



[www.byteway.com.au](http://www.byteway.com.au)

## **MANAGED PRINT SERVICES**

**BYTEWAY PTY LTD**

[admin@byteway.com.au](mailto:admin@byteway.com.au)

Ph 1300 298 392

Shed 2/30-32 Butt St, Canadian VIC 3350 (Ballarat)

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**DATE**

## **PARTIES**

**BYTEWAY PTY LTD** of Shed 2/30-32 Butt St, Canadian VIC 3350 (Ballarat) (**Byteway**)

**And:**

**CUSTOMER**, as per the Customer Details set out in the Application

## **OPERATIVE PART**

### **1. About this Agreement**

- 
- 1.1 We agree to provide you with the Managed Print Services specified in the Application.
- 1.2 This Agreement is not legally binding on us unless and until we accept your Application, which we may do or refuse to do at our sole discretion.
- 1.3 We will be deemed to have accepted your Application if we notify you in writing that we accept your Application.

### **2. Agreement Amendments**

- 
- 2.1 The parties may make changes to this Agreement through mutual consent.
- 2.2 We can make changes to the Agreement in accordance with the following:
- (a) where the change is likely to benefit or have a neutral or minor detrimental impact on you, the change will take effect as soon as we give notice to you; or
  - (b) if we change this Agreement to your detriment, and that detriment is not minor or insignificant, we will give you 21 days' written notice of the change. Should you not agree with the change you will be entitled to terminate the Managed Print Services within 42 days from the date of our notice.
- 2.3 If you choose to terminate any Managed Print Services under clause 2.2(b), you will be required to pay all outstanding amounts in a lump sum for the Managed Print Services and/or Equipment which remains outstanding.

### **3. Term**

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- 3.1 This Agreement commences on the Commencement Date and, unless terminated in accordance with this Agreement, continues until the Term specified in the Application;
- 3.2 Upon the expiry of the Term, this Agreement will continue until either party gives the other party 30 days' written notice of its intention to terminate, and

this Agreement will terminate upon expiry of that notice period.

#### **4. Provision of Managed Print Services**

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- 4.1 We will provide you with the Managed Print Services selected by you in your Application, which may or may not include additional Equipment.
- 4.2 We will provide the Managed Print Services to you with due care and skill. In the event of unexpected faults we will use reasonable endeavors to ensure the Managed Print Service in question is restored as soon as possible.
- 4.3 You will ensure that you comply at all times with all laws and obligations, including license conditions and any reasonable directions issued by us and which are applicable to the Managed Print Services and their use.
- 4.4 You must not use, or attempt to use, the Managed Print Services:
- (a) to break any law or to infringe another person's rights;
  - (b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (c) to expose us to liability; or
  - (d) resupply, license, sell or otherwise a Managed Print Services to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- 4.5 We may ask you to stop doing something which we reasonably believe is contrary to clause 4.4 above. You must immediately comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with clause 4.4 above or suspend or disconnect the Managed Print Services pursuant to this Agreement.

#### **5. Equipment**

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- 5.1 You must ensure that all Equipment you use in connection with the Managed Print Services and the way you use that Equipment complies with:
- (a) all laws;
  - (b) all notices issued by authorization of or under law; and
  - (c) any reasonable direction by us.
- 5.2 If you breach clause 5.1, we may suspend or disconnect the Managed Print Services from the Equipment pursuant to this Agreement.
- 5.3 Depending on the Managed Print Services being acquired, Equipment may either be:
- (a) purchased from us upfront;

