

BIZ-LYNX Technology Pty Ltd of Unit 10, 14 Merino Entrance Cockburn Central, Western Australia, 6164 is referred to as "we", "We", "Us" and "us" in these General Conditions below.

The person we are about to have or have dealings with details of which are set out in the Order is referred to below as "you", "You", and the "customer".

Introduction

- A. We provide various services including services related to computers and computer networks, information technology, software, telephone and support ("services").
- B. This document contains the general terms and conditions upon which we agree to supply you with one or more of such services and is called our "General Conditions".
- C. For specific individual services, we provide you with a separate document called a "Service Schedule" which details additional terms and conditions pertaining to the specific individual service or services you require.
- D. We also provide you with a separate document form called an "Order" with additional details pertaining to the specific individual service you require.
- E. Each Order and Service Schedule will refer to and incorporate these General Conditions. Together these documents form a legally binding contract between you and us, once accepted (the "Agreement").

By proceed with an order with us, you agree to all the terms and conditions in this document and all other terms and conditions referred to in any separate documents referenced.

Table of Contents

1. Definitions and Interpretation	4
2. Services	4
3. Third Party Licences and Costs.....	4
4. Cost Increases	4
5. Term and Automatic Renewal	5
6. Our Commitment to you	5
7. Service Levels and Maintenance.....	5
8. Network Maintenance	5
9. Your Commitment to us	6
10. Agent.....	8
11. Payment and Invoices	8
12. Interest	8
13. GST	8
14. Default Expenses.....	9
15. Termination and Expiry	9
16. Further Grounds to Terminate	10
17. Effect of termination or cancellation of Services	10
18. Consequences of termination and expiry	10
19. Confidentiality and Privacy	11
20. Limitation of Liability	11
21. Make Good Requirements	12
22. Support not included	13
23. Fair Use	13
24. Rights	13
25. Intellectual Property	13
26. Number Porting	14
27. Microsoft Licenses	14
28. Backups	14
29. Interpretation.....	15
30. Governing Law	17
31. Force Majeure	17
32. Indemnity.....	17
33. Notices and Communications	17
34. Entire Understanding	18
35. Severance.....	18
36. Dispute Resolution	18
37. Hourly Labour Rates.....	19

38. Dictionary.....	19
---------------------	----

1. Definitions and Interpretation

1.1. In the Agreement words:

- 1.1.1. as found above and below, beginning with a capital letter, have the meaning given to them in the dictionary of terms at clause 35, which prevails over any preceding explanation;
- 1.1.2. subject to clause 1.1.4, other words shall carry the meaning ascribed to them in the Macquarie Dictionary;
- 1.1.3. where a word has a meaning ascribed by the Interpretation Act 1984 (the "Act"), such ascribed meaning and Act shall apply to the Agreement as if the Agreement were a written law and the Act applied to this Agreement; and
- 1.1.4. any word not defined above including words relating to information technology, computers, computer networks and the internet, shall carry the meaning most commonly known and ascribed to such word.

1.2. Interpretation:

- 1.2.1. Further rules for interpretation of the Agreement are as set out at clause 26.

2. Services

- 2.1. We agree to supply the Service to you, and you agree to acquire the Service from us on the terms and conditions in the Agreement.
- 2.2. If we change or decide, or are required, to modify or exit a Service from the market, then we may, by giving you prior reasonable notice:
 - 2.2.1. migrate you to an alternative service or modified service and if requested by us you will provide reasonable assistance to enable us to do so; or
 - 2.2.2. cancel the Service.
- 2.3. Where we migrate or cancel a Service progressively, we will give you prior reasonable notice on a progressive basis.
- 2.4. If the service to which we propose you migrate is materially detrimental to you, you may cancel the Service without the payment of any Early Termination Charge.
- 2.5. In respect of any increase in the utilisation of a Service, including an increase in the Quantity Required, quality required, the cost per billing period for the additional usage shall be subject to an increase. Such an increase in charges will be contingent upon the degree of consumption and may be retrospectively applied to previous billing periods in a case where there is an inadvertent omission of the increase from an invoice.
- 2.6. In respect of any decrease in the utilisation of a Service, including a decrease in the Quantity Required, quality required, any reduction in the cost per billing period will be at our discretion.

3. Third Party Licences and Costs

- 3.1. You agree to pay for any third party licences, costs, audits, maintenance, warranty, insurance or other costs associated with the Service provided except to the extent where the Service Schedule expressly provides otherwise.

4. Cost Increases

- 4.1. We may pass on any increase in supplier costs including but not limited to software, licensing, internet, hardware, backup, hosting, telephony, utilities, labour or other costs in an invoice without prior notice to you.

- 4.2. We agree to maintain the same rate of margin on any increase in cost we pass on to you under the Agreement.
- 4.3. Within 75 days before expiry of the Service Term, and with a minimum of 30 days prior notice from us, we may increase or decrease the price for a Service. Such adjustments will be determined by the greater of 10% or the most recent twelve-month Consumer Price Index Australia wide.

5. Term and Automatic Renewal

- 5.1. The Agreement begins on the Start Date and continues until each Service Term for each Service being provided has expired or has been lawfully terminated.
- 5.2. Either party may notify the other party that it does not wish to extend the Service Term for a Service by giving at least 60 days written notice prior to the end of the then current Service Term.
- 5.3. If neither party gives notice under clause 5.2, each Service Term and every extension of each Service Term under this clause, automatically extends the Agreement, subject to clause 4, on the same terms and conditions in the Agreement, for a further same period as the Initial Period ("Automatic Renewal Period"). Each Automatic Renewal Period will commence immediately after each Service Term and a reference to a Service Term shall be construed as including any Automatic Renewal Period.

