

BROADVOIP STANDARD SERVICES AGREEMENT

This document sets out the general terms and conditions that will apply to the relationship between you and us.

This document, the Service Schedule(s) and the Service Order Form(s) will together form the Standard Service Agreement between us and you.

By signing the Service Order Form you agree to be bound by our Standard Service Agreement.

If there are any inconsistencies between the documents that form the Agreement between us, the order of precedence is these Terms and Conditions, the Service Schedule and then the Service Order Form.

UNDERSTANDING THESE TERMS

“we” or “us” or “Our Group” means Broadvoip Pty Ltd ABN 86 120 922 152 and/or its Related Bodies Corporate, as the case may be.

“Customer” or “You” means your business, as identified on the Service Order Form.

“Agreement” means these Terms and Conditions, the Service Schedule and the Service Order Form.

“Business Day” means any day excluding Saturday or Sunday or a bank or public holiday in Australia.

“Charge” or “Charges” means the charge or charges (exclusive of any taxes or duties) in respect of a Service as set out in the relevant Service Order Form.

“Confidential Information” means information, whether oral, written or in electronic form, including but not limited to your or our intellectual property, operational information, know-how and trade secrets, financial and commercial affairs, contracts, client information and pricing details.

“Equipment” means either Our Equipment or the Purchased Equipment or both, as the context requires.

“GST” means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 as amended.

“Individual Service(s)” means a particular service(s) as described in the relevant Service Order Form and/or Service Schedule.

“Minimum Period” in respect of an Individual Service, the minimum period for provision of an Individual Service as set out in the Service Order Form.

“Our Equipment” means any equipment that we or our suppliers provide to you as part of a Service under this Agreement but excluding the Purchased Equipment.

“Our Network” means the telecommunications network operated or used by us.

“Purchased Equipment” means any equipment which you purchase from us under this Agreement.

“Related Body Corporate” has the meaning given in the Corporations Act (Cth) 2001.

“Service” and “Services” means the services and products set out in the relevant Service Order Form and/or Service Schedule.

“Service Levels” means the levels of service (if any) in respect of a Service.

“Service Schedule” means a schedule to these Terms and Conditions which sets out, amongst other things, a description of the Service(s), any Services Levels and any other relevant information.

“Service Order Form” means our standard order for service or application form, completed by us and you.

“Terms and Conditions” means the general terms and conditions set out in this document.

“Works” means any design, installation or commissioning works required to enable provision of the Service.

“Intellectual Property” means any intellectual or industrial property anywhere in the world including, but not limited to, any copyright, patent, trademark, design rights, trade secret or Confidential Information relating to the Service or any licence or other right to use, or to be the registered proprietor of, any of the above.

1. THE SERVICES

1.1 Installation and Commissioning

- (a) We will use our best endeavours to carry out any Works within the timeframe that we agree with you. This timeframe may be set out in the Service Order Form.
- (b) The Charges for any Works are based on the information you have provided us. If that information is inaccurate or an unforeseen event occurs, we may charge you for any additional cost incurred by us in completing the Works. Such additional cost will be agreed with you before being incurred.
- (c) You will provide us with reasonable access to your premises and assistance from your employees to allow us to carry out the Works.
- (d) You will provide us with information that we reasonably require to provision and supply the Services to you.

1.2 Services

- (a) Service Order Form sets out the nature of the Service that we will provide to you.
- (b) Whenever we provide you with a Service, we will:
 - (i) provide the Service with care and skill;
 - (ii) use our best endeavours to begin providing the Service within a reasonable time or by any connection date, installation date or other time set out in the relevant Service Order Form; and
 - (iii) ensure the Service substantially conforms to any specifications that we provide.

1.3 Service Levels

For specified Services, we will provide you with Service Levels. If applicable, these Service Levels, will be set out in the separate Service Schedule provided to you with these Terms and Conditions. We may include in the Service Schedule the consequences of us failing to achieve the service levels. We advise you to read any consequences carefully, as they set out our only liability to you for failure to reach the Service Levels.

