

## CONTRACTED SERVICES TERMS AND CONDITIONS

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The Client (which for the purpose of this Contract includes its employees, servants and agents) hereby enters into an agreement with Hotline IT Pty Ltd ("Hotline") for services provided on a Fixed-term basis upon the following terms and conditions.

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### 1. FEE

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- a) The agreement period and monthly fee is specified in the beginning of the Contracted Services Contract.
- b) The Client shall pay the fee by calendar monthly installments with the first installment due and payable 30 days from the Contract start date.
- c) If the Client at the end of the agreement period does not enter into a new agreement the existing agreement will continue as a casual contract, which can be cancelled at anytime after giving 30 days notice.
- d) Casual Contracts do not carry the same discount afforded to Fixed-term Contracts, therefore once the agreement becomes a Casual Contract the discount will be removed from the pricing.
- e) If the agreement is cancelled before the expiration of the contracted period specified in the Agreement Contract then Hotline, at its sole discretion, may recover the full fee amount calculated to the end of the contracted period.
- f) The Price (exclusive of GST) will be automatically increased on each anniversary year of the commencement of this agreement to an amount calculated by multiplication of the then current Price by 2.5%.

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### 2. PAYMENT

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Payment terms are strictly thirty (30) days from date of invoice unless otherwise stated in the Agreement Contract.

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### 3. OVERDUE PAYMENTS

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If any amount is due and unpaid, the Client agrees to pay interest on the overdue amount at the rate of 2.5% higher than the Reserve Bank of Australia's 90 day bill rate calculated daily until payment in full, at Hotline's discretion. The Client is liable for all additional costs Hotline may incur, including legal, administrative and collection costs to recover unpaid amounts.

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### 4. CLIENT'S USE OF HOTLINE SERVICES

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The Client agrees with Hotline that:

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- a) We will use reasonable care and skill in providing our services and will provide our service in accordance with Our Contracted Services Terms. However, given the nature of telecommunications systems (including our services' reliance on systems and services that we do not own or control), we cannot promise that our services will be continuous or fault-free;
- b) Where use of our services involves equipment that does not belong to us and that is at your premises, you have to maintain and repair that equipment. This includes carrying out any maintenance or repairs that we reasonably think is required within a reasonable timeframe of when we ask you to do so;
- c) Where your equipment causes a fault in your service that we need to repair, we can charge you a call-out fee and our reasonable charges for repairing the fault. We will tell you the amount of the call-out fee and hourly rates we charge for repairing faults before we start work;
- d) Our Contracted Services Terms may state that a service is provided for a particular purpose. You must only allow the service to be used for that purpose;
- e) You are responsible for and have to pay for any use of your service, whether you authorise it or not. Also, if you do not disconnect your service when you leave your premises, you have to pay for any use of the service by later occupants or others. We recommend you consider taking measures to protect yourself from unauthorised use of your service. Any person who uses your service, or allows someone else to use it, after you have vacated your premises, is jointly and individually liable with you for any charges relating to that use;
- f) In some circumstances we may monitor usage of your service for excessive or unusual usage patterns, but we do not promise to do so;
- g) You must not use a service to commit an offence or allow anybody else to do so;
- h) You must do what we tell you to do if your use of a service interferes (or threatens to interfere) with the efficiency of our network (including because you have inadequate capacity);
- i) You have to make sure that no-one interferes with the operation of a service or makes it unsafe;
- j) You must only connect equipment that complies with relevant technical standards and other relevant requirements. For these standards see the Australian Communications and Media Authority site at <http://www.acma.gov.au/web/>;
- k) You have to tell us about any relevant changes to your services or equipment that may affect our ability to provide your service to you.

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## 5. LIQUIDATED DAMAGES FOR HIRING MY COMPANY EMPLOYEES

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If, during the term of this Agreement or for twelve months thereafter, Client directly or indirectly retains the services (whether as an employee, independent contractor or otherwise) of any employee of Hotline (or ex-employee within three months of the employee's termination from Hotline) who has provided services to Client on behalf of Hotline, Client agrees that Hotline will be damaged, but that the amount of this damage will be difficult to determine.