6. Our Commitment to you

- 6.1. We will:
 - 6.1.1. provide the Service with due care and skill;
 - 6.1.2. provide the Service in accordance with the Agreement;
 - 6.1.3. endeavour to provide a continuous Service, but do not guarantee that the Service will be continuous or fault free, due to the nature of the Service; and
 - 6.1.4. ensure that all work we perform in connection with the Service is carried out by competent and suitably qualified personnel.

7. Service Levels and Maintenance

- 7.1. The Service Levels for each Service may be set out in the relevant Service Schedule.
- 7.2. Where the performance of a Service is affected by any of the Exclusion Events, we have no liability to you under the Service Levels. Any such periods are disregarded for the purpose of determining performance of a Service against its Service Levels.
- 7.3. To claim a Service Level rebate, you must notify us of your claim within 30 days after the end of the month in which the failure occurred (or such other period set out in the Service Level), giving details of:
 - 7.3.1. the relevant dates and times of the Service difficulty, and time of the report to our Service Desk, in respect of which a rebate is being claimed and test or performance data to support the claim; and
 - 7.3.2. type of Service issue (such as lack of Availability, packet loss or transit delay).
- 7.4. If you do not make a claim in accordance with clause 7.3, then you may not make any claim against us in respect of the relevant failure.
- 7.5. We will credit you with any rebates to which you are entitled in the next invoice, or failing that, as soon as reasonably practicable, after receiving a Valid Claim

8. Network Maintenance

- 8.1. We may schedule Planned Network Maintenance from time to time.

- 8.2. We will attempt to use reasonable commercial endeavours to give you at least;
- 8.2.1. one (1) day's prior advice of Planned Network Maintenance where the maintenance occurs between 8am and 5pm local time for the affected Service locations, where possible;
 - 8.2.2. one (1) hour's prior advice of emergency repairs or modification; and
 - 8.2.3. we may contact you by telephone, email, fax or our website <https://www.biz-lynx.com.au/contact-us/> in the section Network Status.

9. Your Commitment to us

9.1. You must:

- 9.1.1. provide space, relevant environmental conditions, connection points and power for any of our equipment used at your Site for a Service;
- 9.1.2. obtain all necessary consents or permissions for the installation of equipment pertaining to the Agreement;
- 9.1.3. ensure that all equipment used for and or connected to a Service by you, or on your behalf is technically compatible with the relevant Service(s) and that your Site and equipment comply with and are used in accordance with all reasonable procedures notified by us and any applicable legislation;
- 9.1.4. ensure that you have continuity of access to the Service at your Site;
- 9.1.5. maintain and comply with any software licences, subscriptions and third party audits such as but not limited to Microsoft, Adobe, Trend, VMWARE or other party as we advise;
- 9.1.6. ensure that all equipment which you provide for any Service meets the standards that are from time to time reasonably specified by us and that all equipment you own or use is in good working order at all times;
- 9.1.7. comply with any reasonable directions we provide;
- 9.1.8. provide us and our agents timely and safe access to each Site and all relevant equipment and any reasonable assistance and facilities we may require for the purpose of inspection, maintenance, repair or removal of equipment or services; and
- 9.1.9. pay us for any investigation into any issue or matter associated with or incidental to your failure to comply with any obligation under the Agreement, fixing and making good any consequential issue, matter, loss and or damage, such payment to include our time costs, materials and disbursements and legal fees and costs on a solicitor client or indemnity basis, whichever is greater.

9.2. You must not:

- 9.2.1. prevent us from providing a Service to you pursuant to an Agreement.
- 9.2.2. alter, tamper, reverse engineer, repair or attempt to repair, attempt to gain administrative type access or control to, remove, transfer the ownership of any Service or cause, or allow a third party to do any of these acts;
- 9.2.3. allow any third party to use, alter or interfere with any Service provided by us to you;
- 9.2.4. attempt to transfer out, port away, copy or move Significant Amounts of Data out of our network without first notifying us in writing and obtaining our written consent and you must comply with our instructions in relation to any such request so as to not impact the Services we provide you or our other customers;

- 9.2.5. to use any Service for pornography, breach of copyright, any unlawful or illegal purpose or activity which you agree we may disclose to any law enforcement agency or regulatory body along with associated materials, your details including assigned IP numbers, account history and usage upon written request of such agency or regulatory body and without notification to you;
- 9.2.6. use or permit any person to use a Service, any network, system or hardware, to send unsolicited commercial email, spam, for address harvesting or to otherwise breach or contravene any provision of the Spam Act 2003, Broadcasting Services Act 1992, Copyright Act 1968, Interactive Gambling Act 2001, Privacy Act 1988, Racial Discrimination Act 1975, Telecommunications Act 1997 or other law of Australia;
- 9.2.7. permit your staff or any agent to probe, flood, overload, crash, forge any TCP/IP packet header or take any action to obtain services to which you are not entitled;
- 9.2.8. host or permit hosting of a site or information that is advertised by unsolicited commercial email or spam;
- 9.2.9. violate or attempt to violate or breach the security of any system or network of ours and you acknowledge that any such violation or breach may result in civil or criminal liability and that such violations include without limitation accessing data not intended for use by you, logging into or accessing an account or server which you are not authorised to log into or access, attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, flooding, mail bombing or crashing, forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting or taking any action in order to obtain services to which you are not entitled; nor
- 9.2.10. use any Service to menace or harass any person, cause damage or injury to any person or property, incite hatred or in a manner that may infringe any person's rights, including Intellectual Property Rights.
- 9.3. You are solely responsible for:
 - 9.3.1. selecting, supplying and maintaining your own equipment;
 - 9.3.2. the content of, and security measures to protect, any data or information which you send or receive using the Service, except to the extent a Service Schedule expressly provides otherwise;
 - 9.3.3. any use of the Service and any associated equipment used or connected to any Service on your Site, by you or any third party whether authorised or not; and
 - 9.3.4. ensuring that any person who uses a Service complies with the provisions of all applicable laws and the Agreement.
- 9.4. You agree to respect, be bound by and not cause any breach of the terms, conditions and policies imposed on us by, Vocus, TPG, Telstra, NEXTDC, Microsoft, Adobe, VMWARE or any other provider, carrier, related or other entity we use to provide a Service, as if such terms, conditions and policies were incorporated into the Agreement but excluding such terms which are inconsistent with the fundamental terms of the Agreement and to the intent that you are bound by all other non-inconsistent obligations imposed on us. If you cause us to breach or breach any such term, condition or policy, such conduct shall constitute a material breach of the Agreement.
- 9.5. You represent and warrant that:
 - 9.5.1. you have the authority to enter into this Agreement;
 - 9.5.2. you will comply with all applicable laws;