1.1 Equipment

- (a) If required for a Service, we may supply Equipment to you. This Equipment may be Purchased Equipment (which you buy from us) or Our equipment (which we provide to you for use during the duration of the Service).
- (b) You may request upgrades or new versions of equipment and we will advise you of the availability and any additional costs associated with the upgrade or new version.

1.5 Repairing Faults

- (a) We will arrange for the repair of any fault in Our Network or Our Equipment which adversely affects the Service.
- (b) The Charges cover the cost of us repairing faults in the Service during our normal service hours of 08.00 to 18.00 (in the State from which the Service is provided) unless such faults are caused, or contributed to, by you or your employees or contractors.
- (c) If you want us to investigate or repair any faults or defects not covered by the Charges then we may charge you additional charges for the work carried out. Such additional charges will be agreed with you before being incurred.

1.6 Our Group

You should be aware that the Services may be provided by any member of Our Group and, as such, any reference to, "we" or "us" in this document refers to whichever member or members of Our Group is providing the Services to you. Where this occurs, neither you nor we are relieved of our obligations under this Agreement.

2. YOUR RESPONSIBILITIES

2.1 General Responsibilities

Whenever we provide a Service to you, you will:

- (a) comply with this Agreement;
- (b) not resupply the Service to anyone else without our prior written consent;
- (c) follow our directions about the use of the Service;
- (d) ensure that all information and data you give us is correct, current and complete;
- (e) be solely liable for all information and data carried over Our Network or a third party network;

- (f) use the Service for lawful purposes and without being a nuisance to anyone;
- (g) never interfere with the reasonable use of the Service by our other customers;
- (h) be responsible for any of your employees or other service providers who have access to the Service;
- (i) comply with Our Acceptable Use Policy (as amended from time to time) which can be viewed at <http://www.broadvoip.com.au>; and
- (j) comply with all applicable laws, regulations, standards and codes.
- (vii) obtain our written approval prior to connecting or changing a connection to Our Equipment or Our Network;
- (viii) follow the reasonable directions of us or our contractors and any directions from the manufacturer when connecting anything to Our Network or Our Equipment or otherwise operating Our Equipment, ensure it is installed to our specifications and complies with any applicable Australian standards;
- (ix) never use the Equipment for purposes for which it is not designed; and
- (x) pay our charges for repairing or replacing any part of Our Network or Our Equipment which is lost or damaged by you, or by anyone for whom you are responsible. If you become aware of any loss of, or damage to, Our Equipment, you must notify us immediately in writing. There is no charge where damage occurs through normal wear and tear.

2.2 Our Equipment and Network

- (a) Ownership of Our Equipment remains with us or our suppliers (as the case may be). However, you assume all risks associated with Our Equipment from the date of delivery of Our Equipment to your premises.
- (b) We may, at any time and at our cost, modify or replace Our Equipment provided that there is no adverse impact on the Service during your normal business hours.
- (c) For your own safety, and so that the Service is not disrupted, you must:
 - (i) arrange for Our Equipment to be installed in a suitable place;
 - (ii) as we may specify, protect Our Equipment from radio or electrical interference, power fluctuations, abnormal environmental conditions, theft and any other risks and ensure it is not damaged and remains in good condition;
 - (iii) only use Our Equipment at the agreed site location;
 - (iv) not enter into any agreement for the transfer, sale, mortgage, grant of any security interest or other similar dealing, in respect of Our Equipment;
 - (v) give us reasonable access to your premises for the purpose of repairing, maintaining or developing Our Network or Our Equipment, or for any other reasonable purpose;
 - (vi) only permit Our Equipment to be repaired, serviced, moved or disconnected by us or our authorised contractors unless we otherwise permit in writing;
- (d) Where third party equipment or network is used to provide the Service, you must comply with any requirements of such third party in relation to that equipment or network.
- (e) We recommend that you arrange suitable insurance over for any loss, damage or liability you may incur arising from this Agreement.