- (b) purchased by making installment payments during the course of the Term;  
or
  - (c) provided to you by us without payment.
- 5.4 If you purchase the Equipment from us upfront you will own the Equipment and be responsible for the Equipment from when you receive it, subject to your statutory rights as a consumer.
- 5.5 If you acquire the Equipment by making installment payments during the course of the Term:
  - (a) You agree to pay the Equipment charges stated in your Application or each month throughout the Term. The amount of Equipment charges can be varied in accordance with this Agreement;
  - (b) The Equipment is, and remains, our property and you hold it for us until you have paid for it in full in cleared funds;
  - (c) You will remain liable for any residual amount owing to us at the expiry of the Term, or upon termination, and ownership of the Equipment will not pass to you until this residual amount is paid in accordance with your Application; and
  - (d) If you damage or lose any Equipment before you have paid for it in full, you will still be required to pay us for the full price of the Equipment.
- 5.6 If we provide you with the Equipment without the need for any payment:
  - (a) the Equipment will remain our property;
  - (b) upon receipt, you will be responsible if the Equipment is lost, stolen or damaged, except if it is caused by us or our personnel; and
  - (c) you must not mortgage or grant a charge, lien or encumbrance over any of our Equipment.
- 5.7 Our Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law. We guarantee that all Equipment:
  - (a) is of acceptable quality;
  - (b) matches the description, sample or demonstration model;
  - (c) is fit for its disclosed purpose; and
  - (d) comes with clear title, unless otherwise stated.
- 5.8 If you have purchased the Equipment, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Equipment repaired or

replaced if the Equipment fails to be of acceptable quality and the failure does not amount to a major failure.

## 6. Additional Managed Print Services

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6.1 You may apply for the provision of Managed Print Services which are in addition to those set out in your original Application by submitting a further Application to us (**Additional Services**).

6.2 We retain the absolute discretion to decide whether or not to accept any request for Additional Services, which will be subject to additional charges.

6.3 Where we agree to supply additional Managed Print Services to you, that supply will be on the terms and conditions of this Agreement.

## 7. Service Rates and Payment

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7.1 You will be charged rates as specified either in the Application, or herein as an Annexure to this Agreement (**Service Rates**).

7.2 The charges at the Service Rates will be based on the number of copies completed as part of the Managed Print Services and registered on our monitoring devices and equipment (**Service Charges**).

7.3 If your Service Rates stipulate a minimum monthly service charge (**Minimum Charge**), you will be charged the Minimum Charge where the total monthly cost from the number of copies completed through the Managed Print Services is less than the Minimum Charge.

7.4 We may also charge you for any applicable charges for Standard Installation and/or Optional Installation Services as appropriate (**Installation Charges**).

7.5 At the end of each calendar month, we will invoice you for:

(a) the Minimum Charge or the Service Charges for all Managed Print

Services provided during that Month;

(b) any Installation Charges; and (c) charges for

Additional Services.

(**Invoice Amount**).

7.6 Notwithstanding your rights under clause 10 (Termination), you acknowledge our records of Managed Print Services are correct and prima facie evidence that the Managed Print Services were supplied.

- 7.7 We reserve the right, exercisable at any time and from time to time, to vary the Service Rates by giving you 30 days' written notice prior to such variation. Where possible, we agree to inform you of any changes with more than 30 days' notice. You may terminate the Agreement with 30 days' notice if you do not agree with any price increase.
- 7.8 If you are in default of your obligations to pay any Minimum Charges, Services Charges, Installation Charges or charges for Additional Services for a period of in excess of 90 days, we may:
- (a) exercise or enforce any right, power or discretion conferred upon us under this Agreement;
  - (b) commence legal proceedings against you; or
  - (c) do anything else incidental or conducive to the exercise of the above.

## **8. Our Obligations**

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- 8.1 We agree to perform all our obligations under this Agreement:
- (a) in a professional manner; and
  - (b) with the standard of care and diligence normally employed by duly qualified persons in the performance of similar work.
- 8.2 We will contact you if any event occurs which is, or would become if it continues, an event of default, ascertaining any reason for the event occurring and advising you of the need, where possible, to remedy the event.

## **9. Your Obligations**

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- 9.1 You must pay all Invoice Amounts as and when they become due including all Minimum Charges, Service Charges, Installation Charges and/or charges for Additional Services as appropriate.
- 9.2 You must not attempt or purport to grant or permit the existence of any encumbrance over any interest or purported interest with respect to any of the Managed Print Services.
- 9.3 You will ensure that you comply at all times with all laws and obligations, including license conditions, applicable to the Managed Print Services and their use.
- 9.4 You must not resupply the Managed Print Services to anyone else without our prior written consent, which we may withhold in our absolute discretion.
- 9.5 You agree to grant us access to your premises in the event that it is necessary to install, repair or monitor your Managed Print Service.