- 9.5.3. you have or have obtained the right to permit us to supply any Service or goods contemplated by any Agreement; and
- 9.5.4. in entering into any Agreement, you have relied upon your own experience, skill and judgement to evaluate any associated Service or goods and that you have satisfied yourself as to the suitability of the associated Service and goods to meet your requirements.

10. Agent

- 10.1. You appoint us as your agent to do all things (including executing all documents) necessary or desirable to enable us to provide the Services, including without limit the exercise of any customer authorisation necessary to port, transfer or otherwise deal with telephone numbers, internet services, domain names and email, in whole or part provided by another supplier.
- 10.2. In acting as your agent, we will act in a manner as we reasonably consider to be in your interests.

11. Payment and Invoices

- 11.1. You must pay us the fees, charges, costs, disbursements and money required to be paid under or set out in the Agreement.
- 11.2. Charges may be invoiced in arrears or in advance or a combination of both. Service will ordinarily be charged on a single monthly invoice. All charges are payable within 30 days of the date of invoice unless otherwise indicated.
- 11.3. Any charges for Service that are missing from an invoice in error or omission, may be invoiced at a later date.
- 11.4. Charges are payable in the Australian dollars unless otherwise specified by us.
- 11.5. If you genuinely dispute an invoice, you need not pay the disputed amount until the dispute is resolved, however you must pay any undisputed amounts by the due date.
- 11.6. You may only make a claim that charges on an invoice are incorrect before the invoice due date.
- 11.7. You must pay us for the Services we provide to you.
- 11.8. You grant us a lien and charge over all your hardware, software, equipment, data and property ("your Property") in our possession or managed by us under the Agreement in respect of all amounts you owe us. We shall have the right to retain possession of your Property until all amounts you owe us have been paid in full. In the event of any amount owed by you to us for more than 60 days, you hereby authorise us to sell and we may sell your Property and recover the amount owed from the proceeds of such sale with any shortfall remaining due and payable by you immediately.

12. Interest

- 12.1. Without prejudice to our rights and remedies arising out of the Agreement, you agree that we may charge you an interest rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 percent, at the date the invoice issued, on any amount that remains unpaid in breach of the Agreement and after 30 days from the date of invoice.

13. GST

- 13.1. If we make any taxable supply under the GST Act (for example, where we supply a Service to you in Australia), you will be liable to pay GST in respect of the supply by the invoice due date.
- 13.2. Any reference to an amount payable under the Agreement unless otherwise stated (including but not limited to compensation, labour, Services, costs, expenses and indemnity payments) is a reference to that amount exclusive of GST.

- 13.3. Each amount payable under the Agreement must be increased by the GST applying to the amount or imposed on the taxable supply in respect of which the amount is paid. You must pay the GST payable in respect of an amount payable under the Agreement, at the time the amount in respect of which the GST applies is due under the Agreement.
- 13.4. If either party becomes subject to any penalties or interest for late payment of GST and that late payment arises from the failure of either party to comply with the terms, covenants and conditions of the Agreement, the defaulting party must pay to the other party on demand the amount of those penalties and interest.
- 13.5. For the purposes of this clause, an input tax credit and a tax invoice have the meanings given in the GST Act.

14. Default Expenses

- 14.1. You must pay to us on demand all legal fees and costs, charges and expenses for which we are liable on a solicitor and own client or indemnity basis (whichever is greater) in connection with:
 - 14.1.1. any event of default by you under the Agreement, including all costs, charges and expenses and solicitors' costs and fees incurred by us for the purpose of preparation and service of a notice on you;
 - 14.1.2. our costs of remedying any default by you under the Agreement;
 - 14.1.3. our exercise or attempted exercise of any power or right or to obtain any remedy arising from any default by you under the Agreement;
 - 14.1.4. obtaining or attempting to obtain payment of money to be paid under the Agreement; and
 - 14.1.5. any action or proceeding concerned with any of the matters referred to in this clause which we have paid or pay to any other person, provided that this paragraph does not apply if you are awarded costs as against us in any action or proceeding.
- 14.2. You must pay us on demand the costs and disbursements of our solicitors, on a solicitor and own client or indemnity basis (whichever is greater), of and incidental to the instructions for the amendment, assignment, variation or any associated negotiation of or dispute arising out of the Agreement including any duty that is payable.
- 14.3. You must pay us for all work done, time spent together with all costs, fees and disbursements incurred by us incidental to or associated with your breach of law, mandatory data breach reporting, the requirement of any third party, any government or government related organisation or agency, any professional regulatory body court or tribunal, the police or law enforcement agency including obtaining approvals and compliance with any investigation or security audit.

