

Managed Phone - Service Specific Terms and Conditions

MyRepublic Managed Phone ("**Managed Phone**" or "**Service**") is a cloud-managed phone subscription service offering within New Zealand consisting of MyRepublic-provided CPE and network services which includes: (i) the supply of one or more telephone handsets, (ii) the Service and Support.

The Managed Phone Specific Terms and Conditions ("**Managed Phone Service Terms**") set out the basis in which MyRepublic will provide the Service to you. These Managed Phone Service Terms shall be read in conjunction with the MyRepublic General Terms and Conditions ("**General Terms**"). The Managed Phone Service Terms, the General Terms and the order form signed between MyRepublic and Customer shall be referred to as the "**Agreement**". Customer shall be bound by and shall fully observe and comply with the terms and conditions of the Agreement.

1. Definition and Interpretation

1.1. In these Managed Phone Service Terms, words and expressions shall have the following meaning:

"**Customer**" means the company, business or organisation that applies for and/or acquires services from MyRepublic; and "you" and "your" have corresponding meanings;

"**End User**" means the individual using the Service, e.g. an employee of the Customer;

"**Equipment**" means any equipment owned by either MyRepublic, or MyRepublic supplies that is used to provide the Service to you, and excludes any equipment that you have purchased from MyRepublic and have fully paid for, or is otherwise supplied by yourself to access the Service;

"**MyRepublic**" means MyRepublic Limited (NZBN: 9429041029671), and "we", "us" and "our" have corresponding meanings;

"**Premises**" means the property bearing the Installation Address which we provide the Services and is able to receive reliable fibre broadband connection;

"**Service and Support**" refers to fault isolation and diagnosis, hardware replacement for defective hardware, and software updates for defective software.

1.2. For the purposes of interpretation and construction of the agreement:

1.2.1. words importing the singular or plural include the plural and singular respectively;

1.2.2. headings are inserted for convenience only and do not affect the interpretation of this agreement;

1.2.3. words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; and

1.2.4. any reference to any statute or regulation is a reference to that statute or regulation as amended or replaced.

2. Service Description

2.1. We will supply the Services to you in accordance with the details set out in the order form, until the Services are terminated in accordance with the provisions of this Agreement.

2.2. Managed Phone is offered only to Premises in New Zealand with a stable internet connection.

2.3. Our scope of the Service includes providing and configuring the Equipment, testing and activating the Service, and providing support for the Service and Equipment.

3. Early Termination Fees

- 3.1. Early Termination Fee outlined applies when the service(s) are terminated before the end of the minimum contract term. The Early Termination Fee will be prorated by the number of months remaining in the minimum contract term period.
For example: If a customer is on a 12-month contract with early termination fees of \$500, and they choose to terminate in month 6, the early termination fee is calculated as \$500 divided by 12 months x 6 months remaining. This means that the Early Termination Fee will be \$250.

4. Pricing, Billing and Charges

- 4.1. MyRepublic reserves the right to modify prices after the initial term. MyRepublic will provide Customer with ten (10) working days' notice of any price increases. Price reductions will be effective immediately without any written notification. If Customer elects not to accept a price increase, it must notify MyRepublic in writing of its intent to terminate the Service within ten (10) working days of receipt of the notice of the rate increase. After MyRepublic receives such notice, it will terminate Customer's Service within sixty (60) days of receipt without any termination penalty or liabilities by the parties (including the Early Termination Fee). During the termination period, the original price shall apply. Customer's use of the Service after the expiry of the ten (10) working day notice period by MyRepublic will constitute its acceptance of the price increase and MyRepublic will charge and invoice the Customer the revised price accordingly.
- 4.2. Notwithstanding anything to the contrary in the Agreement, billing for the Service will begin on the commencement date of Service activation by MyRepublic, as agreed upon between MyRepublic and Customer at the time of entering into the Agreement. Should there be any delays to Service activation due to the Customer, MyRepublic reserves the right to commence billing on the previously agreed upon date.

5. Service Requirements and Restrictions

- 5.1. To receive Managed Phone Service, Customer must provide the following:
- 5.1.1. All required supporting documents with Customer-acknowledged network order.
 - 5.1.2. Customer contact information that includes telephone number and valid email address.
 - 5.1.3. A single point of contact to work with MyRepublic and the connection team on all project activities and approve all job change orders.
- 5.2. Internet Service
- 5.2.1. MyRepublic shall provide remote Service and Support of provided Managed Phone equipment.
 - 5.2.2. To utilise Managed Phone Service, and to enable MyRepublic to provide Service and Support of Managed Phone, Customer must have a stable internet service at the Managed Phone location. This internet service may be provided by MyRepublic or another internet supplier. However,

MyRepublic internet is recommended as the ability to diagnose and remedy issues may be hampered if a third-party service is used.