## 10. Termination

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- 10.1 We may terminate this Agreement by notice in writing to you if:
- (a) you fail to pay any amount due under this Agreement by the due date, we give you notice requiring payment of that amount and you fail to pay that amount in full within the specified number of days after we give you that notice;
  - (b) you breach any material provision of this Agreement;
  - (c) If you breach any of your obligations under this Agreement and:
    - (i) if the breach is capable of remedy and you do not rectify the breach after receiving 14 days' written notice from us requiring you to do so; or
    - (ii) the breach is not capable of remedy,then we may terminate this Agreement by giving you written notice which will be effective immediately unless otherwise stated in the notice.
  - (d) we reasonably determine that you have failed our credit check requirements or that you are no longer credit worthy; or
  - (e) we are permitted or required to do so by law.
- 10.2 You may terminate the Agreement or cancel the provision of any Managed Print Service by giving us 30 days' notice in writing.
- 10.3 On termination of the Agreement you must:
- (a) pay all charges incurred by you under our Agreement up to the time of termination which will become immediately due and owing upon termination;
  - (b) if we request and at our option, either immediately return all of our or Equipment (at your cost) or make such Equipment available for our collection; and
  - (c) pay the applicable Early Termination Fee (if any) to us.
- 10.4 Any clause of this Agreement which by its nature is intended to survive or is capable of surviving termination or expiry of this Agreement will survive termination or expiry of this Agreement.



## **11. Liabilities and Indemnities**

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- 11.1 Without limiting this clause, except where to do so would contravene any statute or cause any clause of this Agreement to be void or unenforceable, we exclude liability for any and all loss, expense, damage, liability and cost incurred by you in connection with:
- (a) any failure or delay experienced by you in utilising the Managed Print Service;
  - (b) any failure to provide all or part of any of the Managed Print Service; or
  - (c) any refusal by us to supply any Managed Print Service.
- 11.2 You must indemnify, and keep indemnified us against all losses, expenses, damages and costs (on a solicitor and own client basis) suffered or incurred by or awarded against us in relation to or arising out of:
- (a) your breach of this Agreement;
  - (b) any claim or demand against by any person other than you, which arises from or is connected with our supply of the Managed Print Service;
  - (c) any errors in or incomplete details disclosed by you in the Application; and
  - (d) any fraud or illegal activity by you or any third person who uses or purports to use the Managed Print Service supplied to you.
- 11.3 You are liable to us for all charges in relation to the Managed Print Services whether or not you authorised the use of that Managed Print Services by another person.

## **12. Intellectual Property**

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- 12.1 You acknowledge that you have no proprietary right or interest in the Intellectual Property other than granted to it under this Agreement or any other agreement between the parties.
- 12.2 You must not, other than allowed by this Agreement or with our prior consent, assign, licence or encumber the Intellectual Property.
- 12.3 You must not register or record or attempt to register or record anywhere in the world any of the Intellectual Property or any inventions, patents, trade marks, copyright or designs derived from or similar to Intellectual Property or aid or abet anyone else in doing so.
- 12.4 Other than pursuant to this Agreement or other agreement between the parties, you must not, at any time during the Term or after termination, use, deal with or take advantage of the Intellectual Property.

- 12.5 Unless otherwise agreed between the parties, any variation, modification or improvement to any part of the Intellectual Property whether attributable in whole or in part to you will become and remain our property and form part of the Intellectual Property.

### **13. Confidential Information**

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- 13.1 Each party must maintain strict confidentiality in relation to the other party's Confidential Information and must not divulge any aspect of the Confidential Information to any other person other than pursuant to this Agreement.
- 13.2 If either party believes that it may be necessary to disclose any of the other party's Confidential Information to any other person in order to carry out the Managed Print Services, the disclosing party must obtain prior written consent from the other party before making such disclosure.
- 13.3 We must not use or exploit any part of your Confidential Information or aid or abet any other person to do so other than pursuant to this Agreement as is necessary to properly provide the Managed Print Services.
- 13.4 If we are uncertain whether any information comprises part of another party's Confidential Information then we must seek that party's direction before divulging the information.
- 13.5 An obligation of confidentiality under this Agreement does not apply to information that is required to be disclosed by law.

### **14. Fault Reporting**

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- 14.1 We are responsible for arranging the correction of faults in supplying the Managed Print Services. You must provide all necessary assistance to enable us to locate and repair any fault which is our responsibility.
- 14.2 Without limiting any other clause of this Agreement, we will not be liable to you in connection with any fault that is outside of our control.