15. Termination and Expiry

- 15.1. Subject to clause 15.5, either party may terminate all or part of the Agreement by giving 30 days written notice to the other if the other party commits a material breach of the Agreement and does not rectify the breach within that period.
- 15.2. You must inform us in writing of any requirement to return your data or equipment at least 60 days prior to the expiry of the Agreement.
- 15.3. You must provide us with a written request for any data or property to be returned, simultaneously with or before any notice given under clause 15.2, terminating an Agreement.
- 15.4. If you do not give us the written notice outlined in clauses 15.2 and 15.3, we may permanently delete of any of your data in our possession and you waive any and all claims to ownership of any data and property held by us. Such data and property on such notice failure is deemed to vest in us.

- 15.5. The period of notice referred to in clause 15.1 in relation to an Upstream Provider or hardware failure, related delay and clause 28.3 does not begin to run and there shall not be any material breach of any Agreement unless and until we have exhausted all reasonable endeavours to remedy and rectify such Upstream Provider or hardware failure or related delay.

16. Further Grounds to Terminate

- 16.1. We may also terminate this contract and may suspend or terminate provision of and access to a Service, Services or services without notice if:
- 16.1.1. you have not paid an amount due to us;
 - 16.1.2. you are in breach of clauses 9.2 and or clause 9.4 of the Agreement;
 - 16.1.3. you are utilising the services for unethical, unlawful or illegal purposes;
 - 16.1.4. you have become insolvent or bankrupt or have appointed a liquidator or receiver;
 - 16.1.5. you have died;
 - 16.1.6. we have a reasonable belief that payment for our services is unlikely;
 - 16.1.7. we have reasonable grounds to believe that you are responsible for a threat or risk to us, our systems or any third party system or customer we manage; or
 - 16.1.8. we reasonably suspect that your service is being used to expose us to risk of legal action or breach of any law.
- 16.2. If you fail to rectify any breach within 7 days of being issued a written request by us, to remedy such breach, we are entitled to treat you as having committed a material breach and repudiated your obligations under the Agreement and in which event we may accept and treat such repudiation as termination of the Agreement, without providing further notice to you.
- 16.3. Upon Termination under clause 16, all monies owed by you will immediately become due and payable.

17. Effect of termination or cancellation of Services

- 17.1. If, after an Order is placed for a Service but before the expiration of the Service Term for that Service, you inform us to the effect that you no longer want us to provide that service for any reason other than for our material breach, ("Early Termination Event"), without affecting or limiting our right to any claim or for damages you must pay us and we may charge you an Early Termination Charge.
- 17.2. You acknowledge that the Early Termination Charge is a genuine pre-estimate of the loss or damage we are likely to suffer as a result of termination of the Service prior to the expiration of the Service Term of the Service.

18. Consequences of termination and expiry

- 18.1. If the Agreement expires or is terminated or a Service is cancelled for any reason:
- 18.1.1. you must pay us all outstanding invoices by the due date and within 30 days of request of payment, all other amounts outstanding as at the date of, or arising as a result of, expiry, termination or cancellation (including any Early Termination Charges);
 - 18.1.2. we may, with the provision of reasonable notice, enter each Site and remove any equipment belonging to us which is connected with that Service. If we are unable to gain access to the Site, we may recover the value of the equipment from you as a debt due to us;

- 18.1.3. if there is any breach constituting a material breach or repudiation of the Agreement by the you, we shall have the right to terminate the Agreement and any Service immediately without further notice to you. Upon such an event all monies owed by you to us shall immediately become due and payable;
- 18.1.4. all our rights that accrued before the expiry or termination continue;
- 18.1.5. clauses 9 (your Commitment to us), 15 (Termination), 19 (Confidentiality), and 20 (Limitation of Liability) continue in force;
- 18.1.6. subject only to clauses 15.2 to 15.4, we shall retain sole discretion as to whether any data and/or information is:
 - 18.1.6.1. destroyed and deleted from existence in its entirety; or
 - 18.1.6.2. held for such longer period to enable you at your expense and subject to full payment of all outstanding monies owed by you to us, to collect the data and or information from us in a method we deem suitable; and
- 18.1.7. in the event of a termination or suspension we may give such notice in respect to the non-availability of the Service in the method and format as we deem fit.

19. Confidentiality and Privacy

- 19.1. Each party must treat as confidential information:
 - 19.1.1. the provisions of the Agreement; and
 - 19.1.2. all information provided by the other party under the Agreement, including in your case, our technical, operational, billing, pricing and commercial information in relation to the supply of Services.
- 19.2. A party must not disclose the other party's confidential information to any person except:
 - 19.2.1. to its employees, legal and financial advisers and in our case to our subcontractors or Service Provider/s, on a 'need-to-know' basis;
 - 19.2.2. with the other party's prior written consent;
 - 19.2.3. to the extent required by law, any stock exchange or any Regulatory Authority; or
 - 19.2.4. if the information is in the public domain.
- 19.3. You agree and will ensure that any of your associates and related bodies corporate which receive services connected with the Agreement and your representatives are aware, that we may use and disclose information about you and each of them in accordance with our Privacy Statement (as amended by us from time to time), which is available at <https://www.biz-lynx.com.au/privacy-policy/> or by calling us on 08-6263-9400.

20. Limitation of Liability

- 20.1. If we do not meet any of our Service Level obligations our liability is limited to the applicable remedies set out in the relevant Service Level and any Valid Claim amount.
- 20.2. Our liability in any Agreement is limited to the guarantees, warranties, terms and conditions implied by the Australian Consumer Law as adopted by the Fair Trading Act 2010 (WA) in the Australian Consumer Law (WA) which may not be excluded by us. Such guarantees, warranties, terms and conditions implied by the Australian Consumer Law (WA) which may be excluded from any Agreement, are excluded from such Agreement.