2.3 Software

- (a) Where we provide you with any software to use:
 - (i) we remain the owner or licensee of the software;
 - (ii) you may use the software only for the purposes for which it is provided;
 - (iii) your right to use the software may not be assigned or otherwise transferred to anyone else without our prior written consent;
 - (iv) you will not change or interfere with the software in any way;
 - (v) you will not use the software to recreate or reverse engineer any source code;
 - (vi) you will not copy any part of the software except for the purposes of our approved backup or testing procedures; and

(vii) you will comply with any further requirements we impose in relation to the software or where relevant, any requirements of the owner or licensor of the software.

(b) We may at any time install upgrades or new versions of the software.

2.4 Purchased Equipment

(a) If required for the provision of the Service, we will sell to you the Purchased Equipment and in return, you will pay to us the Charges set out in the applicable Service Order Form.

(b) We will supply any Purchased Equipment to the location set out in the applicable Service Order Form or as we otherwise agree in writing.

(c) Title to, and legal and beneficial ownership of, the Purchased Equipment remains with us until we have received in full the Charges for the Purchased Equipment. Risk for damage to, or loss of, the Purchased Equipment passes to you on delivery of the Purchased Equipment to the location in the Service Order Form or as otherwise agreed.

(d) We will make reasonable efforts to assign to you supplier warranties provided in respect of the Purchased Equipment but otherwise give no warranties regarding the Purchased Equipment.

1.1 Indemnity

You will indemnify us against all actions, claims, demands, liabilities, losses, damages, or expenses arising out of your use of the Service(s). This indemnity is not limited by your liability cap in clause 5.1(b)(ii).

1.2 Miscellaneous

Any request in relation to the Service(s) and/or use of the Service(s) originating from you or any of your premises is deemed to be authorised by you.

3. CHARGES & INVOICES

3.1 Our Fees

You agree to pay the Charges for all Services we provide to you in accordance with this Agreement.

3.2 Invoicing

(a) We will invoice you for all Charges. You must pay each invoice by the due date set out on the invoice, or if no due date is specified,

within 30 days of the date of invoice.

Charges are normally invoiced monthly in arrears.

(b) If you do not pay an invoice by the due date for payment, you will be in default and we may charge you a default charge on the unpaid amount on a daily basis from the due date until payment is made at the rate of no more than 3% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month of that date.

(c) If you consider there is a mistake in any invoice, you must notify us within a reasonable time of receipt of the invoice with full details. We will investigate the matter and report back to you as soon as practicable. If the matter cannot be resolved, the procedure under clause 8 must be followed. If we have made a mistake, we will adjust a later invoice or issue a credit note.

(d) Where you receive the Service from more than one member of Our Provider, then in some cases, each member may bill you individually for the Service provided and you must make payment to the bill issuer.

(e) A member of Our Group which has agreed to provide you with a Service may delegate the invoicing for that Service to another member of Our Group. If this happens you agree that you will pay the invoices in accordance with the terms of this Agreement as if they had been received from the member of Our Group which is providing you with the Service.

(f) We may require you to lodge some form of security as a condition of us providing the Service to you. We may also set a spend limit for the provision of service to you from time to time, as notified to you.

(g) You must pay our Charges by cheque electronic funds transfer, or other means specified on the invoice. You must not pay our Charges by credit card but if you do pay us by credit card and we accept the payment then we may charge an additional fee to you that will not exceed 3% of the credit card payment that you made to us.

3.3 Changes to Charges

(a) We may vary the Charges, with your prior written consent, if:

(i) we continue to provide the Service after the end of any Minimum Period;

or

(ii) you have requested a change to the Service to be provided and we have agreed in writing to that change.

(b) We may vary the Charges at any time if there is an increase in the amount we must pay to any other network operator or any of our suppliers in providing the Service to you.

3.4 Cancellation Charges

(a) You will be liable to pay cancellation charges if:

- (i) you terminate a Individual Service before the end of the Minimum Period other than in accordance with 9.2(a)(i) or 9.2(a)(ii); or
- (ii) we terminate an Individual Service prior to the end of the Minimum Period in accordance with 9.2(a) or 9.2(b).

