the opportunity for fraud in relation to the Service.

3.3 Reporting and Inspections: Customer agrees to supply to MY BIZ PHONE or MY BIZ PHONE's nominated agent any information reasonably requested by MY BIZ PHONE relating to Customer: (a) for credit management purposes (see also clause 9);

(b) to enable MY BIZ PHONE to monitor and help reduce the incidence of fraud;

(c) to assist MY BIZ PHONE in complying with its regulatory obligations and its obligations to report on compliance with those obligations;

(d) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all obligations imposed on the Customer under the Agreement; and

(e) for other purposes reasonably required by MY BIZ PHONE from time to time and agreed by the Customer.

#### **4. Equipment**

4.1 MY BIZ PHONE Equipment: If required for the provision of the Service, MY BIZ PHONE will supply to the Customer the MY BIZ PHONE Equipment. Customer is responsible for the MY BIZ PHONE Equipment and must compensate MY BIZ PHONE for any loss or damage to it, (fair wear and tear excepted), unless MY BIZ PHONE or MY BIZ PHONE's agent causes such loss or damage. If the Customer becomes aware of any loss of, damage to, claim over, or malfunction of the MY BIZ PHONE Equipment, the Customer must promptly notify MY BIZ PHONE. MY BIZ PHONE may, at any time and at MY BIZ PHONE's cost, modify or replace MY BIZ PHONE Equipment provided there is no material adverse impact on the provision of the Service. In respect of MY BIZ PHONE Equipment, the Customer must: (a) provide an adequate power supply and a suitable physical environment in accordance with MY BIZ PHONE's reasonable directions;

(b) only permit MY BIZ PHONE Equipment to be repaired, serviced, moved or disconnected by MY BIZ PHONE unless otherwise permitted by MY BIZ PHONE in writing;

(c) not remove or obscure any identification marks on MY BIZ PHONE Equipment;

(d) make title to MY BIZ PHONE Equipment clear to all persons;

(e) comply with all reasonable instructions given by MY BIZ PHONE to protect MY BIZ PHONE's ownership of the MY BIZ PHONE Equipment; and

(f) not do anything or allow anything to be done which might affect MY BIZ PHONE's ownership of the MY BIZ PHONE Equipment.

4.2 Customer Equipment: Customer is responsible for the installation of any Customer Equipment and connections to the MY BIZ PHONE Network necessary for MY BIZ PHONE to provide the Service.

Customer must ensure that Customer Equipment does not have a detrimental effect, as determined by MY BIZ PHONE, on the MY BIZ PHONE Network and accords with all relevant laws.

4.3 MY BIZ PHONE may, without liability, immediately disconnect all or any of the Customer Equipment if MY BIZ PHONE reasonably considers that Customer Equipment may: (a) cause death or personal injury;

(b) cause damage to the property of MY BIZ PHONE or another person; or

(c) materially impair the operation of the MY BIZ PHONE Network,

provided that, where and to the extent that it is reasonable for MY BIZ PHONE to do so, MY BIZ PHONE will notify the Customer before disconnection. Where the Customer Equipment is located at a

place under the control of the Customer, the Customer shall promptly comply with a written request from MY BIZ PHONE to disconnect Customer Equipment in accordance with this clause 4.3.

#### **5. Not for Resale**

5.1 Unless otherwise agreed by MY BIZ PHONE, the Customer may not resell or re-supply the Service.

#### **6. Charges and Payment**

6.1 The installation and recurring Charges for the Service are set out in the Order Form. Other ad-hoc and ancillary Charges may be incurred by the Customer. Such ad-hoc charges include remote hands fees, out of hours or incorrect call out fees, administration charges for moves, adds or changes or other charges notified by MY BIZ PHONE from time to time. Such ad-hoc fees will only be charged when the Customer has been advised of the fees in advance of ordering the service that leads to the fee. The Customer's obligation to pay for the Service will accrue on and from the Service Commencement Date.

6.2 MY BIZ PHONE will periodically issue to the Customer an invoice for the Service and the Customer must pay each Invoice in Australian dollars within 14 days of the Invoice Date (**Due Date**). The Customer agrees that MY BIZ PHONE may use a Related Body Corporate of MY BIZ PHONE to perform billing and collection services for MY BIZ PHONE in relation to Invoices and that amounts invoiced by and paid to that Related Body Corporate shall be treated as payments under the Agreement.