- 20.3. Our liability under the Australian Consumer Law (WA) in respect of the supply of a Service is limited to resupplying the Service again at no cost to you or the payment of the cost of having the Service supplied again. The decision to resupply the Service or paying the costs of having the Service supplied again shall be in our sole discretion.
- 20.4. Without limiting any other provision in this clause 20, our liability to you is limited to the Service or goods directly supplied where the liability arises directly from the negligence of, or breach of an Agreement by us, and does not include liability, loss or damage caused or contributed to by failure related to, due to events or circumstances outside our reasonable control, such as but not limited to a failure to disclose pertinent information by you or your agents on which we rely.
- 20.5. You agree that we shall not have any liability, obligation or responsibility, whether in contract, tort (including but not limited to negligence), under statute (the Australian Consumer Law (WA) excepted) or on any other basis, for any lost profits, opportunity costs or lost data, loss of management time or failure to realise anticipated savings or for any indirect, incidental, consequential, special or exemplary damages arising in connection with an Agreement, even if you have been advised of the possibility of such damages.
- 20.6. To the full extent permitted by applicable law, our maximum aggregate liability for damages under or in relation to an Agreement or in tort (including negligence), shall not exceed the amount of the fees paid by you to us under the Agreement during the previous 6 month period in which such claim arises.
- 20.7. We expressly disclaim any liability we may otherwise have had, arising out of or relating to a claim of infringement of any person's rights resulting from our use of tools, instructions, specifications, or materials provided by you to us, including any improvements, changes, amendments or additions.
- 20.8. Where we provide any addition, modification, alteration, increased capacity, reduction or change to any Service or thing ("Customisation"), such Customisation is provided by us on a time and materials basis and on an "as is" basis and, to the maximum extent permitted by law, we make no representations or warranties as to the performance or functionality of any such Customisation. Any investigation and rectification of any error or issue arising from a Customisation will be undertaken by us as a Service at our current rates.
- 20.9. Subject to clause 28.3, we shall not be liable to you or your customers for any delay in performance or any failure in our performance, caused in whole or in part by reasons beyond our control, including any delay or failure caused or contributed to by your failure to procure in a timely manner information, equipment, or materials /necessary for us to perform the associated Service.

21. Make Good Requirements

- 21.1. When the Agreement ends, you are responsible for and the cost to us of making good the Environment in or from which the Services were provided, which includes (but is not limited to) the following:
- 21.1.1. reinstatement of the Environment (so far as it pertains to any Service provided to you) to the condition it was in at the Start Date, fair wear and tear excepted;
 - 21.1.2. servicing of all electronic equipment owned by us and used by you, to ensure good and proper operation, not less than one month prior to the end of the Agreement;
 - 21.1.3. we may charge you all associated costs and disbursements and you must pay us for same and at our Hourly Labour Rate to remove, return and or destroy any data, network access, configuration, security or other information in our possession, necessary for us to return the Environment to the condition it was at the Start Date;
 - 21.1.4. you may request us to return data owned by you in our control and you agree to pay us at our Hourly Labour Rate for any work done. You will provide us with reasonable notice. We will use reasonable endeavours to return the data to you in a method acceptable to us;

- 21.1.5. as it is difficult to pre-estimate the total make good costs and disbursements as there are significant variables impacting upon any estimate, we may provide an estimate of any reasonable costs and time costs contemplated for us to make good the Environment, and this cost estimate, will be due and payable once notified to you;
- 21.1.6. we will invoice you for all actual time costs, disbursements and other costs incurred pursuant to clauses 21.1.3 to 21.1.4 and you agree to pay any additional costs over and above the estimate and we agree to return to you the difference of any surplus received pursuant to the estimate over and above the amount invoiced for actual costs incurred; and
- 21.1.7. after the Agreement has ended:
 - 21.1.7.1. you will not continue to use or access Services provided by us at the end of the Agreement; and
 - 21.1.7.2. you will not continue to use or access any Internet Protocol Address, telephony service, phone number or domain name managed or owned by us.

22. Support not included

- 22.1. Except to the extent where a Service Schedule expressly provides otherwise, the Agreement does not include any technical support by us or any third party.
- 22.2. Unless otherwise agreed, any technical support shall be charged at our Hourly Labour Rate.

23. Fair Use

- 23.1. You agree to abide by our Fair Use Policy (as amended by us from time to time), which is available at <https://www.biz-lynx.com.au/fair-use-policy/> or by calling us on 08-6263-9400.
- 23.2. We may decide to alter, modify, restrict, terminate or charge for usage that exceeds our Fair Use Policy, and we will advise you in writing of our decision.

24. Rights

- 24.1. We claim no ownership and assume no responsibility whatsoever for, over, in or in respect of, any of your information or data, except as expressly agreed herein.
- 24.2. You agree that we and our contractors may access your information and data at any time and for any reason or for the purposes of us providing the Service under the Agreement.
- 24.3. If we assign you an Internet Protocol Address for your use, a domain name, VPN connection or other similar service ("IP Service") the right to use any such IP Service shall belong solely to us. You shall have no right to use any such IP Service except as permitted by us in and during the provision of a Service under the Agreement. We reserve the right to change or remove any IP Services in our sole discretion.

25. Intellectual Property

- 25.1. The rights to and proprietary interests in any device, processes, procedures, software, coding, program, scripts, programming and associated applications used or created by us for or during the course of an Agreement and all associated intellectual property ("IP") shall belong to us.
- 25.2. You are hereby granted a non-exclusive right to use the intellectual property ("IP") provided by us solely for the purposes of rendering Services under an Agreement. This grant of rights is conditional upon your compliance with the terms of this Agreement.
- 25.3. All IP provided by the us, including but not limited to software, documentation, designs, codes, drawings, configurations, scripts and trademarks, remains the sole and exclusive property of the us. You acknowledge that no title or ownership in the IP is transferred under any Agreement. All rights not expressly granted herein are reserved to us.