Accordingly, Client agrees that for each such Hotline employee hired by Client, Client will pay Hotline Twenty-five Thousand Dollars (\$25,000) as liquidated damages. Notwithstanding the foregoing, for the purposes of this section 5, "employee of Hotline" shall include only employees of Hotline who

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provide services to Hotline customers and shall not include accountants, attorneys or other independent contractors of Hotline who provide services to Hotline itself.

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## 6. WARRANTY

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Hotline warrants that the Equipment and services are of merchantable quality. Nothing in these terms and conditions shall restrict, modify or exclude any conditions, warranties, rights or liabilities which may at any time be implied in this Contracted Services Contract by any State, Territory or Commonwealth law including the conditions or warranties implied by the Trade Practices Act 1974 as amended where to do so would render any provisions of this Contracted Services Contract void or unenforceable. Other than expressly provided for in this Contracted Services Contract the Client acknowledges that it has not relied upon any statement or representation by Hotline in respect of the Equipment/Service or the use of the Equipment/Service by the Client irrespective of whether or not the Client's purpose for the use of the Equipment/Service is known to Hotline the Client acknowledges that under no circumstances is Hotline responsible or liable for any failure or unsuitability of the Equipment/Service to perform the purpose required by the Client.

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## 7. CLIENT DEFAULT & TERMINATION

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- a) If the Client is in breach of this Contracted Services Contract, then Hotline shall be entitled to treat this Contracted Services Contract as breached and repudiated by the Client and with or without notice accept the repudiation and terminate this Contracted Services Contract whereupon the Client shall immediately, at its own cost and expense, return Equipment to Hotline and failing such return Hotline may repossess the Equipment and charge the Client for all of its costs and expenses incurred in doing so. Any such termination shall not prejudice any right to recover any unpaid fees and the rights and obligations under clause 3. Further Hotline shall be entitled to recover all damages including any consequential damages incurred.
- b) Where the Contracted Services Contract is terminated under clause 7a, the Client consents to Hotline its servants and agents entering its premises, or any other premises where it's Equipment is located, using such force as is necessary to repossess the Equipment. The Client must provide Hotline with all reasonable assistance in order to locate and collect the Equipment. If the Equipment is not available for collection at the nominated time and or place the Client will be liable for any additional costs Hotline incur. Hotline will not be liable for any damage to property caused by any person in collecting the Equipment.

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## 8. PPSA (PERSONAL PROPERTY SECURITIES ACT 2009 (CTH))

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8.1 Capitalised terms used in this clause 10 have the meanings outlined in the PPS Law, unless the context otherwise requires. PPS Law means the PPSA and any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

8.2 If we determine that this agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, you agree to do anything (including obtaining consents, completing, signing and producing documents and supplying information) which we ask and consider necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;

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(b) enabling us to apply for any registration, complete any financing statement or give any notification in connection with the security interest; and/or

(c) enabling us to exercise rights in connection with the security interest.

8.3 We are not required to give any notice under the PPSA (including notice of a verification statement) unless the obligation to give the notice under the PPSA cannot be excluded.

8.4 Without limiting clause 8.3, you irrevocably waive any rights you may have to receive any notices in relation to this agreement under sections 95, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.

8.5 Without limiting clause 11, you must notify us as soon as you become aware of any of the following:

(a) If any personal property which does not form part of the Equipment becomes affixed to the Equipment and is subject to a security interest in favour of a third party that has attached at the time it becomes an affixed; or

(b) if any of the Equipment is located or situated outside Australia

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## 9. INDEMNITY

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The Client agrees to indemnify Hotline and be responsible for all costs, charges and other liabilities incurred by Hotline as a result of the Client's breach of any of these terms and conditions or as a result of Hotline enforcement of any of these terms and conditions or arising out of or in any way connected with the use of the Equipment.

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## 10. SEPARATE ITEMS OF EQUIPMENT

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Where more than one item of Equipment is supplied under this Contracted Services Contract, in interpreting this Contracted Services Contract, the singular shall be read as the plural where appropriate and the rental shall be apportioned to each item of Equipment as set forth in the Contracted Services Contract and the conditions herein set forth shall apply separately to each individual item of Equipment/Service as though each item of Equipment/Service was subject to separate Agreements.