6. Equipment

6.1. MyRepublic provided Equipment.

Equipment provided and delivered by MyRepublic to Customer is meant only to be used in conjunction with the Service, and Customer is not authorised to use the Equipment for any other way or purpose. Customer must strictly comply with all technical documentation and manufacturer's instructions that accompany such Equipment. MyRepublic shall not be liable to rectify any default or error occurred due to the negligence and/or non-adherence by Customer to such requirement. Any violation of the foregoing provision by Customer will be considered a Default pursuant to the terms of the Agreement. Customer will take all reasonable measures to protect and care for the Equipment as it would its own equipment. Customer shall be responsible for all loss, damage, or destruction of the Equipment from the date of delivery to Customer's premise until the date the Equipment is removed from Customer's premises by MyRepublic or its contractors or agents at Customer's sole cost and expenses.

6.2. MyRepublic shall furnish Service and Support of MyRepublic provided Equipment only during the term of Service, provided that the Equipment is used by Customer in compliance with the Agreement.

6.3. MyRepublic will not provide service to or support any Customer provided equipment or hardware. If, after diagnosing a problem with the Service, MyRepublic determines that the Customer provided equipment or hardware is the cause of the problem, Customer will be responsible for servicing such equipment or hardware at its own cost and expenses.

6.4. Equipment Purchased Through MyRepublic.

Customer may purchase Equipment through MyRepublic for use in connection with Service. Such Equipment in all instances will remain the sole responsibility of Customer and under no circumstance will MyRepublic's responsibility of providing the Service extend to such Customer's Equipment other than the original manufacturer warranty with respect to the Equipment.

7. Managed Phone Service Delivery

7.1. Physical installation of the Managed Phone Service is the responsibility of Customer and/or their agents.

7.2. MyRepublic may provide a remote MyRepublic Engineer to be Customer's primary point of contact throughout the Managed Phone Service Delivery process.

7.3. Managed Phone Configuration and Set Up.

MyRepublic will configure and set up the Service as specified by Customer in the Managed Phone scoping documentation. Managed Phone equipment may be shipped directly to Customer's service location and will be configured in accordance with manufacturer's published specifications. MyRepublic may impose additional costs to configure certain features.

8. Managed Phone Service and Support

- 8.1. **Managed Phone Equipment and Services Support**
After Managed Phone Service activation, Customer will be required to contact their agent or MyRepublic Customer Care to report Managed Phone service issues, or to request changes to the Managed Phone Service. Only the authorised Customer representatives may request changes to MyRepublic Managed Phone Services. If MyRepublic, or its contractors and agents, provide and continue to own the Equipment needed for Customer to use Managed Phone Service, then while the Service is being provided MyRepublic or its designee shall furnish Service and Support of the Equipment when required, provided that the Equipment is used in compliance with MyRepublic's normal operating instructions and not abused or modified by Customer. Customer will be responsible for making any requests for Service and Support by contacting MyRepublic through a recognised channel, or by giving MyRepublic written notice. For the avoidance of doubt, MyRepublic will not furnish Service and Support for Customer provided equipment and all costs or expenses related to fault isolation, diagnosis, hardware replacement, and software updates for Customer provided equipment will be Customer's sole responsibility.
- 8.2. Details regarding Managed Phone Service and Support are as follows:
- 8.2.1. MyRepublic Managed Phone Service Coverage Hours. Managed Phone Service and Support is provided during Business Hours being 9am to 6pm New Zealand Time, Mondays to Fridays, excluding public holidays.
- 8.2.2. Managed Phone Service and Support includes the provision of replacement MyRepublic provided hardware in the manner as set out below. Replacement hardware provided as part of Service and Support Services may be refurbished and will be furnished only on an exchange basis. Returned hardware that has been replaced by MyRepublic will remain MyRepublic's property.
- a. End of Life Equipment.
 - i. MyRepublic may discontinue, or limit the scope of Service and Support Services, for Equipment that a third-party manufacturer has declared "end of life", "end of service", "end of support", "manufacture discontinue", or similar designation ("**End of Support**") from time to time.
 - ii. MyRepublic agrees to notify Customer of any hardware and/or software application elements that become End of Support by the manufacturer(s) at any time during the initial or extended service agreement. Upon notification, MyRepublic will consult Customer as to the impact to the Managed Phone Service agreement. Consultation will include any recommendation to upgrade, replace, and/or deploy a new technology along with defining any applicable one-time or monthly service charges. A replacement Equipment of similar value and features will be provided at no additional charge. If Customer chooses replacement Equipment of a higher value, Customer will be required to pay an additional fee.
- 8.2.3. MyRepublic may electronically monitor supported Equipment for the following purposes:
- a. Remote diagnostics and corrective actions;
 - b. To determine applicable charges;
 - c. To verify compliance with applicable software license and hardware terms and restrictions and these terms and conditions.
- 8.2.4. None of the following are included in Service and Support provided by MyRepublic:

- a. Diagnosis or support of equipment or software other than supported Equipment provided by MyRepublic in connection with the Managed Phone Service, including without limitation, systems interfacing with supported Equipment;
- b. Support of user-defined applications;
- c. Data recovery services;
- d. Support of Equipment used in breach of applicable license restrictions or contrary to capacity and other use limitations under which the Equipment was licensed by the manufacturer;
- e. Support of Equipment that have had their serial numbers altered, defaced, or removed;
- f. Service and Support or repair resulting from any of the following:
 - i. Neglect, misuse, power failures or surges, fault or negligence of any persons other than MyRepublic or its contractors, or causes external to the supported Equipment;
 - ii. The combination or integration of non-MyRepublic furnished equipment, software, or facilities with supported Equipment (except as provided in the MyRepublic documentation);
 - iii. Supported Equipment that have been changed, modified or altered if such changes, modifications or alterations are not performed or directed by MyRepublic;
 - iv. Changes to the environment in which the supported Equipment were installed;
 - v. Any failure to follow MyRepublic's or the manufacturer's installation, operation or service and support instructions, including the failure to permit MyRepublic timely remote access to the supported Equipment;
 - vi. Actions of non-MyRepublic or MyRepublic authorised contractor personnel; or
 - vii. Force majeure conditions outside of MyRepublic's reasonable control.

8.3. Managed Phone System Administration

MyRepublic will retain all administrator privileges for hardware and software delivered under the Managed Phone Service.

8.4. Customer Changes and Upgrade Policy

Only authorised Customer contacts can request changes to the Managed Phone Service. MyRepublic will provide Customer with an order number and a requested service date. Certain remote changes may require a reboot of the Equipment to take effect. All Changes performed by MyRepublic will be charged at the then current service rates.

8.5. Upgrades

Upgrades will be co-terminus with the Agreement unless otherwise as amended in any extension of the Agreement.

- 8.5.1. Customer will be charged and agrees to pay a non-recurring charge as designated by MyRepublic in connection with related configuration, installation, and training.

9. Customer Representations and Warranties

In addition to the representations and warranties as set forth in the Agreement, Customer acknowledges that the Managed Phone Service shall be subject to New Zealand export laws and regulations and that any use or transfer of the Managed Phone Service must be authorised under those laws and regulations.

10. Termination

- 10.1. We may terminate all or any part of the Service or terminate this agreement with immediate effect without compensation and without prejudice to our rights to damages for any antecedent breach by you of this agreement if:
 - 10.1.1. you breach any of the terms and conditions of this agreement or any other agreement you have with us;
 - 10.1.2. you become or threaten to become bankrupt or insolvent, or die;
 - 10.1.3. you make any arrangement or composition with or assignment for the benefit of your creditors or go into either voluntary or compulsory liquidation or a receiver, trustee, judicial manager or administrator is appointed over any of your assets;
 - 10.1.4. the equivalent of any of the events under the laws of any relevant jurisdiction occurs to you;
 - 10.1.5. you provide incorrect, false or incomplete information to us;
 - 10.1.6. we suspect that you are using or allowing the Service to be used for fraud, misconduct or any other illegal or improper purpose;
 - 10.1.7. the requirements of any relevant regulatory authority or the compliance with directions or guidelines issued by them resulting in us having to stop providing the Service to you;
 - 10.1.8. if you are likely to create imminent harm to our network or any third party's networks or systems or our provision of the Service, or defraud us, or are likely to create imminent harm or are abusive to our personnel; or
 - 10.1.9. for any reason beyond our control (including loss of any licence, wayleave or easement, requirements of any governmental or regulatory authority or orders by the court and cessation or failure to deliver by a third-party supplier) we are unable to provide the Service.
- 10.2. MyRepublic reserves the right to determine, in its sole reasonable discretion, not to arrange for or to discontinue provisioning of such Services and to terminate the Agreement for any reason whatsoever by giving Customer not less than ten (10) working days prior written notice thereof and without being liable for any kind penalty charges or damages. Such Service termination by MyRepublic may be based upon, but not limited to, a determination that the rules, regulations or policies of New Zealand regulatory entity, or any other applicable governmental agency or entity may cause the provisioning of such Services to be unlawful, unprofitable, impractical, or undesirable in the sole determination of MyRepublic. For the avoidance of doubt, in the event of such a termination, early termination charges shall not apply.
- 10.3. If the Service is terminated:
 - 10.3.1. all sums due, accruing due or payable to us in respect of the Service and if applicable, the Equipment, up to the date of termination (including late payment charges) will, upon the termination, become immediately due and payable to us. There will be no refund of any charges paid to us for any equipment (including the Equipment) purchased from us;