- 25.4. In the event that you create any modifications, enhancements, or derivative works of our IP, such modifications shall become the sole property of us. You agree to execute any documents and take all necessary steps as requested by the us to effectuate, record, or perfect such ownership and you appoint us your agent to do so.
- 25.5. Upon termination or expiration of an Agreement, you shall immediately cease using our IP and, in our sole discretion, return, delete, remove, or destroy all copies of our IP in your possession or control. Any continuation of the use of our IP beyond the termination of this Agreement is prohibited unless specifically authorized in writing by us.
- 25.6. You agree to hold confidential and not disclose to anyone our IP.
- 25.7. The obligations regarding IP ownership, confidentiality, and usage rights under this clause shall survive the termination or expiration of this Agreement.

26. Number Porting

- 26.1. If you request your phone number/s to be ported away from us, you will no longer be able to make or receive calls from any associated services we provide to you that used those number/s as their caller id or answer point.
- 26.2. If you port away or churn your phone numbers from us to another provider, you acknowledge and agree that we may shut down your services without further notice to you.
- 26.3. It will be your responsibility to ensure that you have planned and communicated with us and your new provider prior to requesting any churns or porting of numbers to avoid any disruptions to your services.
- 26.4. Once a churn or port has been requested you authorise us to disable and remove from service any phone system, pabx, software system or sip trunk that was linked to that number/s and prevent your access to this system/s.

27. Microsoft Licenses

- 27.1. If you remove, disconnect or arrange for a new billing provider for your Microsoft licences, you must still pay us for any remaining term on any and all Microsoft licences you have ordered through us until that term has been completed.

28. Backups

- 28.1. Where we provide a service to you that includes a backup of your data;
 - 28.1.1. We will use commercially reasonable efforts to manage data backups, including maintaining any specified backup retention periods and storing backups securely. Our associated process involves validating and testing backups to ensure their restorability.
 - 28.1.2. You are responsible for informing us in writing of any specific minimum backup retention periods required, limited to during the Service Term and subject to the General Conditions.
 - 28.1.3. You are responsible for notifying us of any required changes to such requirements, which may incur additional charges we specify. In the event of a backup failure, we will endeavour to rectify the issue using reasonable efforts.
 - 28.1.4. You acknowledge and agree that the data contained in the backup will only be able to be restored by us to a location as determined by us.
 - 28.1.5. You acknowledge and agree that we may only be able to restore data from specific points in time using our agreed-upon methods. We will not be able to provide you with a complete copy of the backup data or data from numerous points in time.

- 28.1.6. You acknowledge and agree that using our backup service is for the purpose of data recovery and restoration of corrupted or missing data only and that a copy of this data will not be made available to you for any other purpose.
- 28.1.7. You acknowledge and agree that we can refuse to restore the same or large amounts of data from numerous points in time or where we deem is excessive use of the service.
- 28.1.8. You acknowledge and agree that we can refuse any third-party access including access by you to the backup data and/or systems and we do this to ensure the privacy and protection of the data, you and our other customers who use the service.
- 28.1.9. Upon cancellation or termination of the backup services;
 - 28.1.9.1. All backup data associated with the Client will be securely and permanently destroyed by us;
 - 28.1.9.2. You acknowledge and agree that, following the destruction of the backup data, no data recovery will be possible;
 - 28.1.9.3. You will ensure that you have had a data restore of any data necessary prior to the termination of the service;
 - 28.1.9.4. You acknowledge and agree that the backup service, the data contained in the backups and any ownership of the software or data is non transferrable to yourself or any third party.

29. Interpretation

29.1. In the Agreement:

- 29.1.1. the singular includes the plural and the plural includes the singular;
- 29.1.2. a gender includes all genders;
- 29.1.3. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 29.1.4. a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- 29.1.5. a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, the Agreement;
- 29.1.6. a reference to any law or to a provision of legislation includes a modification or reenactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- 29.1.7. a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing unless expressly required to be in writing;
- 29.1.8. headings are for convenience only and do not affect interpretation;
- 29.1.9. a reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- 29.1.10. where the Agreement provides that you agree to perform an act, do something or refrain from doing or carrying out some act or thing that agreement shall be read as including an agreement on your behalf that you will procure any of your associates, contractors and agents used, to perform such act, do such thing and refrain from doing or carrying out such act or thing;
- 29.1.11. the interpretive provisions of the Interpretation Act 1984 shall apply to interpretation of any provision of the Agreement including as if the Agreement were a written law to which the Act applied; and

- 29.1.12. if there is an inconsistency between parts of an Agreement, the document(s) here first listed prevail over the document(s) subsequently listed:
- 29.1.12.1. an Order;
 - 29.1.12.2. a Service Schedule and any attachment thereto; and
 - 29.1.12.3. the General Conditions.

30. Governing Law

- 30.1. The laws of Western Australia govern the Agreement.
- 30.2. The parties submit to the exclusive jurisdiction of the courts of Western Australia, the Federal Circuit Court and the Federal Court of Australia.

31. Force Majeure

- 31.1. We shall not be responsible or liable, for failure to perform or observe, or for delay in performing or observing, any obligation under the Agreement where such failure or delay arises from any cause beyond our control, including but not limited to, any Upstream Provider, hardware, strike, lockout, industrial action, act of God, pandemic, insurrection, war, or civil commotion or any other cause which we could not reasonably be expected to avoid ("Force Majeure Event").
- 31.2. Where we are unable to provide a Service as a result of a Force Majeure Event, we will inform you of our proposed associated resolution, if possible and any associated time frame.
- 31.3. In the event of an Upstream Provider or hardware related failure or delay, we shall use reasonable endeavours to rectify and remedy associated issues and problems.