6.3 To the extent that it is not precluded by regulation from doing so, if MY BIZ PHONE has omitted Charges from an Invoice for any reason, MY BIZ PHONE may include such Charges in a later Invoice.

6.4 There is a presumption that records held and logging procedures adopted by MY BIZ PHONE or any other third party provider with which the MY BIZ PHONE Network is interconnected are correct and that the Charges have been incurred and are payable by the Customer in the absence of manifest error.

6.5 If the Customer disputes the validity of any Charges in an Invoice: (a) The Customer must notify MY BIZ PHONE in writing of the reasons for the dispute within 18 days of the date of that Invoice; (b) The Customer must pay the full amount of the Charges in the disputed Invoice unless the Customer has notified MY BIZ PHONE in writing of the reasons for the dispute by the Due Date of that Invoice and will pay the undisputed portion of the Charges in the Invoice by the Due Date of that Invoice;

(c) MY BIZ PHONE will endeavour to give the Customer a determination on the dispute within a reasonable time of receiving the Customer's notice of dispute and MY BIZ PHONE shall keep the Customer informed as to the expected timeframe for finalisation;

(d) where the determination is that a disputed amount is payable to MY BIZ PHONE, the Customer shall pay such amounts within 5 Business Days of receiving notice of the determination; and

(e) if the Customer disagrees with the determination, the Customer will be entitled to engage the dispute resolution mechanisms set out in clause 16 below.

6.6 If the Customer fails to pay when due any amount, MY BIZ PHONE will be entitled to: (a) charge interest on the overdue amount (both before and after judgment), at the rate of 6% above the cash rate set by the Reserve Bank of Australia. This interest will be calculated daily and compounded every 30 days;

(b) impose a charge to cover its reasonable expenses and costs incurred in enforcing any failure or delay in the payment (including the cost of engaging a debt recovery agent); and

(c) suspend provision of the Service in accordance with clause 10 below.

#### **7. GST and Other Taxes**

7.1 Unless otherwise stipulated in the Order Form, the Charges do not include any GST. MY BIZ PHONE will include on each invoice a separate amount for the GST payable in respect of the Charges in the invoice and the Customer must pay the GST to MY BIZ PHONE.

7.2 The Customer must pay all taxes (including any goods or services tax or any equivalent thereof), duties, stamp duties, impost, levies or government charges relating to the Agreement, the supplied Services, provision of the MY BIZ PHONE Equipment and, where relevant, the sale of the Purchased Equipment. Should there be an introduction of any new tax, duty, levy or government charge relating to any charges (including Charges) under the Agreement, the Customer must pay MY BIZ PHONE for such taxes, duty, levy or government charges imposed under such relevant legislation.

## **8. Variation of Agreement**

8.1 Except as set out in this clause, the Agreement may not be varied except in writing signed by the parties.

8.2 MY BIZ PHONE may at any time vary the Agreement by giving to the Customer written notice of the variation (a **Variation Notice**). If MY BIZ PHONE gives a Variation Notice and the Customer does not accept the variation, the Customer must notify us in writing within 20 Business Days from the date of the Variation Notice. If the Customer fails to do so, the Customer will be deemed to have accepted the variation and the new terms and conditions will take effect from the next billing period after the Variation Notice was given or at the time specified in the Variation Notice.

8.3 If the Customer notifies MY BIZ PHONE that it does not agree to the variation, the Customer and MY BIZ PHONE must discuss the proposed variation in good faith. If no agreement on a variation arises within a further 10 Business Days, either party may terminate the Service upon the giving of a further 20 Business Days' notice. For the duration of the further notice period, the terms and conditions applicable immediately preceding the delivery of a Variation Notice will continue to apply.

## **9. Creditworthiness**

9.1 MY BIZ PHONE's obligations to supply a Service, and to continue supplying a Service, are subject to MY BIZ PHONE being satisfied as to the creditworthiness of the Customer.

9.2 MY BIZ PHONE may, from time to time, review the Customer's creditworthiness. In doing so, MY BIZ PHONE may seek from the Customer or an independent person such as a credit reporting agency or credit provider information or advice to assist in the creditworthiness review.

