

The Henley on Broadwater VoIP/Phone Services Terms & Conditions

1. What The Henley On Broadwater provides to You

1.1 The Henley on Broadwater at 70 Marine Parade, Southport QLD 4215 (The Henley) will provide You with the Service on the terms and conditions of the Agreement.

1.2 You acknowledge that to use the Service The Henley provides You must use the hardware that controls the VoIP/Phone services. You agree that should additional phones be required from the already supplied phone by The Henley charges will be additional and at Your cost.

1.3 All new telephone numbers provided by The Henley in connection with the use of the Service are registered to You and all line and call charges are passed onto You for payment by You. The Henley reserves the right to alter or replace any number as a result of compliance with any relevant legislation and in such case will notify You of any numbering change that will affect the Service supplied to You.

1.4 In acquiring the Service, You expressly acknowledge and agree that there are limitations on the use of the Service as set out in the Service Description. Without limitation, these include:

(a) quality of service may differ from time to time; and

(b) the Services cannot be used in the event of broadband interruption or power failure.

1.5 You may acquire from The Henley from time to time additional services. You acknowledge that such additional services may be subject to additional conditions and charges as notified by The Henley.

1.6 You acknowledge and agree that You have relied on Your own judgment to evaluate the suitability of the Service for the purpose for which You require the Service.

1.7 The Henley reserves the right to modify the Service, and the rules and regulations governing its use, at any time and from time to time.

1.8 To the extent applicable You are responsible for maintaining the confidentiality of any applicable registration number and password and for all uses of Your registration number or password and any and all related charges whether or not authorised by You.

1.9 There are no contract periods to use this Service.

2. Commencement and Term

The Agreement will commence on Activation Date and will continue for the Term. The Agreement may be terminated at any time by the provision of written notice from one party to the other after the Activation Date.

3. Customer's Obligations

3.1 You must cooperate with The Henley and its Suppliers to allow The Henley to establish and supply the Service to You safely and efficiently. This includes following The Henley's reasonable requests in relation to same.

3.2 You are responsible for all usage charges in respect of the use of the Service whether or not such usage charges was authorised and including all usage charges in excess of your account balance or in excess of any credit extended to You. It is your

responsibility to maintain security of the means of access to the Service and ensure unauthorised use does not occur. You are liable for all usage charges whether or not you have authorised the particular use of the Service by another person and you will continue to be liable for the usage charges if you allow another person to use the Service irrespective of whether you have authorised that person to use the Service.

3.3 You must not use, or attempt to use, the Service:

- (a) to make receive calls or send or receive content other than for Your own personal or business use;
- (b) to break any law or to infringe another's rights;
- (c) to expose The Henley or its Suppliers to any liability;
- (d) in any way which damages, interferes with or interrupts the Service, or any telecommunications network, equipment, or facilities, or cabling controlled by The Henley or a Supplier (the latter being a "Supplier Network") to supply the Service, as those things are configured at the time; or
- (e) in a manner that does not comply with the terms of any legislation or licence applicable to You;
- (f) in any way which may damage any property or injure or kill any person.

3.4 You:

- (a) must not resell any Service;
- (b) must not use or attempt to use another person's or entity's account, number, Service, system or confidential information without written consent from the owner;
- (c) in using the Service, must comply with all laws, all directions by a regulator, reasonable directions by The Henley and any usage policies as notified from time to time;
- (d) must not use, or attempt to use, the Service to transmit or communicate any material which is defamatory, offensive, abusive, obscene, threatening, harassing, indecent, menacing, illegal, or unwanted; and
- (e) acknowledge that The Henley or its Suppliers may be required to intercept communications over the Service and may also monitor Your usage of the Service and communications sent over it. You will use all your reasonable endeavours to ensure that others within your control will comply with the foregoing provisions of this clause 3.4.

3.5 The Henley may ask You to stop doing something which The Henley reasonably believes is contrary to clauses 3.3 or 3.4. You must immediately comply with such request. If You do not, The Henley may take any steps reasonably necessary to ensure compliance with clauses 3.3 and 3.4 or any the request arising from same.

4. Equipment

4.1 You must ensure that all equipment You use in connection with the Service and the way You use that equipment complies with all laws, all directions by a regulator and the reasonable directions of The Henley and its Suppliers. If, in the reasonable opinion of The Henley, You breach this clause 4.1, The Henley may disconnect the equipment from the Service. The Henley will try to give You reasonable notice before the equipment is disconnected, but may disconnect the equipment immediately if there is an emergency.

4.2 You are responsible for any lost, stolen or damaged The Henley or Supplier

owned equipment in Your possession at any time during the provision of the Services, except if it is caused by The Henley, a Supplier, The Henley personnel or a Supplier's personnel.