### **15. Resolution of Disputes**

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- 15.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.
- 15.2 Before a party (**Notifying Party**) seeks any external dispute resolution, it must follow the escalation procedure set out in clause 15.3.
- 15.3 The escalation procedure is as follows:

- (a) the Notifying Party's Managing Director must notify the other party's Managing Director, setting out the reasons for the Dispute; and
    - (b) the Managing Directors must meet and use best efforts to resolve the Dispute.
  - 15.4 If the Dispute is not resolved through the procedure in clause 15.3, each party agrees that the Dispute must be referred for mediation, in accordance with the Law Society of New South Wales' mediation rules, to:
    - (a) a mediator agreed by the parties; or
    - (b) if the parties do not agree on a mediator, a mediator nominated by the then current President of the Law Society of New South Wales or the President's nominee.
  - 15.5 A party that has complied with this clause 15 in relation to a Dispute may terminate that dispute resolution process by giving notice to the other party.
  - 15.6 If, in relation to a Dispute, a party breaches any provision of this clause 15 the other party need not comply with this clause 15 in relation to that Dispute.
- 16. Force Majeure**
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- 16.1 **Force Majeure Event** affecting a party means, anything outside that party's reasonable control, including but not limited to, acts or omissions of the other party, fire, storm, flood, earthquake, war, terrorist act or threat, transportation embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies).
  - 16.2 If a Force Majeure Event affecting a party precludes that party (**Precluded Party**) partially or wholly from complying with its obligations under this Agreement then:
    - (a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of the Force Majeure Event; and
    - (b) to the extent and for the period that the Precluded Party is precluded by the Force Majeure Event from complying with its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event.
  - 16.3 This clause does not apply to any obligation to pay money.

**17. Assignment**

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17.1

Neither party may assign, charge or deal with the Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld.

**18. Duration of Provisions**

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18.1

The covenants, conditions, provisions and warranties contained in this Agreement shall not merge or terminate upon completion of the transaction contemplated herein but to the extent that they have not been fulfilled or are capable of having effect shall remain in full force and effect.

**19. Parties to do all things necessary**

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19.1

The parties agree to do all things and execute all documents necessary to give effect to the terms of this Agreement.

**20. Severability**

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20.1

If a provision (or part of it) is held to be unenforceable or invalid, then it must be interpreted as narrowly as necessary to allow it to be enforceable or valid.

20.2

If a provision (or part of it) is held to be unenforceable or invalid, then:

- (a) the provision (or part of it) must be severed from this Agreement;
- (b) the remaining provisions (and remaining part of the provision) are valid and enforceable.

**21. Law and jurisdiction**

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21.1

The law of New South Wales from time to time governs this Agreement.

21.2

The parties agree to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.

**22. This is the entire Agreement**

22.1 This is the entire Agreement of the parties concerning the subject matter of this Agreement.

22.2 There is no other Agreement, understanding, warranty or representation, whether oral or written, binding the parties concerning any aspect of this Agreement.

**23. No waiver**

23.1 A party may exercise its rights at any time and does not waive those even if that party:

- (a) previously waived a breach or default of all or part of the same or other provision; or
- (b) delayed or omitted to exercise its rights.

23.2 A waiver is only effective:

- (a) if it is signed by the party granting the waiver; and
- (b) to the extent set out in the waiver.

**24. Privacy**

24.1 We are bound by, and comply with the *Privacy Act 1988*. We collect Personal Information directly from you, and also during our ongoing relationship with you. We use your Personal Information to supply the Managed Print Services and for the other purposes described in our Privacy Policy. If you would like more information about our privacy practices, how to access or correct our records, or make a complaint, please review the Privacy Policy on our website which is indicated on the Application.

