

Mr Fone Network General Terms and Conditions

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

1. Service

- 1.1 **Formation of Agreement:** Customer may order a Service from Mr Fone by completing a Mr Fone Order Form. The Agreement will be formed when Mr Fone 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 Mr. Fone of the Order Form, Mr. Fone 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 Mr. Fone is able to provide the Service and the requested activation date nominated in the Order Form. Mr. Fone will use commercially reasonable endeavors to activate the Service in accordance with the timeframes requested by the Customer.
- 1.3 **Service Levels:** Mr. Fone does not warrant that the Service will be uninterrupted or fault free. Mr. Fone will use its best endeavors 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 Mr. Fone 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 Mr. Fone Equipment, the Mr. Fone Network, the equipment or network of any third party provider to Mr. Fone or any network users;
 - (e) use or permit the use of the Service to engage in any activities in a manner that may expose MrPC 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 Mr. Fone Equipment; the Mr. Fone 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, Mr. Fone and any person engaged by Mr. Fone to provide to the Customer the Service at the Site. The kinds of assistance Mr. Fone may require from the Customer include:
- (a) ensuring that it is possible and safe for Mr. Fone and persons engaged by Mr. Fone to obtain necessary access to a Site (including for any emergency);
 - (b) ensuring that relevant people are available and give to Mr. Fone timely instructions;
 - (c) ensuring that Customer Equipment is ready at the appropriate times;
 - (d) at Customer's own expense and following Mr. Fone reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable Mr. Fone 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 Mr. Fone to provide the Service;

- (b) giving to MrPC 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 MrPC 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 MrPC 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 MrPC 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, MrPC may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to MrPC, 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 MrPC within a reasonable time or exceeds the nominated Credit Limit, MrPC may suspend the supply of the Service.

10. Service Suspension

- 10.1 In addition to any other rights of suspension contained in the Agreement, MrPC 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) MrPC is required to undertake the repair, maintenance or service of any part of the MrPC 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 MrPC Network;
 - (iii) MrPC 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 MrPC'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 MrPC 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) MrPC reasonably suspects that the Customer has suspended payment of its debts generally;
 - (e) MrPC 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 MrPC requests, the Customer must immediately inform MrPC of the specific location of any MrPC Equipment;
 - (c) the Customer must immediately cease using and return to MrPC the MrPC 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, MrPC to access the location at which that MrPC Equipment is situated at any time or times for the purpose of removing that MrPC Equipment;

- (d) the Customer must immediately pay to MrPC, without deduction or set off, all outstanding Charges and any other amounts payable to MrPC under the Agreement at the date of termination; and
- (e) MrPC will refund to the Customer the balance (if any) of any Charges or other money paid in advance to MrPC under the Agreement after deducting all amounts payable to MrPC 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 MrPC 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 MrPC agrees that the Customer will not be 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 (MrPC 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 MrPC from time to time, immediately provide MrPC with a certificate of currency in respect of that policy.
- 14.2 The Customer acknowledges and agrees that:
 - (a) MrPC does not warrant that MrPC 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 MrPC to achieve a Service Level, MrPC 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, MrPC:
 - (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 MrPC or otherwise.
- 14.4 Subject to clauses 14.2 and 14.3, MrPC limits its liability to the Customer as follows:
 - (a) if the loss or damage arises out of or is related to a failure by MrPC 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) 50% of the Charges received by MrPC 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 MrPC 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 MrPC 's liability for claims relating to personal injury (including sickness, death or disability) of the Customer or the Customer's employees directly resulting from MrPC 's negligent acts or omissions arising under the Agreement.
- 14.7 The Customer indemnifies MrPC 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 fax to the fax number, 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 MrPC.
- 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 MrPC and the Customer.
- 18.4 MrPC may set off or apply any credit balance in any of the Customer's accounts with MrPC or any amounts owed by MrPC to the Customer against any amount due and payable by the Customer to MrPC.
- 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 MrPC.
- 18.8 The Agreement is governed by the laws applicable in the State of New South Wales 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 MrPC 's website which may be modified by MrPC from time to time provided that such modifications are reasonable.

Agreement means this agreement for the provision of the Services between MrPC 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 7.00pm in Sydney 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 MrPC Equipment used in connection with the Service.

Early Termination Charge is an amount calculated as 85% 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 MrPC 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 MrPC;
- (b) in the case of electronic Invoices, sent or made available by MrPC 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 MrPC 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 MrPC 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 MrPC whether described as an Order or an Order Form.

Planned Outage means a period of time that MrPC 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 MrPC 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 MrPC.

MrPC means MrPC Corporate Pty Ltd (ABN 74 608 397 600) of 68 Station Street, Fairfield VIC 3078 or, where an Order Form nominates a Related Body Corporate of MrPC Corporate Pty Ltd, that entity.

MrPC Equipment means equipment (if any) of MrPC or a supplier to MrPC 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.

MrPC Network means a telecommunications network of MrPC.

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	
Signature	Name & Position (Printed)	Date

Signatory warrants that (s)he has the authority to enter into this Agreement on the Customer's behalf. MrPC 's acceptance of these Terms & Conditions is signified by its signing the Order Form relating to these Terms and Conditions or by delivery of the Service.