(b) Except as expressly set out in a Service Schedule the cancellation charges are the sum of:

- (i) the unrecovered proportion of the costs we have incurred in provisioning the Individual Service (where those costs have been amortised on a straight line basis over the Minimum Period); any further costs that we will incur in connection with the Individual Service to the extent that we are unable to avoid such costs; and an amount equal to 25% of your average actual monthly spend/Minimum Monthly Spend (whichever is the greater) on the cancelled Individual Service as billed by us in the 3 months (or part thereof) immediately preceding the month in which termination occurred, multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Period; and
- (ii) reimbursement to us of any rebates, credits, technology funds, refunds or discounts, including but not limited to volume rebates, loyalty discounts and service credits ("**Credits**") on the full amount of our standard charges, provided to you during the Agreement.

(c) You agree that the cancellation charges are a reasonable estimate of our likely financial loss if the Individual Service is terminated early.

(d) We may invoice you for all or part of any cancellation charge payable under this clause 3.4. You will pay the invoice specifying the cancellation charges, by the date on the invoice and if no date is specified, then 30 days after the date of the invoice.

3.5 GST

Unless otherwise expressly stated, the Charges are exclusive of GST. You must pay to us, in addition to the Charges, an amount equal to any GST payable on the supply of the Service. That additional amount is payable at the same time as any part of the Charges is payable. We will issue a tax invoice to you for the supply of the Service at or before that time.

4. SERVICE DISRUPTION

(a) Some Services may be affected by your levels of use, the levels of use of other users and of facilities used to provide the Service. For this reason, we do not warrant that Services will be free of blockages, delays or faults of any kind.

(b) We may temporarily suspend or restrict any Service:

- (i) during any scheduled or agreed maintenance period;
- (ii) if we think it is reasonable or necessary to carry out urgent repairs to Our Network or Our Equipment;
- (iii) in order to comply with any applicable law or an order or request of any government or regulatory body; or
- (iv) where the Service is affected by events beyond our reasonable control.

(c) Unless otherwise stated in a Service Schedule, we will:

- (i) give you at least three days notice of scheduled maintenance that is likely to affect your Service; and
- (ii) not carry out any scheduled maintenance between 08.00 – 18.00 unless we agree this with you first.

5. LIABILITY

5.1 Limitation of Liability

(a) We (including our Related Bodies Corporate):

- (i) except as expressly set out in this Agreement, exclude all conditions, warranties and representations, whether express or implied, to the extent permitted by law; and
 - (ii) limit our (including our Related Bodies Corporate) liability for any breach of any conditions, warranties and representations (that cannot be excluded or restricted by law), at our option, to the repair or re-supply of Our Equipment, Service or software or the payment of the cost of having Our Equipment, Service or software repaired or re-supplied.
- (b) Where either you or us (including our Related Bodies Corporate) is liable to pay the other any damages, refunds, rebates or other compensation under this Agreement (“**Compensation**”) the following applies, to the extent permitted by law:
- (i) subject to clause 1.3, the maximum combined amount of Compensation Our Group will have to pay you, and anyone else who uses any Services provided to you, is the sum of the Charges paid or payable by you in the 12 month period preceding the date of the event that gave rise to the claim;
 - (ii) the maximum amount of Compensation you will have to pay us is the sum of the Charges paid or payable by you in the 12 month period preceding the date of the event that gave rise to the claim, save in respect of outstanding Charges (including any cancellation charges), where your maximum liability will be the sum of all Charges payable by you under this Agreement or in respect of any circumstances set out in Part 3 of the Service Schedule, where your liability will be as set out in that Part 3;
 - (iii) both you and we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or on sequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services or any equipment under this Agreement or otherwise in connection with the relationship established by this Agreement, including any loss or damage caused by our negligence or any

fundamental breach of this Agreement;

- (iv) the amount of Compensation that either of us has to pay the other will be reduced to the extent that the event giving rise to the obligation to pay Compensation has been caused or contributed to by the other.