9.3 Customer agrees promptly to cooperate with a review by: (a) providing to MY BIZ PHONE any information (including a completed MY BIZ PHONE credit application form) MY BIZ PHONE reasonably requires to conduct any such review; and (b) giving to MY BIZ PHONE permission (which permission is by the signing of the Order Form granted) to communicate with credit reference associations about the Customer's creditworthiness.

The information sought in this clause can include any information reasonably required by MY BIZ PHONE about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under law.

9.4 The Customer warrants that all material information that it provides to MY BIZ PHONE in any creditworthiness review will provide a true and fair view of the Customer's financial position at the time it is provided, and that all other information is accurate and complete.

9.5 The Customer is entitled to see and to correct any credit information that MY BIZ PHONE holds about the Customer.

9.6 Following a creditworthiness review of the Customer which may occur at any time before or during the supply of the Service, MY BIZ PHONE may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to MY BIZ PHONE, which shall be in a form and amount that is no more than reasonably required.

9.7 If the Customer fails to provide the security required by MY BIZ PHONE within a reasonable time or exceeds the nominated Credit Limit, MY BIZ PHONE may suspend the supply of the Service.

## **10. Service Suspension**

10.1 In addition to any other rights of suspension contained in the Agreement, MY BIZ PHONE may suspend the provision of the Service to the Customer: (a) immediately and, because of the urgency of the need, without prior notice, where: (i) MY BIZ PHONE is required to undertake the repair, maintenance or service of any part of the MY BIZ PHONE Network (or an interconnected third party provider is required to undertake such work on its network) to attend to any emergency; (ii) it is reasonably required to reduce or prevent fraud or interference within the MY BIZ PHONE Network; (iii) MY BIZ PHONE believes it is necessary to do so to comply with any law or an order, instruction or request of government, the ACMA, emergency services or other competent authority; (iv) a Force Majeure Event occurs which materially affects MY BIZ PHONE's ability to provide the Service; or

(b) upon giving 3 Business Days' notice where the Customer is in breach of the Agreement, such suspension to continue for so long as the breach subsists or until termination of the Agreement.

## **11. Termination**

11.1 A party may, at its election, terminate the Agreement: (a) immediately by written notice to the other party if a receiver, liquidator, provisional liquidator or administrator is appointed over any of that other party's undertakings or assets and that appointment continues for a period of 5 Business Days, or if that other party enters into any arrangement with any of its creditors or any class of such creditors or if that other party ceases to carry on business;

(b) immediately by written notice to the other party if that other party breaches any other provision of the Agreement which is capable of remedy and does not rectify that breach within 30 days of receiving written notice from the other party requesting it to do so.

11.2 MY BIZ PHONE may immediately, by giving notice to the Customer, terminate the Agreement if:

(a) following a suspension of the Service under clause 10.1(b) or 9.7 the Customer fails within 14 days of the commencement of the suspension to rectify the breach giving rise to the suspension; or  
(b) the Customer commits persistent breaches of the Agreement, or in particular, the Acceptable Use Policy;

(c) the Customer is in breach of a licence, permit or authorisation relating to the use of or connection of equipment to the relevant access line, or the use of Services;

(d) MY BIZ PHONE reasonably suspects that the Customer has suspended payment of its debts generally;

(e) MY BIZ PHONE reasonably suspects fraud in respect of, or misuse of, the Service by the Customer;

(f) a Force Majeure Event continues for more than 20 Business Days.

11.3 Each party must notify the other party immediately if any event referred to in clause 11.1(a) occurs or any step towards the occurrence of such event occurs.

## **12. Effects of Termination**

12.1 On termination of the Agreement: (a) The Customer's right to use the Service ceases;

(b) if MY BIZ PHONE requests, the Customer must immediately inform MY BIZ PHONE of the specific location of any MY BIZ PHONE Equipment;

(c) the Customer must immediately cease using and return to MY BIZ PHONE the MY BIZ PHONE Equipment used in relation to the Service and, if the Customer does not comply, it must, subject to any usual security arrangements, permit, or procure permission for, MY BIZ PHONE to access the location at which that MY BIZ PHONE Equipment is situated at any time or times for the purpose of removing that MY BIZ PHONE Equipment;

(d) the Customer must immediately pay to MY BIZ PHONE, without deduction or set off, all outstanding Charges and any other amounts payable to MY BIZ PHONE under the Agreement at the date of termination; and

(e) MY BIZ PHONE will refund to the Customer the balance (if any) of any Charges or other money paid in advance to MY BIZ PHONE under the Agreement after deducting all amounts payable to MY BIZ PHONE under sub-clauses 12.1(d) above.