5. Service Charges

5.1 You must pay the applicable charges for the Service in the amount and at the times set out in the Application for Service. The Henley reserves the right to vary its rates and charges in providing the Service at any time and such changes will apply to You forthwith.

5.2 Charges for the Service accrue on and from the Activation Date.

5.3 Unless otherwise agreed, The Henley may invoice You:

(a) for any deposit referred to in the Application for Service, on or before the Activation Date, which amount must be paid on or before the Activation Date;

(b) for any monthly charges, in advance, with the first such payment payable on or before the Activation Date;

(c) for any use charges, The Henley's estimate for same is payable monthly in advance, subject to the provisions of the Application for Service and the The Henley Standard Terms and Conditions; and

(d) otherwise, as notified by The Henley from time to time.

5.4 The Henley reserves the right to:

(a) vary the billing frequency;

(b) issue an interim bill for accrued charges which will become immediately due and payable; or

(c) bill You through a billing agent. Your bill will be mailed to the mailing address provided by You from time to time.

5.5 Processing and verification procedures may mean that not all calls made during the period covered by a bill can be included in that bill. The Henley may include those calls in any subsequent bills.

5.6 The Henley may re-issue any invoice if any error is later discovered. If You have overpaid as a result of a billing error, Your account will be credited with the overpayment or, if You have stopped acquiring the Service from The Henley, The Henley will refund the overpayment after Your request and after deduction of any other amounts due by You to The Henley.

5.7 Unless otherwise requested, You agree that Your bill will contain only a summary of total call charges.

5.8 Your bill will be calculated by reference to data recorded or logged by The Henley and any of The Henley's Suppliers. Records held and call logging procedures adopted by The Henley and any of The Henley's suppliers will be conclusive evidence of Your usage and charges payable by You.

5.9 Subject to clause 5.10, You are required to make payment by authorising The Henley to deduct from Your nominated bank account, the Fees payable from time to time by You in accordance with this Agreement or by transferring to The Henley's nominated account any amount due on or before its due date.

5.10 The Henley is taken to have received a payment from You where it is made by electronic transfer on the date of deposit shown in The Henley's bank account statement.

5.11 If Your payment is not honoured (for example, in the case of insufficient funds for direct debit), The Henley may charge You a fee which reflects the cost to The Henley of same.

5.12 Subject to clause 6, You must pay each amount invoiced in the way and by the due date specified in the invoice or in the The Henley Standard Terms and Conditions (as the case may be) (“Due Date”). If Your account is not paid within 10 days of the Due Date, The Henley may:

(a) charge you interest on the outstanding amount from the date it falls due until the date the payment is received in full, at the rate equal to the greater of 9% per annum or the rate of interest per annum which is one percent point higher than the national benchmark rate published by the Commonwealth Bank of Australia on the first day of each calendar month (if not published on the first day, then the first national benchmark rate published in that month) to be reviewed monthly;

(b) suspend or cancel the Service. If The Henley suspends or cancels the Service, The Henley may charge You a suspension fee, cancellation fee and/or reconnection or reactivation fee. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;

(c) engage a mercantile agent to recover the money You owe The Henley. If The Henley engages a mercantile agent, The Henley may charge You a recovery fee;

(d) institute legal proceedings against You to recover the money You owe The Henley. If The Henley institutes legal proceedings, The Henley may seek to recover its legal costs, and

(e) on-sell any unpaid amounts to a third party. If The Henley does this, any outstanding amounts will be payable to that third party.

5.13 In addition, The Henley may impose a charge on You to cover The Henley’s reasonable expenses and costs incurred in enforcing any failure or delay in Your payment.

5.14 You must pay any taxes (including, without limitation, any goods and services tax), duties, stamp duties, imposts, levies or government charges relating to Your use of the Service.

5.15 The Henley will charge you \$40 for each successful or failed/rejected port-in of a landline telephone number. You should ensure that all complex services (including but not limited to line hunt, DSL, diversions, ISDN) are completely removed from the landline telephone number before requesting The Henley to port-in the number. Failure to remove all complex services may result in the port-in being rejected by the incumbent carrier.

6. Billing Disputes

6.1 You may dispute an amount invoiced by The Henley but only if You do so in accordance with this clause 6.

6.2 Except to the extent You raise a valid billing dispute in respect of a The Henley invoice, You agree that the invoice is valid and payable (and You must pay any undisputed amount included in the invoice in accordance with clause 5.12).

6.3 To raise a valid billing dispute, You must:

- (a) make a good faith request to The Henley to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect; and
- (b) make any such request to The Henley within 3 months of the date of the relevant invoice.