24.2 You acknowledge and agree that:

- (a) if you do not supply the information we request on our Application, we may not be able to provide the Managed Print Services or the Equipment to you;
- (b) we may use your Personal Information or business information:
  - (i) to assess any Application by you for Managed Print Services to be provided by us; and
  - (ii) to provide the Managed Print Services, including the investigation or resolution of disputes relating to any Managed Print Services provided to you;
  - (iii) to collect payments that are overdue in respect of any Managed Print Services provided by us; or

- (iv) in accordance with the *Privacy Act 1988* (Cth) and our applicable Privacy Policy.
  - (c) we may use your Personal Information or business information to provide information to you about other goods or services which we, or any of our Related Body Corporate, may offer to you.
- 24.3 If you do not want us to use your Personal Information in the manner contemplated by paragraph 24.2, you may request that we do not do so.
- 24.4 We warrant that any personal information disclosed to us during the Term will not be used for any other purpose than to provide the Services. At the end of the Term, we agree to destroy all personal information collected by us.

## 25. Definitions

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25.1 The following definitions apply to this Agreement:

**Agreement** means this agreement;

**Application** means our application form necessary to request the Managed Print Services;

**Business Day** means Monday to Friday excluding public holidays;

**Confidential Information** means:

- (a) all drawings, prototypes, computer programs, specifications, manuals, notes, diagrams, flow charts, project plans, calculations, know how or any other verbal information or written data concerning the products of the Client or their development, design, creation or marketing;
- (b) all business and financial information, databases, sales and supply details, marketing strategies, customer and supplier listings, business listings, information concerning a party or its customers and business associates;
- (c) all (if any) other information relating to a party which, by its nature, places or potentially places the party at an advantage over its present or future business competitors; and
- (d) any other information that would otherwise at law be considered secret or confidential information of a party;

whether or not marked "Confidential" BUT does not include information which:

- (e) at the time of first disclosure is already in the public domain;

- (f) after disclosure by a party to the other, becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement; and

the party to which the information was disclosed can prove that the information was in its possession before the time of first disclosure by or discovery from the other party;

**Equipment** means all or any of the equipment specified in your Application;

**Early Termination Fee** means a fee payable if the Managed Print Service is terminated before its Term has expired, the calculation of which is specified in this Agreement or the Application;

**Excluded Consumables** means:

- (a) paper and throughput material; and
- (b) installation of printer driver updates;

**Excluded Services** means repairs or maintenance services required to Managed Print Services due to:

- (g) misuse, abuse, neglect, fire, accident or other natural disaster;
- (h) relocation, transportation, reinstallation, reinstatement and moving of the Managed Print Services;
- (i) servicing, dismantling or interference, changes, alterations, additions or modifications made to the Managed Print Services;
- (j) electrical power failure or any environmental factor;
- (k) third party software;
- (l) malfunction of, or damage to the Managed Print Services caused by using non-genuine consumables or parts;
- (m) malfunction of, or damage to the Managed Print Services caused by using paper that does not meet our specifications;
- (n) malfunction of, or damage to the Managed Print Services or any part thereof through negligence, improper operations including excessive use that is contrary to any specifications provided to you; and
- (o) malfunction of, or damage to the Managed Print Services caused by liquid spillage, vermin, or use of the Managed Print Services in an unsuitable environment as indicated in any specifications provided to you;

**Intellectual Property** means all copyright, trade mark rights, design rights, patent rights and Confidential Information or know-how owned by or licensed to us as of

the Commencement Date and in the future and any variation, modification or improvement;

**Managed Print Services** means the services and products identified in the Application concerning the management and optimization of printing services and devices, including the Standard Installation and/or Optional Installation Services (as appropriate) but excludes the Excluded Consumables and Excluded Services;

**Optional Installation Services** means additional services not included in Standard Installation including installation of Software, configuration of additional workstations, additional training sessions, configuration of pin codes and security, network faxing and additional software installation;

**Software** means the software provided in conjunction with the Managed Print Services;

**Standard Installation** means delivery, loading and configuring of the Managed Print Services, and includes up to two training sessions on the use of the Managed Print Services but excludes diagnosing and resolving of any software issues unrelated to installation;

**Term** has the meaning given to it by clause 3 of this Agreement;

**we, us** means BYTEWAY AUSTRALIA PTY LTD (ACN 124 822 591); and

**you, your** means the customer specified in your Application.

25.2 When interpreting this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) any gender includes any other gender;
- (d) any thing required to be done on a day that is not a business day, may be done on the next business day;
- (e) reference to a person includes a natural person, corporation, partnership, association or other legal entity;
- (f) reference to legislation includes that legislation as amended or modified or re-enacted; and
- (g) reference to a provision or clause means a provision or clause in this Agreement.