12.2 If a Service is terminated by the Customer before the expiry of the Minimum Service Period or is terminated by MY BIZ PHONE for breach of the Agreement by the Customer then, subject to clause 12.3, the Customer shall pay the Early Termination Charge in addition to any accrued charges. If an Order Form identifies any free service period, discount or other price break, the Early Termination Charge will include that amount the Customer saved from the usual Charges by reason of the free service period, discount, or other price break.

12.3 MY BIZ PHONE advises that the Customer will be not liable to make payment of an amount in whole or part satisfaction of the Early Termination Charge if the Customer was entitled to terminate the Agreement under clause 11.1.

12.4 Termination of the Agreement does not affect the accrued rights or liabilities of either party nor does it affect the provisions which expressly or by implication are intended to operate after termination, including, without limitation clause 4.1 (MY BIZ PHONE Equipment); clause 14 (Liability and Insurance); and clause 15 (Confidentiality).

## **13. Force Majeure**

13.1 Neither party will be liable to the other party for any failure to perform or delay in performance of any obligation under the Agreement caused by a Force Majeure Event (other than an obligation to pay money). Each party will provide notice of the date of commencement of a Force Majeure Event and the date of cessation of a Force Majeure Event.

#### **14. Liability & Indemnity**

14.1 The Customer must take out, and maintain during the term of the Agreement a valid and enforceable public liability insurance policy that provides coverage of at least \$20 million per occurrence and on request by MY BIZ PHONE from time to time, immediately provide MY BIZ PHONE with a certificate of currency in respect of that policy.

14.2 The Customer acknowledges and agrees that: (a) MY BIZ PHONE does not warrant that MY BIZ PHONE will be able to supply the Service uninterrupted or fault free; (b) except for any rebate that must be paid as a result of a failure by MY BIZ PHONE to achieve a Service Level, MY BIZ PHONE is not liable to the Customer or any other person for any failure for any reason to supply the Service in accordance with the Service Levels.

14.3 To the maximum extent permitted by law, MY BIZ PHONE: (a) excludes all conditions and warranties implied into the Agreement; (b) excludes any liability to the Customer for any indirect, special or consequential loss, costs, or damage (including, but not limited to, loss of profits, loss of revenue, loss of data, loss of bargain, damage to reputation and expectation loss) arising out of the Agreement, whether arising as a result of any act, omission or negligence of MY BIZ PHONE or otherwise.

14.4 Subject to clauses 14.2 and 14.3, MY BIZ PHONE limits its liability to the Customer as follows: (a) if the loss or damage arises out of or is related to a failure by MY BIZ PHONE to meet Service Levels set out in the Service Level Schedule, the compensation or other remedy specified in the Service Level Schedule; and (b) in respect of any liability which is not otherwise limited and which may arise out of or in connection with the Agreement, (whether based in contract, tort (including negligence) statutory duty or otherwise) an amount which is: (i) 10% of the Charges received by MY BIZ PHONE for the Service for the 12 months preceding the event giving rise to the liability for each event or series of connected events; and (ii) in the aggregate, the amount of Charges received by MY BIZ PHONE under the Agreement.

14.5 Each party's liability under the Agreement is diminished to the extent that the other party's acts or omissions contribute to or cause the loss or liability.

14.6 Nothing in this clause 14 is intended to limit MY BIZ PHONE's liability for claims relating to personal injury (including

sickness, death or disability) of the Customer or the Customer's employees directly resulting from MY BIZ PHONE's negligent acts or omissions arising under the Agreement.

14.7 The Customer indemnifies MY BIZ PHONE on demand against any claim or liability arising from the Customer's acts or omissions, or the acts or omissions of a third party acting on the Customer's behalf or engaged by the Customer in any capacity, relating to the use of the Service.

#### **15. Confidentiality**

15.1 Each party acknowledges that the Confidential Information of the other party is confidential and secret and each party must preserve the confidential and secret nature of the other party's Confidential Information.