6.4 You may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or You are entitled to a refund for overpayment, if You do so within 3 months of the date of invoice or overpayment.

6.5 If You raise a valid billing dispute, then The Henley will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. Within five business days of the end of these investigations, either The Henley will provide You with a credit or You will pay any outstanding amount (together with interest on that amount calculated in accordance with clause 5.12(a) and accruing from the original due date for payment until the date of actual payment), as the case may be. In addition, The Henley may invoice You a daily professional services charge to audit and validate any non-The Henley analysis of the disputed amount. You will pay any such professional services charge in accordance with clause 5.

7. Service Suspension and Termination

7.1 Notwithstanding clause 2, The Henley may immediately suspend supply of the Service to You and/or terminate this Agreement by written notice to You if:

- (a) You fail to comply with clause 3 above;
- (b) You fail to pay by the Due Date any charges payable for the Service;
- (c) You default in performance or observation of any obligation under this Agreement and, if that breach is remediable, You fail to correct the breach within 21 days of written notice from The Henley;
- (d) You are declared insolvent;
- (e) a receiver or liquidator or provisional liquidator is appointed to You or You enter into any arrangement with Your creditors or any class of creditors; or
- (f) The Henley's supply arrangements are terminated with any of its Suppliers required for the provision of the Service.

7.2 On termination of this Agreement, all charges for use of the Service and all other amounts owing by You to The Henley will become immediately due and payable.

7.3 Termination of this Agreement for any reason shall not prejudice the rights of either party which have accrued up to the time of termination.

7.4 The Henley may without liability and with immediate effect suspend or limit the Service in the event of an emergency or if required to by so by its Suppliers or to perform necessary maintenance or other service work in connection the Service.

8. Liability

8.1 The Henley nor its Suppliers' does not warrant that the Service will be free of interruption, delays or faults.

8.2 To the maximum extent permitted by law all conditions and warranties expressed or implied by any legislation, the common law, or otherwise in relation to the supply of the Service or otherwise in connection with this Agreement are expressly excluded.

8.3 The Henley is not responsible for rectifying any fault in the Service where the fault arises in or is caused by a Supplier Network, Your equipment or other equipment beyond the control of The Henley.

8.4 To the extent permitted by law, The Henley nor its Suppliers' shall not be liable to You for any loss or damage (including incidental loss, consequential loss, loss of profits of any kind, loss or corruption of data, interruption to business, loss of revenue, or economic loss of any kind) arising out of any performance or failure to perform by The Henley any of its obligations under this Agreement (including as a result any act, omission or negligence and including in relation to the performance or non-performance of the Service).

8.5 The Henley acknowledges that legislation may imply into this Agreement certain conditions of warranties and confer on You certain rights and remedies which may not be excluded, modified or restricted. Where permitted, The Henley's liability under those non-excludable rights is limited at The Henley's option to:

(a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and

(b) in the case of services, supplying the services again or payment of the cost of having the services supplied.

8.6 You indemnify and hold The Henley and its Suppliers' harmless in respect of all loss, damage, costs, expenses and liability arising from the use by any person of the Service.

8.7 The Henley and its Suppliers' enter into the supply of services with their best intentions to provide a quality and hassle-free service. However, as hardware and datacentres are involved to provide the service You accept that things can go wrong from time-to-time and The Henley and its Suppliers are held harmless at all times.

8.8 The Henley and its Suppliers' will take all care where possible to maintain a good quality service and will be held harmless at all times.

9. Privacy and Personal Information

9.1 The Henley may collect, use and disclose personal information provided by You or your personnel or customer for purposes relating to the supply of the Service, including without limitation to our Suppliers, or for purposes that would reasonably be expected as part of the supply of the Service. You agree to:

(a) provide true, accurate, current and complete personal information in this regard, and

(b) maintain and promptly update such personal information to keep it true, accurate, current and complete. If you provide information that is untrue, inaccurate, not current or incomplete, or if The Henley has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, The Henley has the right to suspend or terminate Your use of the Service and any future use of the Service (or any portion of the Service).

9.2 You acknowledge and give authorisation to The Henley to obtain from a credit reporting agency a credit report containing personal information regarding You, your personnel or your customers.

9.3 Without limiting clause 9.1, You acknowledge that The Henley may deal with such personal information and other information about You in accordance with its privacy policy from time to time. The Henley's privacy policy is located in your lease

documents. Without limitation, in order for The Henley to provide the Services to You, You expressly acknowledge and agree that The Henley may provide such information from time to time to:

- (a) a credit reporting agency or credit provider;
- (b) another The Henley group company;
- (c) parties who are not related to The Henley, including The Henley's agents, dealers and contractors;
- (d) suppliers who need access to Your Personal Information to allow supply of the Service;
- (e) such persons as may be necessary to enable The Henley to comply with any applicable industry codes registered with the Australian Communications and Media Authority.