10.3.2. you must immediately (and in any event, within five (5) days of such termination) return to us all Equipment which we may have leased or rented to you in respect of the Service in the same condition as when originally delivered, normal wear and tear excepted, failing which we will be entitled to, at our absolute discretion but based on market related prices which are publicly available in New Zealand:

- a. charge you the replacement value of the Equipment; or
- b. the cost of repair of the Equipment; and

10.4. The termination of this agreement will not affect any accrued rights or remedies of either party against the other party.

11. Your Responsibilities

11.1. You are responsible for the use of the Service under your account and for any Content disseminated through the account.

11.2. You must not use or allow the Service:

11.2.1. to transmit any content which may be defamatory, offensive, indecent, objectionable or illegal, or which may cause annoyance, harassment, irritation, inconvenience or anxiety to anyone, give rise to civil liability or otherwise violate any applicable laws, rules or regulations, or contains viruses, worms, trojan horses, time bombs, cancelbots or any other harmful, damaging or destructive programmes;

11.2.2. to make or attempt any unauthorised access to any part or component of the Service, the network or any third-party systems or networks to which you can connect through the Service directly or otherwise;

11.2.3. to disrupt the various networks that are connected to the Service or violate the regulations, policies or procedures of such networks;

11.2.4. in any manner that may constitute a violation or infringement of the rights (including intellectual property or confidentiality rights) of any party; and

11.2.5. to be resold or to transfer the Service and/or the Equipment to third parties without our prior written consent, whether or not for profit or otherwise. We reserve the right to immediately suspend or terminate your Service if we determine, in our absolute discretion, that you resell or transfer the Service.

11.3. You are solely responsible to keep secure any access credentials of the Service.

12. Matters beyond Our Control

12.1. We will not be liable for any delay or failure in performance under this agreement resulting from matters beyond our control. These include acts of God, requirements of any governmental or regulatory authority, war, national emergency, accident, fire, lightning, equipment failure, computer software or software malfunction, electrical power failure, faults, interruption or disruption of the MyRepublic network or the networks of other service providers or of your equipment or the equipment of any third party, riots, strikes, lock-outs, industrial disputes (whether or not involving our employees) epidemics of infectious diseases or acts of terrorism.

12.2. Without prejudice to Clause 12.1 above, we will not be liable for any delay or failure in performance under this agreement resulting from any delay or failure of any third party (including any supplier) to deliver or provide any facilities, infrastructure, equipment, or services to us.

13. **Indemnity**

13.1. You must indemnify us, our affiliates, employees, directors, agents and suppliers against all claims, damages, losses, and liabilities resulting from your use of the Service, your negligence, omission, act, or breach of this agreement.