15.2 A party must not: (a) disclose or copy the other party's Confidential Information (including the terms and conditions of the Agreement) for any purpose other than as contemplated by the Agreement; (b) make the other party's Confidential Information available to any third party, other than to its employees with a need to know the information to enable the Service to be used in the manner contemplated by the Agreement (but only to the extent that the employee needs to know), or (c) use the other party's Confidential Information for any purpose other than as contemplated by the Agreement.

15.3 Neither party may use in any way any the name, logo, trade mark, registered design, or copyright material of the other party without having first obtained the written consent of the owner of the property to such use. Neither party will issue a press release, or make any public announcement, concerning the existence of, or any fact arising out of, or connected to, the Agreement or the other party without first having obtained the prior written consent of the other party to the terms of such press release or announcement.

## **16. Disputes**

16.1 Before resorting to external dispute resolution mechanisms, the parties must seek to resolve any dispute in relation to the Agreement by referring the matter to the respective chief executive officers of the parties or their nominees.

16.2 If the parties cannot resolve the dispute in accordance with clause 16.1 within 60 days, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (ACDC) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC.

16.3 Nothing in this clause prevents a party from seeking interlocutory relief.

## **17. Notices**

17.1 For a notice under the Agreement to be effective, it must be (a) in writing;

(b) addressed to the contact person of the other party; and

(c) personally delivered, or sent by prepaid post, to the address or by email

to the address, fax number or email address stipulated for each party in the Order Form or last notified by each party to the other in writing.

17.2 A notice given in accordance with clause 17.1 is received: (a) if left at the recipient's address, on the date of delivery;

(b) if sent by prepaid post, five days after the date of posting; and

(c) if sent by fax, when the sender's fax system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice; and

(d) if sent by email, when the sender's email system generates an electronic delivery receipt confirming the successful transmission from the sender's mail server unless the sender receives an electronic notification that the transmission was unsuccessful.

## **18. General**

18.1 Headings are for ease of reference only and not as an aid to interpretation.

18.2 The Customer may not assign or attempt to assign or otherwise transfer any right or obligation arising out of the Agreement without the written consent of MY BIZ PHONE.

18.3 Nothing in the Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, employer and employee or principal and agent between MY BIZ PHONE and the Customer.

18.4 MY BIZ PHONE may set off or apply any credit balance in any of the Customer's accounts with MY BIZ PHONE or any amounts owed by MY BIZ PHONE to the Customer against any amount due and payable by the Customer to MY BIZ PHONE.

18.5 Failure by either party to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of the right or of any other right on any later occasion.

18.6 If part or all of any clause of the Agreement is illegal, invalid or unenforceable it will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable or if this is not possible, the affected clause or part will be severed from the Agreement, the remaining provisions of the Agreement will continue

to have full force and effect and the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter severed.

18.7 The Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by MY BIZ PHONE.

18.8 The Agreement is governed by the laws applicable in the State of Queensland in the Commonwealth of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

## GLOSSARY

**ACMA** means the Australian Communications & Media Authority.

**Acceptable Use Policy** means the acceptable use policy published on MY BIZ PHONE's website which may be modified by MY BIZ PHONE from time to time provided that such modifications are reasonable.

**Agreement** means this agreement for the provision of the Services between MY BIZ PHONE and the Customer formed as described in clause 1.1.

**Business Day** means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in the location in which the Services are being provided, excluding Saturdays and Sundays.

**Business Hours** means the hours between 9.00am and 5.00pm in QLD on any Business Day.

**Charges** means the charges for the Service which are payable by the Customer in accordance with clause 6.

**Confidential Information** of a party means information (including the Agreement), know-how, ideas, concepts, and industrial knowledge, in whatever format, of that party, other than information which:

(a) is generally available in the public domain without a breach of confidence or unauthorised disclosure by either party.

(b) is lawfully disclosed by a third party without restriction on disclosure; or

(c) is required by law or the Australian Stock Exchange to be disclosed.

**Customer** means the customer identified in the Order Form.

**Customer Equipment** means all equipment and facilities located on the Customer side of the Network Boundary Point other than MY BIZ PHONE Equipment used in connection with the Service.