32. Indemnity

- 32.1. You agree to indemnify and hold us harmless including any of our employees, contractors, agents and directors in full against any and all liabilities, claims, losses, damages, penalties, actions, judgments, suits, costs or expenses of any kind arising under the Agreement, including from the use by you of any intellectual property rights of any third party and the registration or use of any business and domain names by you.

33. Notices and Communications

- 33.1. Any notice, consent or other communication required or permitted by the Agreement shall be in writing and shall be deemed sufficiently served:
 - 33.1.1. if sent to you by email to the email address specified in the first Order (and to which all statements, invoices and correspondence will be sent);
 - 33.1.2. if sent by registered mail to your registered business address;
 - 33.1.3. if sent to your email address that is usually used for billing communications;
 - 33.1.4. if received by us by registered mail to Unit 10, 14 Merino Entrance Cockburn Central WA 6164; or
 - 33.1.5. if received by us by email to director@biz-lynx.com.au and an acknowledgment email has been sent by a director in reply.
- 33.2. Each party shall promptly notify any change of such details to the other.
- 33.3. You must immediately report to us any faults which you become aware of including in relation to the Services, equipment or our systems.

34. Entire Understanding

- 34.1. Subject to the terms of the Agreement this document embodies the entire understanding and agreement between the parties to the Agreement as to the subject matter of this document. Subject to the terms of the Agreement all previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatever and no party to the Agreement shall be liable to any other party to the Agreement in respect of those matters. No oral explanation or information provided by any party to the Agreement to another shall affect the meaning or interpretation of this document or constitute any collateral Agreement, warranty or understanding between any of the parties to the Agreement.

35. Severance

- 35.1. To fullest extent possible, any term in, provision of, phrase, words or word in the Agreement which is or are contrary to any law or have the effect of rendering void or voidable the Agreement or any part thereof, shall be read and construed as if such term, provision, phrase, words or word is or are deleted from and not applicable to the intent that such remaining part or parts of the Agreement will not be affected and shall remain enforceable and binding on the parties.

36. Dispute Resolution

- 36.1. If you have any dispute or difference arising out of or in respect of, our performance of, or any Agreement, the General Conditions, a Service Schedule or an Order, including, without limitation, any dispute or difference as to the meaning of any associated provision (the "Dispute") then you agree to use your best endeavours to ensure that the Dispute be resolved by your reference to the Small Business Development Corporation, Business Advisory, Dispute Resolution Service and mediation (the "Service") in which case clauses 33.2 to 33.6 shall apply. You may not commence any legal or arbitration proceeding unless and until you have made such reference and participated in mediation.
- 36.2. You must serve a written notice on us setting out full and detailed particulars of the nature of the Dispute ("Notice of Dispute").
- 36.3. Within three days of such service, we will furnish you with a written reply ("Reply") which shall answer concisely each item in dispute and respond to all the particulars in the Notice of Dispute so as to disclose, clearly the extent of any concession and denial and the basis of the latter. We will cooperate and communicate with the Service, using our best endeavours to resolve the Dispute.
- 36.4. Upon the receipt of a Reply, or upon the expiry of the time for giving such a Reply, whichever is appropriate, we and you shall communicate with the Service for the purpose of discussing the Dispute in detail. These conciliation communications and mediation shall be held on a without prejudice basis and, in the event that no agreement is reached, no evidence of matters discussed shall be admissible in any proceedings, arbitration or mediation.
- 36.5. There shall be no legal representation during the conciliation communications or at the mediation meeting unless otherwise agreed by the parties. During the conciliation communications the parties shall use their best endeavours to reconcile the Dispute between them.
- 36.6. If, at the conclusion of the conciliation communications held under clause 33.4, including any adjournment thereof, the parties have failed to resolve the Dispute, then you must give us, within four days thereafter, a mediation notice stating that at the expiry of seven days, it will proceed to have the Dispute resolved mediation as part of the Service, as set out in the following paragraphs.
- 36.7. Where the notice has been given within the time permitted, for the Dispute to be resolved by the Service, the following paragraphs shall apply:
- 36.7.1. the parties shall do all such acts matters and things and complete and sign any form or documents required, to enable the Service to be used;

- 36.7.2. the parties shall each pay to the Service half of any fee for the Service (around \$125.00);
- 36.7.3. the parties shall abide by the terms set out by the Service from time to time;
- 36.7.4. the mediator appointed to resolve the Dispute shall be nominated by the Service; and
- 36.7.5. you shall deliver to the mediator copies of the Notice of Dispute and the Reply.

37. Hourly Labour Rates

37.1. Our hourly labour rates, will be charged at the following hourly rates excluding GST:

- 37.1.1. Monday to Friday, business days, during our business hours 9am – 5pm at \$200.00; and
- 37.1.2. for work performed outside of the hours specified in clause 34.1.1 the following rates will apply as a multiplier of the rate specified in clause 34.1.1:
 - 37.1.2.1. business days 6am – 9am, 5pm – 9pm at a multiplier of 1.5;
 - 37.1.2.2. business days 12am – 6am, 9pm to 11:59pm at a multiplier of 2;
 - 37.1.2.3. Saturdays all day at a multiplier of 2;
 - 37.1.2.4. Sundays all day at multiplier of 2.5; and
 - 37.1.2.5. Public holidays at a multiplier of 3;

(“Hourly Labour Rate”).