9.4 The Henley may be permitted or required by applicable laws to collect, use or disclose personal information about You, your personnel or your customers (which may include, for example, numbers called, time of call, location of call), including to:

- (a) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
- (b) emergency services organisations, and
- (c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

9.5 If You do not provide part or all of the personal information requested by The Henley, The Henley may refuse to supply, or limit the supply to You of, the Service.

10. Intellectual Property

10.1 Nothing in this Agreement shall be construed as transferring any Intellectual Property rights of The Henley to You;

10.2 Except as otherwise provided in this Agreement, no part of any content or software on the Service may be copied, downloaded, recorded or stored in a retrieval system for any other purpose, nor may it be redistributed for any purpose, without the express written permission of The Henley;

10.3 The Service is protected by Australian and international copyright laws. Except for your informational, personal, non-commercial use as authorised above, you may not modify, reproduce or distribute the content, design or layout of the Service, or individual sections of the content, design or layout of the Service or The Henley logos without our express written permission.

11. Force Majeure

11.1 The Henley and its Suppliers' shall not be liable to You for any failure or delay in the performance of any obligation under this Agreement caused directly or indirectly by any event beyond The Henley's and its Suppliers' reasonable control.

12. General

12.1 The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this Agreement, or exercise any election or discretion under this Agreement, shall not operate as a waiver of the rights of a party, whether express or implied, arising under this Agreement.

12.2 If a provision of this Agreement or a right or remedy of any part under this Agreement is invalid or unenforceable it will:

(a) be read down or severed to the extent of the invalidity or unenforceability; and

(b) not affect the validity or enforceability of that or the remaining provisions of this Agreement. The Henley may vary this Agreement from time to time and at its discretion without prior notice.

12.3 This 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 The Henley.

12.4 This Agreement is governed by and must be construed in accordance with the laws of the State of New South Wales for the time being in force and the parties submit to the jurisdiction of the courts and tribunals of that State.

12.5 You must not assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of The Henley.

12.6 In the event, and to the extent, of any conflict or inconsistency between (i) these General Terms and Conditions and (ii) the The Henley Standard Terms and Conditions, these General Terms and Conditions will prevail.

12.7 Terms & Conditions may change from time to time. These are always available by contacting The Resort Manager of The Henley c/o 70 Marine Parade Southport QLD 4215.

12.8 Acceptance of this agreement means the Governing Law will be within the State of Queensland.

12.9 There may be disruption to your service whilst your number is being ported through. The Henley on Broadwater nor its Suppliers' shall not be liable to You for any loss or damage arising from this process.

12.10 Termination of this contract requires written notice to The Henley Manager c/o The Henley 70 Marine Parade Southport QLD 4215

13. Definitions and Interpretation

13.1 In these General Terms and Conditions, unless the context otherwise requires: Activation Date means, with respect to any Service, the date on which The Henley commences supplying that Service to You. Agreement means the agreement between You and The Henley comprising the terms and conditions set out or referred to in these General Terms and Conditions, the Application for Service and any schedule, appendix or attachment to the Application for Service; Application for Service means an application for service document (in a form approved by The Henley) completed in full and signed by a party wishing to be supplied with VoIP services by The Henley; The Henley Standard Terms and Conditions means the set of standard terms and conditions located at www.TheHenley.com.au, as the same may be updated at any time and from time to time. GST means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999; Intellectual Property includes any: copyright; design, patent, trademark, logo, circuit layout owned and or used by The Henley (and whether registered, unregistered or applied for) used in connection with the Service; trade,

business, company or domain name; know how, techniques, methods, inventions, processes, confidential information (whether in writing or recorded in any form used established and or developed by The Henley from time to time in connection with the Service); manuals or practices used in connection with the Service; and any and all other proprietary, licence or personal rights arising from intellectual activity in or used in connection with the Service and all improvements and modifications to any of them; Services means those services to be provided by The Henley as specified in the Application for Service; Supplier means a telecommunications service provider or equipment supplier who supplies telecommunications services or equipment to The Henley; You and Your means the party named as the customer or subscriber in the Application for Service.

13.2 In these General Terms and Conditions:

- (a)** a reference to a person includes a body corporate, an unincorporated body or other entity and vice versa;
- (b)** a reference to a clause means a clause of these General Terms and Conditions;
- (c)** a reference to an Annexure means an annexure of the Application for Service.