**Early Termination Charge** is an amount calculated as 100% of all recurring Charges that, but for the early termination, would have been paid by the Customer between the date of the termination and the date of the expiry of the Minimum Service Period.

**Force Majeure Event** means:

(a) fire, flood, earthquake, elements of nature or act of God;

(b) riot, civil disorder, rebellion or revolution; or

(c) other matter outside of the reasonable control of the non-performing party,

but in each case only if, and to the extent that, the non-performing party is without fault in respect of the default or delay and the default or delay could not have been prevented by taking steps specifically required under the Agreement.

**GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Invoice** means an invoice rendered by MY BIZ PHONE to the Customer which records the Charges payable for the relevant Services.

**Invoice Date** means the date that an Invoice for the Charges is:

(a) in the case of paper Invoices, printed by MY BIZ PHONE;

(b) in the case of electronic Invoices, sent or made available by MY BIZ PHONE to the customer by electronic means including by email or through an online portal.

**IP Address** means an internet protocol address.

**Minimum Service Period** of the Service means the minimum supply period or contract term (if any) specified in the Order Form from the Service Commencement Date.

**Network Boundary Point** means the point at which the MY BIZ PHONE Network connects to:

(a) equipment or cabling of the Customer; or

(b) cabling of a third party where it is being used to convey the Service to Customer Equipment,

or, if MY BIZ PHONE fails to designate that point, the Network Boundary Point ascertained in accordance with as defined in the Telecommunications Act.

**Order Form** or **Order** means a physical or online application for Services submitted by the Customer to MY BIZ PHONE whether described as an Order or an Order Form.

**Order Withdrawal Charge** means a charge that is the sum of:

(a) all costs incurred by MY BIZ PHONE in respect of the Service(s) being withdrawn by the Customer; and

(b) all costs committed to by MY BIZ PHONE in respect of the Service(s) being withdrawn by the Customer, up to and including the date on which the Customer:  
(c) provides MY BIZ PHONE written notice (in the manner and form required by MY BIZ PHONE) that it is cancelling its order for the relevant Service(s) or the Order in its entirety (as applicable); or  
(d) withdraws or cancels the order for the relevant Service(s) or the Order in its entirety (as applicable) via the customer portal.

**Planned Outage** means a period of time that MY BIZ PHONE may interrupt the supply of Services to the Customer other than an interruption which is less than 100 milliseconds in duration (a **Nominal Outage**) for routine maintenance or up-grading or other similar processes, after giving the Customer 5 Business Days prior notice, which outage does not exceed the period of time specified in that notice.  
**Related Body Corporate** has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001*.

**Service** means a service identified in, and to be delivered pursuant to, an Order Form and described in a Service Schedule.

**Service Commencement Date** of the Service means the date on which the Service is available for use by the Customer.

**Service Schedule** is a Schedule which describes the Service that is supplied to the Customer pursuant to an Order Form and may be either a separate document signed by the parties or be set out in an Order Form.

**Service Level** means, where applicable, the reliability and performance standard that applies to the delivery of the Service by MY BIZ PHONE to the Customer, as set out in, or agreed in accordance with, a Service Level Schedule.

**Service Level Schedule** means the service level schedule in respect of the Service setting out the Service Levels and the remedies available to the Customer for a breach of the Service Levels.

**Site** means the location at which the Service is to be supplied by MY BIZ PHONE.

**MY BIZ PHONE** means MY BIZ PHONE (ABN 11 683 151 105) of 1/21 Hilldon Court, Nerang or, where an Order Form nominates a Related Body Corporate of MY BIZ PHONE (QLD) Pty Ltd, that entity.

**MY BIZ PHONE Equipment** means equipment (if any) of MY BIZ PHONE or a supplier to MY BIZ PHONE located on the Site or other Customer premises (including premises leased by the Customer or co-location spaces licensed by the Customer) for the provision of the Service.

**MY BIZ PHONE Network** means a telecommunications network of MY BIZ PHONE.

**Telecommunications Act** means the Telecommunications Act 1997 (Cth).

**Term** means the period between the Service Commencement Date and the termination of the Service pursuant to clause 11 above.

#### **SIGNATURES**

For and on behalf of the Customer

Customer Name

Customer ABN: \_\_\_\_\_

Name & Position (Printed)

Signature

Date