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## 11. LIABILITY

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If the Equipment/Service does not function as warranted or in the event of any breach by Hotline of the Contracted Services Contract then to the extent permitted by law Hotline's liability (if any) for any loss, damage or injury whatsoever shall be restricted to the amount of the fee for the duration of the agreement period in which the breach occurs and Hotline shall not be liable for any item of so called consequential loss. If this Contracted Services Contract constitutes a supply of goods or services to a consumer, as defined in the Trade Practices Act, as amended, or relevant State or Territory legislation, nothing in this Contracted Services Contract excludes, restricts or modifies any condition, warranty or other obligation in relation to this Contracted Services Contract and the goods or the services to be supplied, where to do so would be unlawful. In such case, Hotline's sole liability for breach of any such condition, warranty or other obligation, including consequential loss, shall be limited to:

(a) replacement of goods; or

(b) supply of equivalent goods; or

(c) refund of the invoiced value of the goods; or

(d) the repair of the goods; or

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in relation to the services:

**(e)** the supply of the services again; or

If the Equipment is returned or repossessed, Hotline is not liable to the Client for any consequential damage or other damage arising out of or by reason of any Client data or information being contained in the Equipment.

Hotline will not be liable for any failure to deliver the Equipment or perform services under this Contracted Services Contract if the failure arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other matters beyond the control of Hotline. In addition, Hotline will not be liable for any delay or failure to deliver by any freight company or delivery service to deliver the Equipment to the Client or any consequential loss or damage arising in respect of delivery of the Equipment.

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## 12. PROPERTY

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The property in the Equipment remains with Hotline unless the Client purchases the Equipment and the Client is not in breach or in default of the Rental Agreement. The property in the Equipment shall not pass to the Client until and unless all monies owing including rental and purchase price have been received by Hotline and the payments received shall be applied first in reduction of any outstanding rental and interest and second on account of the purchase price.

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## 13. INTELLECTUAL PROPERTY RIGHTS

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All rights pertaining to industrial or intellectual property including but not limited to copyrights patents and trademarks are expressly reserved. The Client shall not make any copies or authorise any copying of anything supplied such as software programs and operating manuals except with the prior written authority of Hotline and the owner/licensor and in accordance with the license terms as applicable. All copies must be delivered up with the Equipment.

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## 14. DAMAGE WAIVER

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14.1 Hotline has available and may offer at its discretion an optional rental equipment damage waiver facility for certain items of Equipment. If the Client seeks the waiver and it is available, the agreement rate will be increased by a fee. This waiver does not cover theft or loss of the Equipment or damage to the Equipment caused by the negligence of the Client or to any damage caused to the Equipment other than in the course of its proper use and provided further:

- (a) the Client notifies Hotline of the damage within 2 business days;
- (b) the Client pays to Hotline an amount calculated by multiplying the daily rental rate by 30 together with the damage waiver fee within 30 days of date of invoice for this amount.

Or

- (c) the Client pays to Hotline an amount equivalent to an undiscounted 1 month's rental fee and damage waiver fee within 30 days of date of invoice of this amount.

14.2 The waiver option does not apply and the Client will continue in all respects to be fully responsible if the damage to Equipment was directly or indirectly the result of:

- (a) Misuse or use contrary to instructions; or

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- (b) Malice or any deliberate act; or
- (c) Negligence or want of care; or
- (d) An act or omission by any person who is not the Client or in the Client's direct employ; or
- (e) Damage by any cause at or from a place which has not been approved as a rental location.

14.3 The waiver option does not apply and the Client will continue in all respects to be fully responsible if damage was directly or indirectly the result of:

- (a) The Client is in breach of any item or condition of the Rental Agreement; or
- (b) The Client fails to fully co-operate with the Police and Hotline in relation to any theft, loss or repairs to damaged Equipment; or
- (c) The Equipment has a value, or its price, is in excess of \$100,000.

14.4 The waiver option does not apply and the Client will continue in all respects to be fully responsible for the return of all accessories and manuals in good order and condition.

14.5 The waiver option does not apply to any item comprising the Equipment which is noted as being excluded on the accessory list provided with the Equipment. The cost for repair or replacement of these items of the Equipment will be invoiced to and payable by the Client.

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## 15. SUNDRY

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These Terms and Conditions constitute the entire agreement between Hotline and Client with respect to the Equipment/Services and shall not be amended except in writing by Hotline. This Contracted services Agreement shall be governed in all respects by the laws of New South Wales and the jurisdiction of New South Wales shall apply to any dispute arising out of this Contracted Services Agreement.