14. **Liability**

14.1. The Service (including any installation, hardware, software, or support services) are provided on an "as is" and "as available" basis and you agree that you use the Service or rely on any Content obtained through the Service at your sole risk. MyRepublic provides, and you hereby accept, any MyRepublic or third-party hardware or software provided to or used by you in connection with the Service "as is" with no express or implied warranties of any kind, whether express or implied, including implied warranties of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement, to the fullest extent allowed by law. No advice or information whether oral or written, obtained by you from us or through the Service will create any warranty not expressly set out in this agreement. Nothing herein shall be interpreted to enhance or create any warranty with respect to any third-party software. MyRepublic disclaims any and all liability arising out of the delivery, installation, support or use of any software. MyRepublic assumes no obligation to correct errors in any software. You understand and accepts all responsibility for any software meeting your requirements or expectations. Without prejudice to the foregoing, we will not be liable for any delay or failure to provide the Service, or any interruption or degradation of the Service quality which may arise from the following:

- 14.1.1. an act or omission of an underlying carrier, service provider, vendor or other third party;
- 14.1.2. third-party equipment, third-party network or facility failure;
- 14.1.3. third-party equipment, third-party network or facility upgrade or modification;
- 14.1.4. force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and governmental actions;
- 14.1.5. equipment, network or facility shortage;
- 14.1.6. equipment or facility relocation;
- 14.1.7. service, equipment, network or facility failure caused by the loss of power to you;
- 14.1.8. any act or omission by you or any person using Service or Equipment provided to you;
- 14.1.9. any third party's service, equipment, software, network or facility; or
- 14.1.10. any other cause that is beyond our control, including, without limitation, a failure of or defect in any Equipment, the failure of an incoming or outgoing communication, the inability of communications to be connected or completed, or forwarded.

14.2. Without prejudice to clause 14.1 above, we make no warranty:

- 14.2.1. that the Service, the software or any equipment (which we provide to you, including the Equipment) will not cause any harm to your applications, equipment, hardware, software, networks or content;
- 14.2.2. as to the accuracy, reliability or quality of any content obtained through the Service or that defects in any software will be corrected; and
- 14.2.3. that the Service and access to them are error free and uninterrupted or available at all times.

- 14.3. Except as set out in this agreement and to the extent permitted by law, we expressly exclude all other liability we may have to you, including all liability in contract, tort, negligence, misrepresentation, strict liability or statute. This exclusion applies for our benefit and that of all companies, directly or indirectly owned, wholly or partly owned or controlled by us or any of these parties, and all their officers, employees, contractors and agents or anyone else to whom we or these parties are responsible (“**the Relevant Parties**”) and whether it relates to anything caused by or resulting from anything any of us does or does not do or delays in doing (even if done, omitted or delayed fraudulently, wilfully, recklessly, maliciously or negligently), whether or not it is contemplated or authorised by any agreement you have with us.
- 14.4. Under no circumstances will we or any of the Relevant Parties be liable for any special, incidental, indirect, consequential or punitive damages, losses, costs or expenses, even if such damages, losses, costs or expenses were caused wilfully, recklessly or negligently.
- 14.5. Under no circumstances will we or any of the Relevant Parties be liable for any lost profits, revenue, business or anticipated savings, even if such damages, losses, costs or expenses were caused wilfully, recklessly or negligently.
- 14.6. If we or any of the Relevant Parties are liable to you and we cannot, for any reason, rely on the exclusion of liability set out in clause 14.3 to 14.5 herein, then in no event will our liability for damages, losses, costs or expenses suffered or incurred by you and anyone else (whether in contract, tort, negligence, misrepresentation, strict liability or statute or otherwise) exceed \$5,000 for any event or series of related events and \$10,000 for all events occurring in any 12 month period during our Agreement. We will not be liable for any loss of data, profits or any consequential, indirect or special damage, or any loss to the extent that it is caused by you, for example through your negligence or breach of our Agreement. This limitation does not apply to any claim, damages, loss or expense caused by fraud, wilful breach or wilful damage.
- 14.7. The limitations and exclusions of liability in this agreement shall not apply to any liability we or any of the Relevant Parties may have in respect of any death or personal injury resulting from our negligence.

15. General

- 15.1. Currency: Unless otherwise stated, a reference to dollars or \$ is a reference to New Zealand dollars.
- 15.2. GST: Unless stated otherwise, all advertised prices for business Services are exclusive of GST.
- 15.3. No waiver: No failure or delay by us to exercise or enforce any of our rights under our Agreement will operate as a waiver of such rights nor will such failure or delay in any way prejudice or affect our rights at any time thereafter to act in strictly in accordance with our rights under our Agreement.
- 15.4. Severability: If any provision of our Agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions of our Agreement shall not be affected.

- 15.5. Reliance on verbal instructions: You agree that we can act on any verbal instructions you give us in relation to the Services.
- 15.6. Governing law: Our Agreement is governed by the laws of New Zealand. You and we submit to the exclusive jurisdiction of the courts of New Zealand.