5.2 Events Beyond Reasonable Control

Neither of us will be liable for failing to meet our responsibilities under this Agreement (except your obligation to pay the Charges for Services you have received) because of events beyond our reasonable control, including but not limited to acts or omissions of third party network operators or suppliers, acts of war or terrorism, natural disasters, strikes and lockouts.

6. PROPERTY RIGHTS

6.1 Our Network and Our Equipment

Acquiring Services from us does not give you any ownership or other property rights in Our Network or Our Equipment.

6.2 Intellectual Property

- (a) Any Intellectual Property owned by either of us prior to entry into the Agreement, or developed independently of this Agreement by either of us, will continue to be owned by you or us, as the case may be.
- (b) We either own the Intellectual Property in the Service provided to you, or where we use any Intellectual Property belonging to anyone else, we have a licence to do so.
- (c) You acknowledge that none of our Intellectual Property is transferred to you. You further acknowledge that unless specifically authorised by this Agreement, you cannot, and will not, use or reproduce such Intellectual Property for any purpose outside this Agreement.
- (d) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the time we are providing the Service to you, belongs to us.

7. INFORMATION

7.1 Confidential Information

- (a) You and we must always keep each others Confidential Information confidential.
- (b) We both agree:

- (i) to use the Confidential Information of the other only to the extent required for the purpose it was provided;
 - (ii) not to copy or reproduce any of the Confidential Information of the other in any way; and to disclose the other's Confidential Information only to employees and contractors who need access to the information and who have agreed to keep it confidential.
- (c) You or we must promptly return all Confidential Information of the other (including any copies of it) in our possession or control, at the other's request.
- (d) You and we agree that Confidential Information excludes information generally available in the public domain (without unauthorised disclosure under this Agreement) and excludes information received from a third party entitled to disclose it.

7.2 Personal Information

- (a) During your relationship with us, we may collect information from you or from a credit provider or credit reporting agency ("**Personal Information**").
- (b) You agree that we may:
- (i) hold the Personal Information and share it with our employees, contractors and other agents or where relevant other credit providers but only where this is necessary to enable us to provide you with the Services, send you bills, check your creditworthiness, check that your responsibilities are being met, or otherwise to administer and enforce this Agreement. If this Personal Information is not provided to us, we may be unable to provide the Service to you;
 - (ii) share with other network operators any information needed to provide certain services to you, or to enable you to send or receive messages of any kind through those networks;
 - (iii) use any information about you for statistical purposes, so long as you are not identified; and
 - (iv) use any information about you for the purposes set out in our privacy policy which can be viewed at www.broadvoip.com.au.

- (c) We, like other suppliers, are required by law to provide your name, address, service numbers and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if you wish to have your IPND data altered in any way.

7.3 Electronic Addresses, Numbers and Other Codes

- (a) We will arrange for appropriate electronic addresses, numbers and other codes to be allocated for you to use depending on the kinds of services you require.
- (b) Subject to any third party agreements to which we are a party (eg portability agreements), all addresses, numbers and other codes allocated to you remain the property of us or other members of Our Group. For that reason, you may not sell or give them to anyone else.
- (c) If it is necessary to do so, we may, by giving you one month's notice, change or replace any electronic address, number or other code allocated to you.

8. RESOLVING DISAGREEMENTS

- (a) Where a dispute arises between us, it will be referred to our account manager and your contract representative for resolution.
- (b) If they cannot resolve the dispute within 10 Business Days, either of us may escalate the dispute to our respective group managers.
- (c) If the dispute is not resolved within 10 Business Days of escalation to our respective group managers, then either of us may take such action or proceedings as we see fit.

9. TERM AND TERMINATION

9.1 Term of an Individual Service

Each Individual Service will, subject to clause 9.2:

- (a) remain in effect for the Minimum Period; and
- (b) unless otherwise stated in the applicable Service Order Form or Service Schedule, on expiry of the Minimum Period, continue unless and until terminated by either of us by giving to the other not less than 20 Business Days prior written notice.