38. Dictionary

38.1. Subject to clause 1:

- 38.1.1. **Automatic Renewal Period** means the period and subsequent periods referred to in clause 5. and by which the Initial Period and any Service Term is extended.
- 38.1.2. **Availability** means the number of minutes in a month during which a Service is not Unavailable.
- 38.1.3. **Early Termination Charge** for a Service means the charge set out in the Service Schedule or Order for that Service payable in the event of an Early Termination Event.
- 38.1.4. **Early Termination Event** means termination of a Service by you, for any reason other than for our material breach, before expiry of the relevant Service Term, other than where notice has been given pursuant to clause 5.2.
- 38.1.5. **Equipment** means any part of the infrastructure or any line, equipment, computer, switch, server, storage, virtual server, software, apparatus, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with the Service being provided.
- 38.1.6. **Environment** means the environment surrounding the Equipment and Services provided and includes the data centre which may facilitate the provision of services to you, virtual servers, storage, web hosting environment, computer network, shared storage, computer and networking infrastructure, electronic systems and other things that we own and use to provide the Services to you.
- 38.1.7. **Exclusion Event** means:
 - 38.1.7.1. Any faults or lack of Availability caused or contributed to by the simultaneous failure of one or more internet or network systems not wholly owned or operated by us for the relevant Service;

- 38.1.7.2. Any faults, Unavailability or failure not confirmed by us, or which are caused or contributed to by your (including your agents, contractors and customers) act or omission, any act or omission of a third party, your Site (including access to your Site and availability of cabling facilities at your Site), equipment or software owned or supplied by you or a third party. Our Service Provider is a third party under this paragraph;
- 38.1.7.3. Network Maintenance; or
- 38.1.7.4. Force Majeure event.
- 38.1.8. **Force Majeure Event** has the meaning ascribed by clause 28.
- 38.1.9. **General Conditions** has the meaning ascribed in the introductory recitals A and B.
- 38.1.10. **GST** has the meaning given to it in the GST Act and includes a notional liability for GST.
- 38.1.11. **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 38.1.12. **Hourly Labour Rate** means the relevant rate as specified in clause 34.
- 38.1.13. **Initial Period** for a Service means the period of time defined in the Order for that Service or 12 months if not so defined.
- 38.1.14. **Intellectual Property Rights** means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know-how and confidential information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.
- 38.1.15. **Order** means an order for a Service including a request to vary, reconfigure, cancel an existing Service or add an additional Service, submitted by you to us in the form specified or accepted by us from time to time.
- 38.1.16. **Our and our** means and has reference as possessive adjective to we, We and us.
- 38.1.17. **Planned Network Maintenance** means network maintenance scheduled from time to time in respect of a Service and during which the Service may not be available.
- 38.1.18. **Quantity Required** means the exact number of units of or the precise level of quality, speed, or other measurable attributes of the Service or product that will be delivered or provided as specified in the Order, defined under Minimum Quantity Required, or as increased or decreased from time to time.
- 38.1.19. **Remote Support Method** means a method such as a phone call, email, remote control access method using a tool we provide or one that is provided by your operating system or software and any method that does not involve us directly attending your location or assisting you physically in person.
- 38.1.20. **Service** means the specific service or services set out and referred to in a Service Schedule and any associated Order.
- 38.1.21. **Service Levels** for a Service means the service levels set out or referred to in the Service Schedules.
- 38.1.22. **Service Provider** means a service provider from whom we acquire any Service for the purpose of reselling the Service to you.
- 38.1.23. **Service Request Method** means an email, phone call or ticket to us detailing name of the person who is experiencing the issue along with a description of the issue being reported, any steps taken to resolve the issue already as well as the severity or impact of the issue on the person reporting and business as a whole together with the person's email and phone number or your other preferred contact name and associated email and phone number.

- 38.1.24. **Service Schedule** means a schedule or schedules attached to or referred to in an Order better describing and providing additional terms and conditions relating to a particular Service or Services to be provided to you.
- 38.1.25. **Service Term** means the Initial Period and any Automatic Renewal Period for that Service.
- 38.1.26. **Significant Amounts of Data** includes amounts of data over and above:
- 38.1.26.1. a daily usage specified by us as unreasonable or unacceptable having regard to the impact of such usage on a network;
 - 38.1.26.2. your average daily usage since a Service started to be provided to you;
 - 38.1.26.3. your average daily usage over the last 12 months; and
 - 38.1.26.4. any limit specified in a Service Schedule.
- 38.1.27. **Site** means any land, building, vehicle, vessel, structure or place which is owned, leased, occupied or used by you, containing Equipment or for a Service, or to which a Service is supplied or access by you or us, and includes any part or parts thereof.
- 38.1.28. **Start Date** means the date an Order is accepted by us.
- 38.1.29. **Unavailable and Unavailability** mean the number of minutes in a month during which a Service is subject to an interruption or outage that results in the total disruption of that Service such that the Service is unable to send and receive data and is documented in our service ticket which is opened within 72 hours of the disruption occurring. Unavailable commences when the service ticket for it is opened. Service tickets will be opened at the time you notify us of the disruption by notice in writing or by telephone to the Service Desk or we otherwise open a service ticket in relation to the disruption, including where we do so as part of a pro-active fault monitoring service, we provide to you. Unavailable time does not include any period during which an Exclusion Event applies.
- 38.1.30. **Upstream Provider** means any service or product provider, on which we rely for the provision of a Service to you or the provision of a product to you.
- 38.1.31. **Valid Claim** for a Service Level means the maximum amount or value of a claim that if applicable to that Service is defined the Service Schedules.
- 38.1.32. **your and Your** means and has reference as possessive adjective to you and You.