9.2 Termination

- (a) Either of us may terminate:
- (i) an Individual Service on written notice where the other has materially breached this Agreement as relates to that Individual Service and has failed to remedy the breach within 20 Business Days of receipt written notice from you or us, as case may be; or
 - (ii) this Agreement where a liquidator, receiver, manager and receiver any other administrator is appointed over the assets of the business the other, or if the other enters into any composition with its creditors.
- (b) We may terminate this Agreement:
- (i) if we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy; or
 - (ii) in whole or in part, if you materially breach this Agreement and fail to rectify such breach within 20 Business Days of written notice of such breach from us; or
 - (iii) if we are required to do so by law.

9.3 Suspension Rights

If you are in material breach of this Agreement (including by non-payment of our Charges when due), we have the right to suspend performance of any or all of our obligations under the Agreement.

9.4 Automatic Termination

- (a) Each Service Schedule and Individual Service will terminate automatically on termination of this Agreement.
- (b) If termination of this Agreement by you under clause 9.1 or by us under clause 9.2 results in an Individual Service terminating prior the expiration of the Minimum Period for that Individual Service, then you must pay cancellation charges in respect of that Individual Service in accordance with clause 3.4.
- (c) Each Service Schedule will terminate automatically following termination of all Individual Services provided pursuant to that Service Schedule.

9.5 Recovery of Our Equipment

- (a) On termination of an Individual Service under this Agreement, we may reclaim Our Equipment after giving you written notice.
- (b) If, following 30 days from the date of termination of the Individual Service, you fail to return Our Equipment, or refuse to allow us to recover Our Equipment, you agree that, as your agent only in relation to this clause, we may enter any premises where we believe Our Equipment may be located during normal business hours to recover Our Equipment.
- (c) Provided we act with reasonable care, you must pay us for any costs incurred (including but not limited to legal costs on a solicitor client basis) in us exercising our rights under clause 9.4(b).

9.6 Post-Termination

Clauses 2.5, 3, 5, 6, 7, 9, 10 and 11 survive termination of this Agreement.

10. NOTICES AND INVOICES

- (a) All notices and invoices must be in writing and may be sent by letter, fax or e-mail to the address and contact person on the front of Service Order Form, as updated to each other from time to time.
- (b) Any notice or invoice sent by post to that contact address will be assumed to have been delivered 2 Business Days after it is posted. Any notice sent by fax to that contact number will be assumed to have been delivered once a correct transmission confirmation slip is received.

11. GENERAL

- (a) You and we will comply with each others reasonable requirements for security and health and safety when working at each other's premises. Where practical, these requirements will be communicated to each other in writing.
- (b) You cannot assign your rights and responsibilities under this Agreement without our prior written consent.
- (c) This Agreement may only be varied by written agreement between us.
- (d) We may have subcontractors or other agents meet any of our responsibilities under the Agreement but we will remain liable to you for meeting all those responsibilities
- (e) No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by this Agreement.

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- (f) The Agreement is the entire agreement between you and us in relation to its subject matter.
- (g) You agree that you enter into this Agreement entirely on the basis of your own enquiries and that you do not rely on any statement, representation or promise by us that is not expressly set out in this Agreement.
- (h) No failure, delay or indulgence by either you or us in exercising any power or right conferred by the Agreement on either you or us will operate as a waiver of that power or right.
- (i) If a provision of this Agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this Agreement will not be affected.
- (j) You authorise us to complete any blank spaces in your Service Order Form.
- (k) The Agreement will be governed by the laws of New South Wales, and both you and we agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from such courts.
- (l) Headings are for convenience only and do not affect interpretation.
- (m) The singular includes the plural and conversely.
- (n) A gender includes all genders.
- (o) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (p) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (q) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Agreement.
- (r) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (s) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (t) A reference to dollars and \$ is to Australian currency.
- (u) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.